THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Albert J. Dooley, Special Referee

Case No. 2010-CP-32-00669
Appellate Case No. 201400820

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

Respondent,

v.

Demetric Hayes,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Was the Special Referee correct in denying Hayes's Motion under Rule 60(b)(3), SCRCP, based on his findings that the motion was time-barred and that Hayes had failed to meet his burden of proof?

2. Was the Special Referee correct in finding that Hayes did not have a defense to this foreclosure action based on his claims that Chase did not have standing as the real party in interest and that Chase failed to give notice to the Department of Veterans' Affairs?

3. Did the Special Referee correctly rule that Chase complied with the South Carolina Supreme Court's requirements on foreclosure intervention?

STATEMENT OF THE CASE

Respondent JPMorgan Chase Bank, National Association, Successor by Merger to Chase Home Finance, LLC s/b/m to Chase Manhattan Mortgage Corporation ("Chase") commenced this foreclosure action to collect on a residential loan given to Demetric Hayes ("Hayes") on May 27, 2004. (Complaint.) The loan was secured by a mortgage encumbering Hayes's principal residence (the "Property"). (Complaint.) Chase Manhattan Mortgage Corporation was the original payee under the promissory note and mortgagee under the mortgage. (Complaint.) Following a default on the loan, Chase Home Finance LLC, who is the successor by merger to Chase Manhattan Mortgage Corporation, commenced a foreclosure action on February 16, 2010. The Lexington County Sheriff's Department served Hayes with the Lis Pendens, Summons, and Complaint (the "Pleadings") on March 16, 2010, by leaving a copy of the Pleadings with Hayes's fiancée, Karla Marshall a/k/a Carla Marshall ("Marshall"), at the Property. (Affidavit of Service.)

Hayes failed to file or serve any response to the Pleadings within thirty days. (Affidavit of Service, Affidavit of Default, Master's Order.) Chase's attorneys filed an Affidavit of Default on June 16, 2010. (Affidavit of Default.) By Order filed on June 16, 2010, the matter was referred to the Master in Equity for Lexington County ("Master"), and a foreclosure hearing was scheduled for July 29, 2010. (Order of Reference, Notice of Final Hearing.) Chase sent Hayes a Notice of Final Hearing addressed to the Property. (Notice of Final Hearing.)

The Master held a foreclosure hearing on July 29, 2010 (the "Foreclosure Hearing"). Two individuals appeared at the hearing and purported to represent Hayes,

but they were not allowed to appear on behalf of Hayes or present evidence because they were not lawyers. (July 2010. Tr. 3:22-5:1.) Also on July 29, 2010, Hayes filed, among other documents, a Trustee Notice and Determination, Notice of Fraud, and Charging Sheet, which made claims about ownership to the Property. (Trustee Notice.)

The Master found that Hayes was in default and that Hayes had defaulted under the terms of the subject mortgage loan because he failed to make payments when due. The Master also found that the mortgage loan was not subject to the Supreme Court's Administrative Order No. 2009-05-22-01 concerning the Home Affordable Modification Program ("HAMP"), because the loan was guaranteed by the Veterans' Administration. (Master's Order at p. 3, ¶ 16.) Based on those findings, the Master entered a Master's Order of Judgment and Foreclosure Sale on July 30, 2010 ("Master's Order"), in which the court awarded Chase judgment for $118,456.96 and ordered that the Property be sold. (Master's Order p. 4, ¶ 20.). Hayes did not file any motion to reconsider the Master's Order, and he did not file a notice of appeal.

On May 16, 2012, the Master entered an Order amending the caption of this case to reflect that the owner of the subject mortgage loan had changed due to a merger between JPMorgan Chase Bank, National Association and Chase Home Finance LLC. The order substituted "JPMorgan Chase Bank, National Association successor by merger to Chase Home Finance LLC s/b/m to Chase Manhattan Mortgage Corporation," as the real party in interest and plaintiff in the action. (Order to Substitute Plaintiff.)

