

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY CIRCUIT COURT
Philip E. Wright, Special Referee

Appellate Case No.: 2013-002373

Ziraili M. Elbey,

Appellant,

v.

H&R Block Bank, FSB,

Respondent.

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SC Court of Appeals

MOTION TO DISMISS APPEAL

Chad W. Burgess, Esq.
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Columbia, South Carolina 29210
(803) 454-3540
Attorney for Respondent

Ziraili M. Elbey
9789 Charlotte Highway, #400-191
Indian Land, South Carolina 29707
(803) 233-2665
Pro Se Appellant

PLEASE TAKE NOTICE that the Respondent H&R Block Bank, FSB, ("Respondent") by and through its undersigned attorneys, will move before this Court for an Order dismissing the Appeal of Bank's Judgment against Ziraili M. Elbey ("Appellant") pursuant to South Carolina Appellate Court Rule 269 on the grounds that the Appeal is frivolous and taken solely for the purposes of delay.

STATEMENT OF THE FACTS AND MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION

The instant action is an appeal from foreclosure action brought by Respondent against Appellant concerning property located in Lancaster County. The present case was delayed for a number of

years and such delay was caused primarily by the sham filings of the Appellant. On October 24, 2013, the Honorable Phillip E. Wright, Special Referee for Lancaster County, held a supplemental hearing in this action. A Supplemental Special Referee's Report and Judgment of Foreclosure and Sale was entered in favor of Respondent on November 14, 2013. The Special Referee found that Appellant exhibited a pattern of inundating the court system with sham pleadings intended only to delay and unreasonably dispute the legal process. A copy of the aforementioned Supplemental order is attached hereto and incorporated herein as **Exhibit "A"**. Further, the Supreme Court of South Carolina had previously issued Appellant a letter dated January 28, 2011, marked as Plaintiff's Exhibit Number One at the October 24, 2013 supplemental hearing, whereby Clerk Daniel Shearouse characterized Appellant's filings as sham pleadings and warned Appellant against filing such pleadings. A copy of the letter from the Supreme Court of South Carolina to Appellant is attached hereto and incorporated herein as **Exhibit "B"**. Appellant continues to burden the Respondent and the South Carolina court system with sham pleadings, evidenced by this Appeal. In all of the frivolous filings submitted by Appellant, her sole argument appears to be that Respondent lacked standing to bring the foreclosure action. Appellant's assertions regarding standing are wholly without merit.

ARGUMENT

I. RESPONDENT HAD STANDING TO BRING THE INSTANT FORECLOSURE ACTION AND THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE FORECLOSURE JUDGMENT

A. Standard of Review

In an appeal from an action in equity, an appellate court may find facts in accordance with its own view of the preponderance of the evidence; this does not require indifference to the

findings below nor ignorance of the fact that the trial judge is in the better position to assess the credibility of the witnesses. The burden remains on the appellant to show that the trial judge committed error. *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009).

B. Argument

"Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008). At the original hearing on August 22, 2012, Respondent produced the original Note and Mortgage, demonstrating standing to pursue a foreclosure action, as well as an Affidavit of Debt to evidence the Appellant's default of the subject loan. Appellant offers no justiciable argument, nor any proof to support any claims that may be inferred in the pleadings. Appellant's claims tending to refute the standing of Respondent to bring the foreclosure suit at issue have been repetitively denied but Appellant persists in making the same meritless claims.


The Special Referee did not abuse his discretion in denying Appellant's various motions and claims. The evidence presented at both the original foreclosure hearing and the supplemental hearing amply support the judgment.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests this Court to dismiss the present Appeal or, in the alternative, to reject Appellant's claims and affirm the judgment of

foreclosure. Further, pursuant to South Carolina Appellate Court Rule 269, this Court should impose any and all sanctions it deems just and proper under the circumstances to discourage Appellant from continuing to file sham pleadings with the Court.

Brock and Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210
Telephone: (803) 454-3540



Chad W. Burgess
Attorney for the Respondent

Dated: March 25, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

H&R Block Bank, FSB

Plaintiff,

v.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,

Defendant(s)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-29-00035

**SUPPLEMENTAL SPECIAL REFEREE'S
REPORT
AND JUDGMENT OF FORECLOSURE AND
SALE**

DEFICIENCY WAIVER

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CLERK OF COURT
LANCASTER, SC

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directly to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held on August 22, 2012, attended by Brock & Scott PLLC, attorney for the Plaintiff, and a *Special Referee's Order and Judgment of Foreclosure and Sale* was entered on August 22, 2012 (hereinafter: "Original Judgment"). Subsequent to said hearing, the Defendant filed bankruptcy causing the foreclosure sale to be canceled. Said bankruptcy was discharged and Plaintiff now wishes to proceed to foreclosure sale.

A supplemental hearing was held on October 24, 2013, for the purpose of updating the debt due to the Plaintiff and setting a foreclosure sale date, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

At the call of the case, counsel for the Plaintiff appeared. The Defendant appeared pro se. Wellesley K. Clayton also appeared. While he indicated he was not a party, I find that he is one and the same

EXHIBIT

" A "

Wellesley K. Clayton named in the caption as the Trustee on an instrument filed by the Defendant during this proceeding. He did not participate in the proceedings.

