

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Appellate Case No. 2014-000820**

Appeal from the Circuit Court of Lexington County, South Carolina

Albert J. Dooley, Judge/ Special Referee

Case No. 2010-cp-32-00669

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION SUCCESSOR BY
MERGER TO CHASE HOME FINANCE
LLC S/B/M TO CHASE MANHATTAN
MORTGAGE CORPORATION.....Respondent

V.

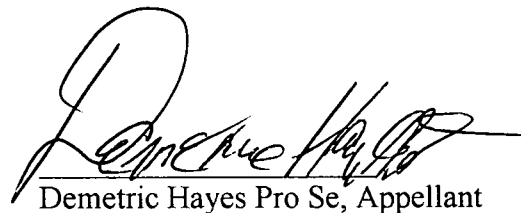
Demetric Hayes.....Appellant

AMENDED NOTICE OF APPEAL

Demetric Hayes; Appellant will appeal the Order Granting [judgment] (the "Order") of the Albert J. Dooley dated March 25, 2014. Appellant received written notice of entry of this order on April 9, 2014.

Counsel of record for the respondent:

Mary M. Caskey, Esquire, FeD ID No. 10120
James Y Becker, Esquire, Fed ID No. 5733
Haynsworth Sinkley Boyd, P.A.
1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
Telephone: 803- 779-3080



Demetric Hayes Pro Se, Appellant
232 Edinfield Ct.
Gaston, SC 29053
(803)-920-4478

RECEIVED

APR 30 2014

SC Court of Appeals

April 30, 2014

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Demetric Hayes.....Appellant

PROOF OF SERVICE

I certify that a copy of the foregoing Amended Notice of Appeal has been served upon the Respondent by placing the same in the United States mail, Certified mail, addressed to the following as shown below this April 30, 2014.

Counsel of record for the respondent:

Mary M. Caskey, Esquire, FeD ID No. 10120
James Y Becker, Esquire, Fed ID No. 5733
Haynsworth Sinkley Boyd, P.A.
1201 Main Street, Suite 2200
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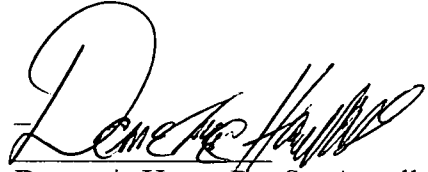
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APR 30 2014

SC Court of Appeals

Presiding Judge / Special Referee:

Albert J. Dooley, Jr., Esq
The Dooley Law Firm
218 East Main Street
Lexington, SC 29072
(803)-359-2547

A handwritten signature in black ink, appearing to read "Demetric Hayes". The signature is written in a cursive, flowing style with a large initial "D".

Demetric Hayes Pro Se, Appellant
232 Edinfield Ct.
Gaston, SC 29053
(803)-920-4478

April 30, 2014

ORIGINAL

FILED

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

BETH A. GARRIS
CLERK OF COURT

JPMorgan Chase Bank, National Association,
Successor by Merger to Chase Home Finance,
LLC s/b/m to Chase Manhattan Mortgage
Corporation,

Case No. 2010-CP-32-00669

Plaintiff,

vs.

Demetric Hayes,

Defendant.

RECEIVED

APR 30 2014

Section of Appeals

**ORDER DENYING DEFENDANT'S RULE 60(b)(3) MOTION TO VACATE
JUDGMENT FOR FAILURE TO EXECUTE SERVICE ON DEFENDANT
AND
SUPPLEMENTAL ORDER POST-JUDGMENT**

Pursuant to Rule 53, SCRCP, this matter was referred to me with authority to enter final judgment in this case. A hearing was held before me on March 13, 2014, on Defendant's Rule 60(b)(3) Motion to Vacate Judgment for Failure to Execute Service on Defendant ("Defendant's Motion") and on Plaintiff's request for an order updating the amount that has come due on the debt since the Master's Order of Judgment and Foreclosure and Sale filed on July 30, 2010 ("Master's Order"). Plaintiff appeared through its counsel, James Y. Becker, Esq. and Defendant appeared *pro se*. For the reasons set forth below, Defendant's Motion is denied and Plaintiff's request for a supplemental order updating the amount of the debt is granted.

