

STATE OF SOUTH CAROLINA
IN COURT OF APPEALS

APPEAL FROM MARION COUNTY
Court of Common Pleas

Haigh Porter, Special Referee for Marion County

Appeal number 2013-001824
Marion County Case number 2013-CP-33-306

Anderson Brothers Bank
Respondent,

v.

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., South Carolina Department of
Revenue and South Carolina Department of Motor Vehicles, Defendants,

Defendant

Of Whom

Dazarhea Monique Parson, aka Dazarhea D Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone, Jr. a/k/a Arnold Tyrone Parson, Jr., are the.....Appellants

Appellants final Brief

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STATEMENT OF ISSUES ON APPEAL

Appellants, is unschooled in law and notices the court of enunciation of principles as stated in Haines v. Kerner, 404 U.S. 519, wherein the court has directed that those who are unschooled in law making pleadings and/or complaints shall have the court look to the substance of the pleadings rather than in the form, and hereby makes the following pleadings/notices in the above referenced matter without waiver of any defenses. With this fact in mind, Appellants requests this Honorable Court to consider his pleadings in substance. Also in accords with Rule 8(f) S.C.R.C.P.

1. Whether the circuit court has discretion to forward in a case where the record of the case shows lack of jurisdiction/ want of jurisdiction?
2. What was the consideration given to the purported borrowers in exchange for their promissory note?
3. Whether violation of the Fair Debt Collections Practices Act deprives the alleged debtor of due process rights depriving the court of subject matter jurisdiction?
4. Whether a summary judgment is void where party fails to prove standing?

STATEMENT OF THE CASE

Anderson Brothers Bank, alleging indebtedness, without answering prior request in writing required under the Fair Debt Collections Practices Act, filed a complaint against purported borrowers Arnold Jr. and Dazarhea Parson and fraudently obtained a foreclosure judgment and sale order.(R.p.3:1) This court is noticed that Anderson Brothers Bank did not show evidence that Arnold Jr. and

Dazarhea Parson had a valid contract with Anderson Brothers Bank nor did they post a bond to continue with sale in accords with S.C Ann Code Section 18-9-130(2).(R.p.3:4, 12) Anderson Brothers Bank did not show that Arnold Jr. and Dazarhea Parson had damaged Anderson Brothers Bank in any way. (R.p.3: 10,11,12,14,15, p. 4: 16,17,19)(Tr. p 42: 10-p.44:10)The court below had nothing to rely on to prove that Anderson Brothers Bank has standing to file a complaint in South Carolina court's or that Anderson Brothers Bank's charter authorizes Anderson Brothers Bank to enter into fraudulent debt contracts. (R.p.3:10,11,13) The court below relied on records which contained only hypothetical and theoretical conclusions and no fact whatsoever and entered foreclosure judgment for Anderson Brothers Bank and against purported borrowers Arnold Jr. and Dazarhea Parson. (R.p.3:10,11,12,14,15 p.4:16)It is from this miscarriage of justice that Arnold Jr. and Dazarhea Parson Appeals. (R.p.3:1,2,3)

Argument

I. The Circuit Court record shows lack of jurisdiction/want of jurisdiction

The circuit court lacks discretion to proceed where the record shows matters before the court do not rise to a justiciable controversy. Where there are no affidavits rebutted, or interrogatories answered, the court is without factual basis to rule judicially for the plaintiff. South Carolina summary judgment rule 56(e). (T.p.52-p.54:5 R.p.3:4, 12, 14, 15, p. 4:16, 19)

II. There was no consideration given for the promissory note

When purported borrowers raised the issue on how Anderson Brothers Bank became holder/owner of the note. The Master had a duty to invoke Equity to ensure that what ought to have been done is done. (Tr.p.27:18-p.28:6) "If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." *Menominee River Co. v. Augustus Spies L & C Co.*, 147 Wis 559-572; 132 NW 1122.