The Defendant has filed numerous documents with the Clerk of Court and with the Special Referee. The documents filed by the Defendant proclaim that the Defendant is a natural person, that she is not subject to the jurisdiction of the Court, that she has assigned her interest and the note and mortgage to another entity, to wit a Trust named in the Complaint as a party and that her mortgage has been satisfied by the holder of the Trust.

The documents filed by the Defendant are not proper pleadings under the laws of this State. The Answer of the Defendant was an avoidance of the action, not a legal Answer. Her Answer and subsequent filings raised no legal challenge to the right of the Plaintiff to foreclose the mortgage signed by the Defendant.

The Defendant's filings purport to place the Defendant in some protected category of persons that are not subject to the jurisdiction of the Court. The Defendant challenges the power of the Court over her and the Plaintiff's standing to sue her and her alleged inherent right to maintain possession and ownership of the subject real property despite the fact that she has not paid the Plaintiff under the terms of the agreement.

I find that the documents filed by the Defendant constitute sham pleadings and are intended only to delay and unreasonably dispute the legal process of the Court. The Defendant is governed by the same rules of law and evidence as all other persons who enjoy the benefits of liberty and justice under the system of law that governs the United States of America. The Defendant's attempts to declare herself above the law are a mockery of the system and the Courts.

I heard evidence from both the Plaintiff and the Defendant. The Plaintiff established its right to obtain an Order from this Court requiring that the lien on the property owned by the Defendant be foreclosed. I find that the efforts of the Defendant to divest herself of title or to transfer the property to other entities in an effort to make her in some way immune from the power of the Court to be of no effect and void. The Defendant is still the record owner of the subject property and as such is the only proper Defendant in this action.

The arguments made by the Defendant at the hearing were primarily aimed at standing and jurisdiction. I determined that none of those arguments were of sufficient legal meaning to delay this proceeding from its legal final result, the foreclosure of the mortgage on the Defendant's home.

FINDINGS OF FACT:

1. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$4,200.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

2. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	10/24/13		\$ 189,911.32
Accrued interest from:	01/02/10	to: 10/24/13	\$ 55,350.18
Accruing at:	7.999% per annum		
Advancements to Escrow			\$ 5,646.55
Corporate Advances			\$ 367.45
Late charges:			\$ 1,953.18
Other charges:			\$ 0.00
Costs of collection prior to hearing:			\$ 2,506.85
Attorney's fees:			\$ 4,200.00

Total Debt secured by note and mortgage, including interest to date is \$259,935.53.

Interest for the period from the date shown in (b) above through the date of this judgment, at above stated rate, to be added to the above stated "Total Debt" to comprise the amount of the Judgment debt

entered herein, and interest after the date of Judgment at the rate of 7.999% per annum, pursuant to the terms of the note and mortgage on the judgment debt should be added to such judgment debt to comprise the amount of the Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

3. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Waived the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRPC.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of its mortgage; and the mortgaged property should be ordered sold at public auction after due advertisement.
2. That there is due to the Plaintiff on its note and mortgage the sum of \$259,935.53. representing the Total Debt due to the Plaintiff as outlined above, together with interest thereon at the rate provided in the note to the date hereof.
3. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 7.999% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Defendants liable for the aforesaid mortgage debt shall, prior to the date and time of the sale of the subject property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

2. That on default of payment prior to the date and time of the sale, the mortgaged premises, hereinafter described, shall be sold by the undersigned Special Referee at public auction, at the Lancaster County Courthouse, in the City of Lancaster, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:

- A. FOR CASH: The undersigned Special Referee shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon

compliance with the bid, but in case of non-compliance within thirty (30) the same to be forfeited and applied to the costs and then to the Plaintiffs debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.999% per annum.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.

D. Purchaser to pay for the deed and the cost of recording the deed.

3. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Special Referee only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.

4. That a personal or deficiency Judgment being Waived, the bidding will not remain open for thirty (30) days and bidding will be final on the date of the sale, and compliance with the bid may be made immediately.

5. That the undersigned Special Referee will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) after the date of sale, then the undersigned Special Referee may re-advertise the premises for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

6. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

7. That the undersigned Special Referee shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the amount to the Plaintiff, or the Plaintiff's Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRC.

8. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

9. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Lancaster County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Lancaster County may be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

11. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Special Referee shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.

12. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the premises herein ordered to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND LOCATED IN LANCASTER COUNTY, SOUTH CAROLINA, AND BEING DESIGNATED AS LOT 261 ON THAT CERTAIN PLAT OF CLAIREMONT, PHASE 2, MAP 5, PREPARED BY YARBROUGH, WILLIAMS & HOULE, INC. DATED JANUARY 18, 2005, AND RECORDED JANUARY 28, 2005, AS PLAT DOC #2005 AT PAGE 0047 IN THE OFFICE OF THE CLERK OF COURT FOR LANCASTER COUNTY, SOUTH CAROLINA.

