

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM SUMTER COUNTY

Richard L. Booth, Master In Equity

---

Case No.: 2014-001016

---

Wells Fargo Bank, N.A.....Respondent,

v.

Henrietta Rouse; Park West Homeowners Association, Inc.....Defendants,

Of Whom Henrietta Rouse is the..... Appellant

---

**INITIAL BRIEF OF RESPONDENT**

---

Jason D. Wyman (SC Bar # 100271)  
ROGERS TOWNSEND & THOMAS, PC  
220 Executive Center Drive – Suite 109 (29210)  
P.O. Box 100200  
Columbia SC 29202-3200  
Telephone (803) 744-5303

Attorneys for Respondent Wells Fargo Bank, N.A.

October 13, 2014

**RECEIVED**

OCT 13 2014

**SC Court of Appeals**

TABLE OF CONTENTS

Table of Authorities.....iii

Statement of Issues on Appeal.....1

Statement of the Case.....2

Statement of the Facts.....3

Standard of Review.....4

Arguments.....4

    I.    THIS COURT SHOULD AFFIRM THE DENIAL OF APPELLANT’S MOTION  
          FOR A CONTINUANCE.....4

    II.   THE MASTER-IN-EQUITY CORRECTLY FOUND THAT APPELLANT’S  
          MOTIONS WERE WITHOUT MERIT .....5

Conclusion.....5

**TABLE OF AUTHORITIES**

CASES

*Bridwell v. Bridwell*, 279 S.C. 111, 112, 302 S.E.2d 856, 858 (1983).....4  
*Newman v. Old West, Inc.*, 286 S.C. 394, 334 S.E.2d 275 (1985).....5  
*Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007).....4  
*State v. Babb*, 299 S.C. 451, 385 S.E.2d 827 (1989).....4  
*State v. Wright*, 304 S.C. 529, 405 S.E.2d 825 (1991).....4

COURT RULES

Rule 40, SCRCP.....4

**RECEIVED**  
OCT 13 2014  
SC Court of Appeals

**STATEMENT OF THE ISSUES ON APPEAL**

- I. Did the Master-in-Equity abuse his discretion when he failed to continue the hearing on Appellant's motions?**

## STATEMENT OF THE CASE

This case arises from Wells Fargo Bank, N.A.'s ("Respondent") filing of a foreclosure action against Henrietta Rouse ("Appellant"). On May 31, 2012, Respondent filed its Lis Pendens, Summons, and Complaint seeking foreclosure of its real estate mortgage. (Lis Pendens, Summons and Complaint). Respondent served Appellant by publication after it was unable to have her personally served despite diligent efforts. (Affidavits of Non-Service; Order for Service by Publication). Appellant failed to file an answer and was held in default on June 19, 2013. (Certificate of Default). On that same day, an Order of Reference was filed. (Order of Reference).

At a hearing on July 30, 2013, the Honorable Richard L. Booth, as Master-in-Equity for Sumter County, heard Respondent's foreclosure action. (Notice of Hearing). By Order filed July 31, 2013, the Court granted a Judgment of Foreclosure and Sale (Judgment of Foreclosure and Sale). The property was scheduled to be sold on December 2, 2013. On December 2, 2013, the foreclosure sale was held and a deficiency sale was subsequently held on January 2, 2014.

On or about March 10, 2014, Appellant filed a number of documents including her Motion for Objection of Sale and Motion for Acceptance. (Motion for Objection to Sale; Motion for Acceptance). On April 3, 2014, a hearing was held on each of these motions. However, Appellant failed to attend or participate in the hearing. (Notice of Hearing). She claims to have sent a fax to the Court the day before the hearing indicating that she would not be in attendance, but has not presented any evidence of this. Even though, to the extent this could be considered a Motion for a Continuance, the Court did not grant her request and proceeded to have the hearing at its scheduled time. Accordingly, the Court denied all of the documents and motions filed by Appellant. (Order Denying Defendant's Motions).

**RECEIVED**

OCT 13 2014

**SC Court of Appeals**

On May 7, 2014, Appellant filed her Notice of Appeal. After multiple deficiency letters were sent to Appellant, she filed her Second Amended Notice of Appeal May 21, 2014.

### **STATEMENT OF THE FACTS**

In addition to the facts set forth in the Statement of the Case, on April 3, 2014, a hearing was held on a number of documents filed by Appellant. (Order Denying Defendant's Motions). All parties were given notice of the time, date, and place of hearing. (Id.) Specifically, the Court considered Appellants documents entitled "Motion for Acceptance," "Claim Reduced to Summary Judgment," "Notice of Settlement," and "Notice for Objection of Sale." (Id.). In spite of giving notice of this hearing and an opportunity to be heard, Appellant failed to attend or participate in the hearing. (Id.). The Court found each of the documents without merit and denied each. (Id.). The Order denying Appellants motions was filed April 17, 2014. (Id.).

