

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James E. Reeves, Special Referee

Appellant Case No. 2013-000965

SCBT, NA,..... Respondent

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of
Revenue; Baird Transport, Inc,.....Defendants

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is theAppellant

**APPELLANT'S MEMORANDUM AND OPPOSITION TO
RESPONDENTS MOTION TO DISMISS**

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SC Court of Appeals

The Appellant is elderly, legally blind and in poor health, and claims that the Respondent SCBT, NA wrongfully foreclosed on his family farm, and that he was denied due process by the banks overly aggressive tactics, and improper conduct during the foreclosure procedure.

The Special Referee in this case ordered a foreclosure sale, which took place, with the Respondent SCBT, NA being the highest bidder and the purchaser at the foreclosure sale. The Appellant did not have enough money to post a bond to stop the sale. Because the foreclosure sale did not result in the property being sold to an innocent third party, the Appellant in this matter has a remedy, the actual return of his property, since SCBT actually holds title to the property, and thus has the ability to transfer it back.

Should the case be remanded, it could be determined that the Appellants property was sold pursuant to an improper foreclosure. Thus, the Court could in fact void the sale of the property. *LeConte v. Irwin* 19 S.C. 554(1883) *Eason v. Witcofskey* 29 S.C.239, 244(1888). Various courts have addressed when a judgment is to be deemed voidable, as opposed to void. See *E.G., City Bank v. Saje Ventures II* 7 Haw. App. 130, 133(Haw.ct.app.1988); *Leisure Campground and Country Club Limited Partnership v. Leisure Estates* 280 MD. 220, 223, 372(a) 2d 595, 598 (1977); *City Bank NA. v. Data Lease Fin. Corp.* 645, F 2d 333, 336 (5th Circuit 1981).

Since there is no innocent third party purchase, the sale could be voided, providing the Appellant with his remedy. Therefore, since the Respondent was the purchaser at the foreclosure sale, it's title is at risk, and therefore this case is not moot.

Further, having a mortgage foreclosure on the Appellant's credit record also causes a damage, and the removal would be to his benefit. Thus a finding by this Court on behalf of the Appellant, would not be moot as the Court on remand could award damages and other relief to the Appellant.

The issue of mootness was brought up by the Respondent in its Brief, and responded to by the Appellant in his Reply Brief.

CONCLUSION

Based on the above, the Respondents Motion to Dismiss should be denied and this case should proceed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark W. Hardee', written over a horizontal line.

Mark W. Hardee
2301 Devine St
Columbia, SC 29205
(803)799-0905
Attorney for Appellant

March 12th, 2014

STATE OF SOUTH CAROLINA)

IN THE COURT OF APPEALS

COUNTY OF ORANGEBURG)

Case No. 2013-000965

Shelton Hoffman)

a/k/a Shelton L. Hoffman)

Appellant,)

vs.)

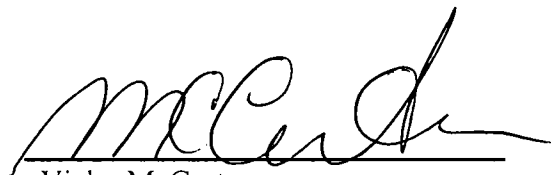
SCBT, NC)

Respondent.)

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March, 2014, I served, via first class mail, at the address below, a copy of the Appellant's Memorandum and Opposition to Respondents Motion to Dismiss pertaining to the above-referenced action.

Harriet Pollitt Wallace, Esq.
James K. Cluverius, Jr.
Roger Townsend & Thomas, PC
401 N. Main St Suite 100
Greenville, SC 29601
Attorney for the Respondent



Vicky McCarter
Legal Assistant

Columbia, South Carolina

Date: 3-12-14

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