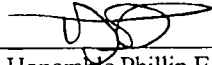
ALSO BEING SHOWN AS LOT 261 OF CLAIREMONT ON A PLAT OF ZIRAILI ELBEY PREPARED BY HUCKS AND ASSOCIATES, PC, DATED MARCH 3, 2006, AND RECORDED IN PLAT DOC 2006 AT PAGE 198.

THIS BEING THE IDENTICAL PROPERTY CONVEYED TO ZIRAILI M. ELBEY BY DEED FROM THE RYLAND GROUP, INC. DATED MARCH 29, 2006 AND RECORDED APRIL 7, 2006 IN BOOK 329 AT PAGE 170. SUBSEQUENTLY, SAID PROPERTY WAS CONVEYED TO KMJ TRUST, DATED DECEMBER 15, 2006 (TRUSTEES: ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON) BY DEED OF ZIRAILI M. ELBEY DATED JANUARY 19, 2007 AND RECORDED JANUARY 29, 2007 IN BOOK 378 AT PAGE 7. THEREAFTER, THE PROPERTY WAS CONVEYED TO WFKC LIVING TRUST UNDER THE PROVISIONS OF A TRUST AGREEMENT DATED JUNE 4, 2010 (TRUSTEE: WELLESLEY K. CLAYTON) BY DEED OF ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON AS TRUSTEES OF THE KMJ TRUST, DATED DECEMBER 15, 2006 DATED JUNE 11, 2010 AND RECORDED JUNE 22, 2010 IN BOOK 569 AT PAGE 85.

CURRENT ADDRESS OF PROPERTY: 13132 Wilburn Park Lane, Fort Mill, SC 29715

TMS: 0006M-0A-261.00

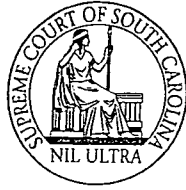
AND IT IS SO ORDERED.



The Honorable Phillip E. Wright
Special Referee for Lancaster County

Date: Nov. 12, 2010

Lancaster, South Carolina



The Supreme Court of South Carolina

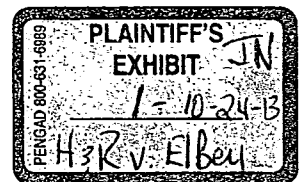
DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

January 28, 2011

Mr. Ziraili M. Elbey
a/k/a Ziraili Mohsassin El Bey
13132 Wilburn Park Lane
Fort Mill, SC 29715



RE: H&R Block Bank v. Elbey, 2011-CP-29-00036

Dear Mr. Elbey:

This responds to the correspondence of January 20, 2011, to Chief Justice Toal. Please be advised that the Chief Justice cannot assist you with this matter.

The above foreclosure action is pending in Lancaster County. Any issues that you have with that action will need to be raised in the trial court. I would encourage you to seek the assistance of an attorney to assist you with this matter.

In the correspondence, you appear to be asserting that you have some independent authority to stop the above case. I note that this State has filing restrictions, criminal penalties and civil penalties for filing "sham legal process." S.C. Code Ann. § 16-17-735 (2003) (among other things, it is "unlawful for a person falsely to assert authority of law, in an attempt to intimidate or hinder a state or local official or employee or law enforcement officer in the discharge of official duties, by means of threats, harassment, physical abuse, or use of a sham legal process" and "sham legal process" includes "the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, which purports to: . . . assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of a person or property . . ."); S.C. Code Ann. § 15-75-60 (2005) (civil remedies including actual damages, punitive damages, costs and attorney's fees for a person

EXHIBIT

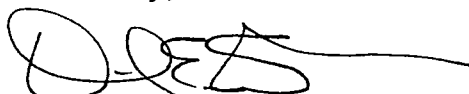
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injured by sham legal process as defined by the criminal statute); and S.C. Code Ann. § 30-9-30 (2007) (prohibiting the filing of sham legal process and providing for civil remedies including actual damages, punitive damages, costs and attorney's fees against those who file sham legal process).¹

Finally, if you have any concerns about the status of any member of the South Carolina Bar, you may want to consult the member directory of the South Carolina Bar at http://scbar.org/member_resources/member_directory. I note that all of the members of the bar that are being copied with this letter are currently active members of the South Carolina Bar in good standing.

Sincerely,



Daniel E. Shearouse

cc: Ronald F. Johnson, Jr., Esquire
Mark A. Pearson, Esquire
Brian L. Campbell, Esquire
Suzanne E. Brown, Esquire
Jason L. Branham, Esquire
Brock & Scott, PLLC
3800 Fernandina Rd., Ste.110
Columbia, SC 29210

Adam J. Russo, Esquire
701 Ventura Place
Mt. Pleasant, SC 29464

The Honorable John Lane
Lancaster County Clerk of Court
P.O. Box 1807
Lancaster, SC 29721

¹ The statutory provisions are available on the South Carolina General Assembly's website, www.scstatehouse.gov.