The sale of the Property was delayed until mid-2012. On July 5, 2012, the Master conducted a supplemental hearing to update the amount of the debt that had come due since the Master's Order was entered on July 30, 2010. (July 2012 Tr. 21:1-9.) At the

hearing, Hayes argued that he was not properly served with the Pleadings, but the Master advised Hayes that he was required to file a motion to set aside the default and offer proof that the Pleadings were not properly served if he wanted to challenge service at this stage in the case. (July 2012 Tr. 17:5-14.) Even though Hayes argued he was not properly served, he admitted that he had received the Pleadings from Chase that gave him thirty days to respond to the foreclosure action, but that he failed to do so. (July 2012 Tr. 18:5-7 ("Now when I received correspondence from Chase, I knew I had 30 days to respond back to them.").) Hayes never offered any reason or explanation as to why he did not answer the Complaint, and instead insisted that he wanted to see the original note and mortgage and proof that Chase was the real party in interest. (July 2012 Tr. 14:1-19.) Because Hayes failed to file any motion contesting the service of the Pleadings, the Master declined to revisit the earlier order. (July 2012 Tr. at 3-5.) The Master continued the hearing to allow Chase time to present additional testimony as to the updated amount of the debt. (July 2012 Tr. 26:9-21)

The Master held a second supplemental hearing on October 30, 2012, at which Chase planned to present testimony concerning the amount of the debt, but the witness had a medical emergency and was unable to testify. (Oct. 2012 Tr. 4:9-19.) In the meantime, Hayes purported to serve discovery on Chase's attorneys, seeking information about the mortgage loan. (Oct. 2012 Tr. at 5-6.) The Master found that, because Hayes was in default, the only discovery to which Hayes was entitled to was related to the amount of the debt and ordered Chase to respond on that limited point. (Oct. 2012 Tr. at 5-11.) Chase served discovery responses to Hayes on November 20, 2012. (Mem. in Opposition to Rule 60(b)(3), at Exh. 5.)

On January 11, 2013, Hayes filed a motion to dismiss, arguing that Chase did not have standing to proceed with the foreclosure. (Motion to Dismiss.) The Master held a hearing on the motion on March 20, 2013, during which Hayes argued that the foreclosure should be dismissed for lack of proper service, lack of standing, and Chase's failure to notify the Veterans' Administration of the pending foreclosure. (Mar. 2013 Tr. 3:21-5:4.) The Master again ruled that Hayes had been properly served with the complaint (*id.* at 6:14-8:18) and denied Hayes's motion, (*id.* at 17:15-19). Scott Sayre, a Home Lending Research Officer with Chase, testified as to the total amount due on the mortgage loan. (Mar. 2013 Tr. 25:7-16.) Hayes did not cross-examine Sayre despite the opportunity to do so, nor did he offer any evidence to contradict the amount of the debt. (Mar 2013 Tr. 27:10-16.)

Before an order on Hayes's motion to dismiss and the supplemental amount of the debt was entered, Hayes notified the trial court that he had removed this action to federal court. (Mar. 2013 Tr. at 21-22.) The federal court action was remanded on June 3, 2013.[1] (Motion for Order Confirming Reference.)

Following the remand, the Master recused himself, and Chase filed a Motion for Order Confirming Reference and Appointing a Special Referee on July 12, 2013. (Motion for Order Confirming Reference.) Hayes then filed a Rule 60(b)(3) Motion to Vacate Judgment for Failure to Properly Execute Service on Defendant ("Rule 60(b)(3)

[1] Hayes filed a new federal court action (D.S.C. C/A 3:13-cv-01884) against Chase and its prior foreclosure attorneys, Butler & Hosch, on July 9, 2013. In that action, Hayes sought to enjoin the foreclosure and argued that Chase should not be allowed to proceed as the plaintiff in this case. Magistrate Shiva J. Hodges issued a Report and Recommendation to the District Court on July 8, 2014 recommending dismissal of the federal case.

Motion") on September 10, 2013. The circuit court granted Chase's request to refer the case to a Special Referee and appointed Albert J. Dooley, Jr. ("Special Referee"), but withheld judgment on the Rule 60(b)(3) Motion.[2] (Second Order of Reference.)

At the time the case was referred to the Special Referee, the only pending items were (1) Hayes's Rule 60(b)(3) motion and (2) Chase's request for a supplemental order updating the amount of the debt since the Master's Order in July 2010. After a hearing on March 13, 2014, the Special Referee denied the Rule 60(b)(3) Motion and declined to vacate the Master's Order, finding that Hayes had been properly served, that the Rule 60(b)(3) Motion was time-barred, that Hayes had failed to meet his burden of proof under Rule 60(b)(3), and that Hayes's claims were barred by the doctrine of res judicata. (Post Judgment Order at 2-5.) The Special Referee also entered an order supplementing the amount of the debt that had come due since the Master's Order was entered in 2010, for a total judgment in favor of Chase in the amount of $158,253.76. (Post-Judgment Order at 6.)