I. DEFENDANT'S MOTION TO VACATE THE MASTER'S ORDER IS DENIED.

In his Motion, Defendant argues that he was not properly served with the summons and complaint in this foreclosure action, and that the Master's Order should be vacated under Rule 60(b)(3), SCRCP. However, the evidence before the Court shows that the Master's Order was filed after a hearing before the Honorable James O. Spence on July 29, 2010, during which

AVA

Plaintiff's attorney presented testimony that Defendant was properly served with the summons and complaint, and that Defendant was in default for failing to file any responsive pleading. Plaintiff filed an Affidavit of Service from the Lexington County Sheriff's Department on March 24, 2010, affirming that Defendant was served by substitute service when the Sheriff left a copy of the Summons and Complaint with Defendant's fiancé, Karla Marshall, at the address for the property that is the subject of this action and Defendant's current address. Defendant was given notice of the final foreclosure hearing, as evidenced by the Notice of Final Hearing filed on July 21, 2010. Defendant has admitted that he was present at the hearing on July 30, 2010.

Additionally, after the entry of the Master's Order, Judge Spence held two additional hearings at which Defendant had the opportunity to present argument concerning the service of the summons and complaint and the validity and finality of the Master's Order. Judge Spence ruled at each hearing that Defendant had been properly served by the Lexington County Sheriff's Department and that Defendant had waived his right to challenge the foreclosure action by failing to appear prior to the entry of the Master's Order in 2010.

In his Motion, Defendant again seeks to challenge the validity of the Master's Order, this time based on Rule 60(b)(3), which provides in relevant part:

(b) On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . . (3) fraud, misrepresentation, or other misconduct of an adverse party. . . . The motion shall be made within a reasonable time and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

First, Defendant's Motion under Rule 60(b) is clearly time-barred. Rule 60(b), SCRPC, requires that a motion for relief from a final judgment must be made within a reasonable time but not later than one year after the entry of judgment. *Se. Hous. Found. v. Smith*, 380 S.C. 621, 670 S.E.2d 680 (Ct. App. 2008). Defendant's Motion was not filed until September 10, 2013—

more than three years after the Master's Order was entered on July 30, 2010, so his motion is time-barred.

Second, Defendant has not offered any evidence of any extrinsic fraud or misconduct by Plaintiff. South Carolina courts have long held that to obtain equitable relief from a judgment under Rule 60(b)(3), SCRPC, the alleged fraud or misconduct must be extrinsic. *Raby Constr., LLP v. Orr*, 358 S.C. 10, 19, 594 S.E.2d 478, 482-483 (2004). "Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." *Chewning v. Ford Motor Co.*, 354 S.C. 72, 81, 579 S.E.2d 605, 610 (2003). In his Motion, Defendant asserts two facts that he claims warrant vacating the Master's Order: Plaintiff's alleged failure to serve Defendant with the Summons and Complaint, and Plaintiff's alleged failure to prove that it is the current holder of the Note and Mortgage. Defendant, however, has not produced any evidence to support the truth of his allegations, and even if either allegation was true, there is no evidence that either action by Plaintiff has prevented Defendant from participating in the foreclosure. Instead, Defendant has participated in every hearing held in this case and has repeated the same arguments at every turn, all in an effort to delay the inevitable sale of the property. There is no dispute that Defendant had proper notice of all hearings in this case and that he was present at every hearing. Consequently, even if Defendant's motion was timely brought, which it was not, there is no evidence that Plaintiff has engaged in any fraud or misconduct that has prevented Defendant from participating in this action.