III. The Circuit Court did not have subject matter jurisdiction due to the violation of The Fair Debt Collections Practices Act depriving the alleged debtor of due process rights

Violation of the Fair Debt Collections Practices Act deprives the alleged debtor of due process rights depriving the court of subject matter jurisdiction.(R.p.3:12,14,15, p.4:16) The Act applies to third party debt collectors. Third party debt collectors include lawyers and law firms who are attempting to collect any alleged debt. *George W. Heintz v. Darlene Jenkins*, 514 U.S. 291, 115 S.Ct. 1489. 15 USC 1692G(b). Debt collection activity must cease if the debt is disputed. Failure to notice the alleged debtor of their due process rights or failure to cease collection activity until timely validation voids any legal proceedings.(R.p.3:13) As a matter of law, a creditor violating the WCA must suffer the consequences of its wrongful repossession and prohibited debt

collection practices. The WCA plainly treats venue as a jurisdictional issue. Therefore, the failure to have proper venue means the judgment is void. Void judgments can always be challenged. Moreover, there is no need for a trial in any of the three instances. As a matter of law, the creditor violated the WCA and must suffer the consequences of its wrongful repossession and prohibited debt collection practices. This court is noticed: the court below failed to require counsel for Anderson Brothers Bank to show that the Fair Debt Collections Practices Act, the WCA, and Rule 33 S.C.R.C.P had been complied with. (T.p.52-53: 22 R.p.3: 4, 12,14,15, p.4: 16)

IV. A judgment is void when party fails to prove standing/claim

A summary judgment is void where party fails to prove standing. To have standing, party suing in foreclosure of debt must produce the original promissory note. Complaining party must (1). Prove standing by possession of the original promissory note, (Rule 1002 and Rule 1003 SCRCP) and (2). Must prove damages by appearance of a competent fact witness: Where the complaining party cannot prove the existence of the note, then there is no note. To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner of the note; and (4) that a certain balance is due and owing on the note. See *In Re: SMS Financial LLC. v. Abco Homes, Inc.* No.98-50117, and the same has been upheld in *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872) as well as *LYNN E. SZYMONIAK, Plaintiffs, vs. AMERICAN HOME MORTGAGE SERVICING et al., Defendants. September 20th, 2013. February 18,*

1999 (5th Circuit Court of Appeals.), Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically states, "...; and no part payments should be made on the bond or note unless the person to whom payment is made is able to produce the bond or note and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common law right to demand production or surrender of the bond or note and mortgage, as the case may be. *Carnegie Bank v, Shalleck* 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability. Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged note or the true holder in due course. New Jersey common law dictates that the plaintiff prove the existence of the alleged note' in question, prove that the party sued signed the alleged note, prove that the plaintiff is the owner and holder of the alleged note, and prove that certain balance is due and owing on any alleged note. Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th Cir 1977). "Under the Uniform Commercial Code (codified in South Carolina under title 36) the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee." Bankruptcy Courts have followed the Uniform Commercial Code. *In Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrcty.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is "instrument,"

security interest in which must be perfected by possession ...” Unequivocally the Court’s rule is that in order to prove the “instrument”, possession is mandatory. This court is noticed: the record in the court below does not show that Anderson Brothers Bank had standing in the underlying case by failing to present the original wet ink signature note and general accounting ledgering.(T.p.13:16-p.14:5)

Summary judgment is void where party fails to prove up claim. Prevailing party in civil action must prove damages. (R.p.3:4,10,12,14,15,p.4:16) For example, see *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8th Cir. 07/25/2001). Claim of damages, to be admissible as evidence, must incorporate records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauanoie*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), and See also *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Ill. Dec. 890, 516 N. E.2d 1045 (3Dist. 1987).

Conclusion

Determination by this court that the record in the court below does not verify compliance with The Fair Debt Collection Practice Act, therefore depriving the lower court of subject matter jurisdiction by denying purported borrowers due process of law, therefore does not verify standing on the part of Anderson

Brothers Bank. The record also does not verify Anderson Brothers Bank has rebutted any affidavits or answered any discovery questions. This should require vacating the lower court's order of foreclosure judgment, and sale reversing and remanding to the lower court with instructions of recoupment and payment of damages incurred by Arnold Jr. and Dazarhea Parson to repair and make Arnold Jr., and Dazarhea Parson whole.

Prepared and submitted by:

UCC 1-309

By: Arnold Parson Jr. Dazarhea Parson

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June 15, 2014

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CERTIFICATE OF COUNSEL

We certify that the foregoing Final Brief of Appellant's complies with the
Supreme Court of South Carolina's order of August 13, 2007

ucc 1-308

By: Arnold Parson, Jr. Dazarhea Parson

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PROOF OF SERVICE

We certify that we served the Final Brief of Appellants on Respondents, represented by
Suzanne Taylor Graham Grigg of Nexsen Pruet, LLC, by depositing a copy of it in the
United States Mail, postage prepaid, addressed to Respondent's Attorney as follows:

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