Hayes filed a Motion for Reconsideration and Vacating of Order Based on Newly Discovered Evidence on April 4, 2014, arguing that Chase had not presented a correct copy of the signed mortgage on the Property to the Court, and again requesting that the

[2] On January 21, 2014, Hayes filed a Motion of Filing IRS Form 56 Notice Concerning Fiduciary Relationship and IRS Cancellation of Debt Form-1099C, in which he purported to file cancellation of debt notices for $141,168.89. On that form he listed the debtors as James Y. Becker and Mary M. Caskey (Chase's current attorneys), the Special Referee, Circuit Court Judge Edgar W. Dickson, the Master in Equity, Beth Carrigg (clerk of court for Lexington County), and Chase's prior foreclosure attorney, Genevieve S. Johnson.

Court vacate the Master's Order on the grounds that Hayes had not been served.[3] (Motion to Reconsider at 4-5.) The Special Referee entered an order denying the motion on April 14, 2014. (Order Denying Motion for Reconsideration.)

Following the orders from the Special Referee, the Property was scheduled for sale on May 5, 2014. (Post-Judgment Order at 6-7.) Hayes filed a Notice of Appeal on April 22, 2014, stating that he intended to appeal the Post-Judgment Order. Hayes filed an Amended Notice of Appeal on May 2, 2014, correcting the date on which he claimed to have received written notice of the entry of the Post-Judgment Order. Neither notice included a copy of any orders entered in this case, but the only order mentioned is the Post-Judgment Order.

ARGUMENT

This is not a novel case, nor does it present any issues of first impression for the Court. Instead, it is a routine appeal from the denial of a motion for relief from judgment made pursuant to Rule 60(b)(3), SCRCP.

This Court must affirm the Special Referee's order unless it finds there was a clear abuse of discretion. *Fassett v. Evans*, 364 S.C. 42, 49-50, 610 S.E.2d 841, 845 (Ct. App. 2005); *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). "An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary

[3] Hayes also filed a Motion for Removal of Special Referee Due to Conflict of Interest on April 4, 2014, arguing that the Special Referee should be removed from the case because he had been law partners with the Master seven years earlier. The Special Referee entered an order denying the Motion as untimely and without merit on April 14, 2014.

support." *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997), *quoted in Fassett*, 364 S.C. at 49-50, 610 S.E.2d at 845. Further, "it is well-settled that the moving party in a Rule 60(b) motion has the burden of presenting evidence entitling him to relief." *McClurg v. Deaton*, 395 S.C. 85, 86-87, 716 S.E.2d 887, 887-88 (2011).

I. Hayes's request for relief pursuant to Rule 60(b)(3) was time-barred.

A motion for relief from a final judgment pursuant to Rule 60(b)(3) must be made within a reasonable time but not later than one year after the entry of judgment. Rule 60(b), SCRCP; *see Hous. Found. v. Smith*, 380 S.C. 621, 639, 670 S.E.2d 680, 690 (Ct. App. 2008) ("The one-year limit is non-discretionary . . . .") Here, the Master's Order was a final judgment. Hayes's motion to set aside the Master's Order was not filed until September 10, 2013—well over three years after the Master's Order was entered on July 30, 2010. As a result, the Special Referee properly denied the motion as time-barred.

II. There is evidence in the record supporting the Special Referee's refusal to set aside the Master's Order because Hayes failed to show any fraud or misconduct by Chase as required by Rule 60(b)(3), SCRCP.

South Carolina courts have long held that to obtain equitable relief from a judgment under Rule 60(b)(3), SCRCP, based on fraud, the fraud 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 comparison, intrinsic fraud "misleads a court in determining issues and induces the court to find for the party perpetrating the fraud." *Raby Constr., LLP*, 358 S.C. at 19, 594 S.E.2d at 483 (noting that the "classic case of intrinsic fraud is perjured testimony or presenting forged documents at trial").

South Carolina courts have also recognized that when considering whether to grant relief from final judgments, "a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute [because] important benefits are achieved by the preservation of final judgments." *Chewning*, 354 S.C. at 80, 579 S.E.2d at 609. As such, "'[a] judicial sale should not be set aside except for cogent reasons. The purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final.'" *E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 355, 644 S.E.2d 802, 806 (Ct. App. 2007) (quoting *Spillers v. Clay*, 233 S.C. 99, 104, 103 S.E.2d 759, 761-62 (1958)). As explained below, no evidence before the Special Referee indicated that Chase or any other party prevented Hayes from participating in the foreclosure action; moreover, the evidence supports a finding that Hayes was properly served, he defaulted, and waived all defenses to the foreclosure.