Third, the Court finds that Defendant failed to present any new evidence at the March 13 2013, hearing to support his claims that he was not served or that Plaintiff does not have standing to pursue this case. The Court has already ruled on both issues and held that Defendant was properly served and that Plaintiff is the real party in interest and has standing to sue, so

Defendant's claims are barred by the doctrine of res judicata. Further, Defendant's argument that Plaintiff should be barred from proceeding in the foreclosure because there is no assignment of record into Plaintiff is without merit. Plaintiff is the successor by merger to Chase Home Finance LLC, which is the successor by merger to Chase Manhattan Mortgage. Thus, the Note and Mortgage have never been sold or transferred to a new entity, and no assignment of Mortgage or transfer of the Note is required to give Plaintiff standing.

Based on the foregoing, Defendant's Motion is denied.

2. Plaintiff's request for a supplemental order on the amount of the debt is granted.

At the March 13, 2014, hearing, Plaintiff submitted an Affidavit of Indebtedness from Stephanie N. Dinkins for the purpose of updating the amount due on the subject mortgage loan since the Master's Order was entered on July 30, 2010. Defendant did not present any evidence to oppose the Affidavit of the information contained therein. Defendant also admitted on the record that he in default under the terms of the subject mortgage loan by failing to make payments when due.

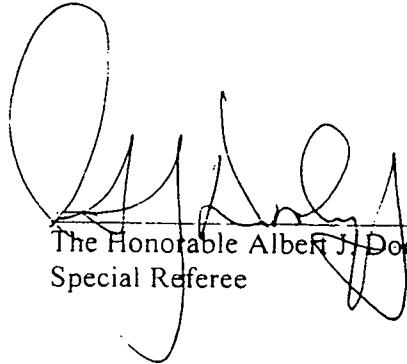
Therefore, upon motion of Plaintiff's counsel and for good cause shown, IT IS HEREBY ORDERED that the previous judgment debt in the Master's Order is amended to reflect that the amount due on the subject not and mortgage, with interest rate provided in the note, and other costs and expenses of collection, is, as of February 20, 2014:

Principal Balance	\$ 109,197.28
Interest Due through 1/31/2014	28,937.47
Pre-Acceleration Late Charges	313.67
Escrow	
Escrow Advances for 2014	0.000

Escrow Advances for 2013	1,926.88
Escrow Advances for 2012	0.00
Escrow Advances for previous years	838.45
Hazard Insurance Advances	3,421.00
PMI Advances	0.00
Credits	(605.11)
Total Escrow	5,581.22
Broker's Price Opinion	503.00
Property Preservation	0.00
Previous Bankruptcy Fees/Costs	750.00
Previous Attorney's Fees/Costs	0.00
Property Inspections	294.00
Suspense	0.00
Subtotal before fees:	145,576.64
Foreclosure Attorneys' Fees (from Master's Order filed July 30, 2010)	1375.00
Costs of collection prior to hearing (from Master's Order filed July 30, 2010)	719.61
Additional Foreclosure Attorneys' Fees	8,649.20
Additional Costs of Collection since July 20, 2010 hearing	1,933.31
TOTAL DEBT SECURED BY NOTE AND MORTGAGE:	\$158,253.76

The Court further finds that based on the Attorney Certification served by Plaintiff, it appears that the foreclosure intervention process under the Administrative Order is complete because Defendant has refused to participate, and the subject property may be set for sale. The subject property shall be sold under the terms of the original Master's Order, at the sale scheduled for May 5, 2014.

AND IT IS SO ORDERED.


The Honorable Albert J. Dooley
Special Referee

MARCH 25, 2014

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2010CP3200669

JPMorgan Chase Bank National Association	Demetric Hayes
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	Date <u>3/26/2014</u>
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For Clerk of Court Office Use Only

This judgment was entered on 27th of March 2014, and a copy mailed first class or placed in the appropriate attorney's box on 27th of March 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Mary McFarland Caskey
PO Box 11889 Columbia, SC 29211

Demetric Hayes 232 Edinfield Ct Gaston, SC 29053

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