A. There is no evidence of fraud in this case.

Hayes argues that the trial court erred in granting default judgment against him because he believed there was evidence that he was never served with the Pleadings. However, for purposes of this appeal, the inquiry is whether the Special Referee committed an abuse of discretion in denying Hayes relief pursuant to Rule 60(b)(3). To meet his burden under Rule 60(b)(3), Hayes was required to prove "fraud, misrepresentation, or other misconduct of an adverse party." Rule 60(b)(3), SCRCP.

Hayes has never presented any reliable evidence that the Affidavit of Service presented by the Sheriff's Department for Lexington County was false, or that it was procured by fraud, misrepresentation, or misconduct of Chase. The first time Hayes presented any evidence at all concerning the service of the Pleadings was in his and

Marshalls' affidavits filed in March 2014, which was six months after Hayes filed his Rule 60(b)(3) motion, and almost two years after Hayes first argued that he had not been properly served at the hearing on July 5, 2012. (Affidavits of Fact; Marshall Affidavit.) Even if the statements in the affidavits were true and based on personal knowledge, which they are not, none of the statements in the affidavits demonstrates any fraud, misrepresentation, or other misconduct by Chase, nor do they in any way rebut the presumption of service.

To meet his burden under Rule 60(b)(3), Hayes must prove some fraudulent action by Chase affected or deprived him of his ability to be heard. *Chewning*, 354 S.C. at 81, 579 S.E.2d at 610. Here, there are no allegations, much less any evidence, that Chase took any action to prevent Hayes from participating in the foreclosure action. Instead, Hayes acknowledges that he received the pleadings, and either he or a representative on his behalf has been present at every hearing (for a total of six) that has occurred in this case. (July 2012 Tr. 3:22-4:8; Oct. 2012 Tr. at 2; Mar. 2013 Tr. at 2; 2014 Order of Reference at 1; Post-Judgment Order at 1.) Simply, Hayes has not offered any testimony or evidence alleging or showing any action by Chase that prevented him from responding to the Pleadings, timely moving to set aside his default, challenging the amount of the subject debt, or otherwise participating in this action.

B. Even under the other provisions of Rule 60, there was evidence to support the Special Referee's refusal to set aside the Master's Order.

Hayes's motion before the Special Referee exclusively sought relief pursuant to Rule 60(b)(3), SCRCP. Therefore, he is limited to those grounds on appeal. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998) (requiring that an argument

must have been raised to and ruled on by the trial court to be preserved for appellate review).

Nevertheless, in his brief, Hayes argues that the Master's Order was void because the Court did not have personal jurisdiction over him. Even if Hayes had preserved this argument under Rule 60(b)(4), SCRCP, he still failed to raise the issue within a reasonable time (waiting over 4 years after the default was entered against him), and Hayes has waived any arguments concerning personal jurisdiction by filing numerous pleadings and appearing at multiple hearings in this case.

"A general appearance constitutes a voluntary submission to the jurisdiction of the court and waives any defects and irregularities in the service of process." *Ex Parte Cannon*, 385 S.C. 643, 659, 685 S.E.2d 814, 823 (Ct. App. 2009) (finding that by appearing and arguing the merits of an action, the defendant consented to the court's personal jurisdiction) (quoting *Strickland v. Consol. Energy Prods., Co.*, 274 S.C. 554, 555, 265 S.E.2d 682, 683 (1980)). "Voluntary appearance by defendant is equivalent to personal service." Rule 4(d), SCRCP. "The term 'appearance' is used particularly to signify or designate the overt act by which one against whom suit has been commenced submits himself to the court's jurisdiction." *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 338, 644 S.E.2d 793, 796 (Ct. App. 2007) (quoting 4 Am.Jur.2d *Appearance* § 1 (1995)); *see also Jenkinson v. Murrow Bros. Seed Co., Inc.*, 272 S.C. 148, 154, 249 S.E.2d 780, 783 (1978) (Ness, J., concurring) ("In order to establish waiver of the right to contest jurisdiction, it is only necessary that a party, by its conduct, evince an intent to proceed to the merits of the case."); *Connell v. Connell,* 249 S.C. 162, 167, 153

S.E.2d 396, 399 (1967) (holding that raising a defense, like res judicata, constitutes a voluntary appearance).

Here, Hayes has repeatedly appeared in court proceedings throughout the history of this case and repeatedly argued that the foreclosure should be dismissed because Chase did not notify the Veterans Administration of the foreclosure and that Chase did not have standing to foreclose. (July 2012 Tr. 14:1-19; 19-22; Oct. Tr. 6:9-15; Mar. Tr. 3:20-5:4; Post-Judgment Order.) Additionally, he has filed over 32 pleadings, letters, or other documents purporting to contest Chase's standing to proceed on the foreclosure and the validity of the underlying loan documents. (*See, e.g.,* Trustee Notice and Determination; Notice of Fraud; Charging Sheet; Notice of Fraud and Intent to Litigate; Notice to Principal is Notice to Agent; Motion to Dismiss; Opposition to Motion for Order Confirming Reference and Appointing Special Referee; Rule 60(b)(3) Motion; Motion of Filing IRS Form 56 Notice Concerning Fiduciary Relationship and IRS Cancellation of Debt Form-1099C; Affidavits of Fact; Memorandum in Support of Defendant's Motion to Vacate Default Judgment and to Grant Defendant's Motion to Dismiss; Motion for Removal; Motion for Reconsideration.) By appearing and making arguments related to the merits of the case, Hayes waived any objection to personal jurisdiction and submitted to the jurisdiction of the court. Thus, whether or not he was properly served is now moot.

In addition, a finding of service will not be disturbed unless "there is no evidence reasonably supporting the finding." *Richardson Constr. Co., Inc. v. Meek Engineering & Constr., Inc.*, 274 S.C. 307, 309-10, 262 S.E.2d 913, 915 (1980). The party seeking relief bears the burden of proving the facts entitling him to relief under Rule 60(b), SCRCP. *BB&T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

Here, Chase presented a validly executed Affidavit of Service issued by the Sheriff's Department for Lexington County. Nothing on the face of the affidavit suggests it is irregular in any way. When process has been served in apparent compliance with Rule 4, SCRCP, there is a rebuttable presumption of service. *Taylor,* 369 S.C. at 552, 633 S.E.2d at 503. That presumption may be overcome by extrinsic evidence. *Richardson Constr. Co., Inc.,* 274 S.C. at 311, 262 S.E.2d at 915. However, where the service has been accomplished by an officer who executes a return of service, the presumption of service cannot be overturned by mere denial of service by the defendant. *Id.* Hayes has not presented evidence sufficient to rebut the presumption of service in this case, and the evidence supports the finding of service.

For all of these reasons, the Special Referee correctly denied Hayes's request for relief pursuant to Rule 60(b)(3), SCRCP.

III. Hayes's argument relating to notice to the Department of Veteran's Affairs does not afford him a defense in this action.

Hayes argues that the Special Referee erred in refusing to set aside the judgment because Chase did not notify the Department of Veterans Affairs about the foreclosure. However, the regulation cited by Hayes, 38 C.F.R. § 36.4317, relates to requirements for loan servicers to ensure that the Veterans Administration will honor guaranties of certain loans. Nothing in that regulation provides that a foreclosure may not proceed if notice is not given to the Veterans' Administration, and the regulation does not provide recourse to a borrower whose loan may be subject to that provision. In other words, whether or not Chase did or did not notify the Veterans' Administration of the pending foreclosure against Hayes has no effect whatsoever on whether or not the foreclosure could proceed.

Additionally, as explained above, an order of default was entered against Hayes after he was properly served and failed to appear. His default resulted in the admission of the well-pleaded facts of the Complaint and waives all defenses that not previously asserted, except to the amount of unliquidated damages. *Harbor Island Owner's Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 546 633 S.E.2d 497, 501 (2006); *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 319, 594 S.E.2d 867, 878 (Ct. App. 2004). Thus, even if there was a viable defense to the foreclosure under 38 C.F.R. § 36.4317, Hayes waived that defense in failing to respond to the Pleadings.

IV. The record in this case confirms Chase's standing to bring this action, and Hayes did not present new evidence to the contrary.

Hayes argues that the trial court erred in finding that Chase had standing to bring the foreclosure action and that the Special Referee "failed to consider newly discovered evidence that Hayes produced that confirmed that the plaintiff did not have standing to bring suit due to the fact that there are no liens or mortgage on the property." (Hayes Brief at 11.) However, Hayes does not identify any newly discovered evidence on which the Special Referee should have relied, and the evidence clearly demonstrates that Chase is the current holder of a valid mortgage lien on the Property.[4] (Complaint; Master's Order.) There are no assignments related to the mortgage in this case because the

[4] Hayes's brief is silent on the "newly discovered evidence." However, in his Motion for Reconsideration, Hayes argued that the copy of the mortgage attached to Chase's Complaint was not a true copy of the "real" mortgage," and thus there was no valid mortgage on the Property. (Motion for Reconsideration.) However, because Hayes defaulted by failing to answer the Complaint, the facts alleged in the Complaint are deemed admitted. *See Harbor Island Owner's Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 546, 633 S.E.2d 497, 501 (2006). The Special Referee denied the Motion for Reconsideration, and that order was not appealed. (Order Denying Motion for Reconsideration.)

current holder of the mortgage, JPMorgan Chase Bank, National Association, is the successor by merger to Chase Home Finance LLC, which is the successor by merger to Chase Manhattan Mortgage, who originated the Note and Mortgage. (Complaint, Order of Substitution.) For that reason and as found by the Special Referee, 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 Chase standing. (Post-Judgment Order.) Thus, the evidence in the record supports the Special Referee's findings and the order denying Hayes's Rule 60(b)(3) motion must be affirmed.

V. Hayes has not preserved any issues concerning foreclosure intervention for review by this Court, and even if he had, Chase complied with the South Carolina Supreme Court's Administrative Order 2011-05-02-01.

In his brief, Hayes argues that the trial court failed to note that Chase did not comply with the South Carolina Supreme Court's 2011 order on foreclosure intervention. However, Hayes did not preserve any argument concerning foreclosure intervention because he never raised the issue with the trial court. *See Wilder Corp.* 330 S.C. at 76, 497 S.E.2d at 734.

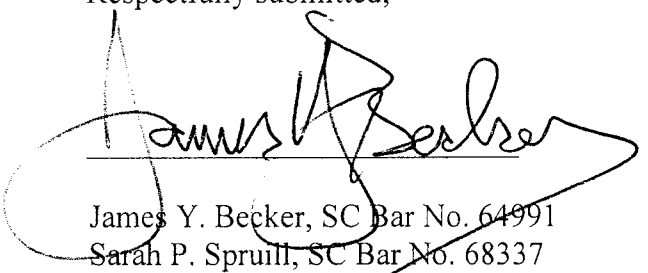
Moreover, the evidence demonstrates Chase fully complied with the Supreme Court's order on foreclosure intervention. The Supreme Court's Administrative Order 2011-05-02-01 ("Administrative Order") requires only that before a final foreclosure hearing or sale occurs, a mortgagor be given notice of the right to foreclosure intervention, and that if the mortgagor fails, refuses, or voluntarily elects not to participate in any foreclosure intervention process, then the attorney should certify that fact to the court, and the foreclosure action may proceed. Here, on May 7, 2012, Chase's attorneys served Hayes with a Notice of Right to Foreclosure Intervention. (Notice of

Foreclosure Intervention.) Hayes responded with a letter stating, "I reject your offer to contract." (Hayes response.) Chase's attorney filed an Attorney Certification on May 17, 2012, providing the court with a copy of Hayes's response to the notice of foreclosure intervention and certifying that the process was complete. (Attorney Certification.) Thus, Hayes's argument that Chase failed to comply with the Administrative Order is wholly without merit.

CONCLUSION

Based on the foregoing, the Special Referee correctly determined that Hayes did not meet his burden of showing that he was entitled to have the Master's Order set aside. For all of the above reasons, the judgment below must be affirmed.

Respectfully submitted,



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August 4, 2014

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
SC Court of Appeals Clerk of Court
1015 Sumter Street
Columbia, SC 29201

RE: *JPMorgan Chase Bank, N.A. v. Demetric Hayes*
South Carolina Court of Appeals Appellate Case No. 2014000820
HSB File No. 09150.0378

Dear Ms. Kitchings:

With regard to the above-referenced matter, enclosed please find the original and one copy each of Chase's Initial Brief of Respondent, the Respondent's Designation of Matter to be Included in Record on Appeal, and the Proof of Service. Please have the original and copy date stamped and return the copy via our courier.

Very truly yours,

James Y. Becker

JYB/cw

Enclosures

cc: Demetric Hayes

Haynsworth
Sinkler Boyd, P.A.

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