On May 7, 2014 Appellant filed her Notice of Appeal in which she appeals the April 17, 2014 Order.

## STANDARD OF REVIEW

“The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record.” *Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) (quoting *Bridwell v. Bridwell*, 279 S.C. 111, 112, 302 S.E.2d 856, 858 (1983)).

## ARGUMENT

### **I. BECAUSE APPELLANT DID NOT SHOW GOOD AND SUFFICIENT CAUSE WARRANTING A CONTINUANCE, THE MASTER-IN-EQUITY DID NOT ABUSE HIS DISCRETION.**

Rule 40, SCRCP governs continuances in civil cases. Pursuant to Rule 40(i), SCRCP, the trial judge has discretion to grant a continuance either for cause or for the absence of a witness and the reversals of decisions denying continuance motions are rare. *See Plyer v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) (citing *State v. Babb*, 299 S.C. 451, 385 S.E.2d 827 (1989) (“[T]he denial of a motion for a continuance on the ground that counsel has not had time to prepare is rarely disturbed on appeal.)).

Rule 40(i), SCRCP states:

[C]ounsel may request that the action be continued [i]f good and sufficient cause for continuance is shown...[or if] the testimony of the witness is material to the support of the action or defense of the party moving; that the motion is not intended for delay; but is made solely because the party cannot go safely to trial without such testimony; that there has been due diligence to procure the testimony of the witness or of such other circumstances as will satisfy the court that the motion is not intended for delay.

S.C. R. Civ. P. 40.

Continuance motions are addressed to the sound discretion of the trial judge and, absent a showing of prejudice, the judge's decision will not be disturbed on appeal. *State v. Wright*, 304

S.C. 529, 405 S.E.2d 825 (1991); *Newman v. Old West, Inc.*, 286 S.C. 394, 334 S.E.2d 275 (1985).

In the present case, Appellant did not appear at the hearing on her motions that are the subject of this appeal. Appellant argues that because she sent a fax to the Court indicating that she would not be able to attend the hearing, the Court abused its discretion in not granting her a continuance. However, Appellant has failed to indicate a single articulable reason as to why she was unable to attend the hearing. She essentially asserts that because she sent a fax to the court, the day before her hearing, she has given notice that she would not be able to attend and that this notice was therefore sufficient to grant a continuance. This is a clear misstatement of the law and provides no grounds that sufficient cause for the continuance existed or that there would be any material witnesses absent. In addition, Appellant has failed to offer any evidence that she actually sent a fax to the Court or that she copied Respondent or its counsel. Therefore, because Appellant failed to show any good and sufficient cause warranting a continuance, the trial judge did not abuse his discretion.

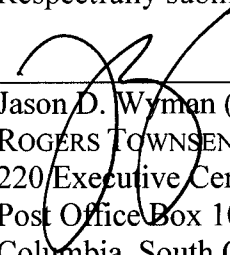
## **II. APPELLANT'S MOTIONS WERE WITHOUT MERIT**

The Master-in-Equity correctly found that “each of the documents filed by [the Respondent] were without merit.” South Carolina law does not support Respondent’s various motions.

## **CONCLUSION**

Based on the foregoing and any additional sustaining grounds appearing in the record, Respondent respectfully requests this Court affirm the Master’s Orders without further delay.

Respectfully submitted,



---

Jason D. Wyman (SC Bar #100271)  
ROGERS TOWNSEND & THOMAS, PC  
220 Executive Center Drive (29210)  
Post Office Box 100200  
Columbia, South Carolina 29202-3200  
(803) 771-7900 Tel  
(803) 343-7017 Fax  
jason.wyman@rtt-law.com  
Attorney for the Respondent

Dated: October 13, 2014

**RECEIVED**  
OCT 13 2014  
**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM SUMTER COUNTY

Richard L. Booth, Master In Equity

---

Case No.: 2014-001016

---

Wells Fargo Bank, N.A.....Respondent,

v.

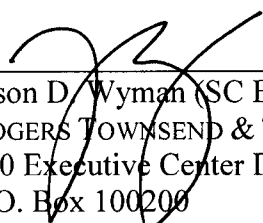
Henrietta Rouse; Park West Homeowners Association, Inc.....Defendants,  
Of whom Henrietta Rouse is the..... Appellant

---

**PROOF OF SERVICE**

---

I certify that I have served the **INITIAL BRIEF OF RESPONDENT** on Appellant by depositing a copy in the United States Mail, postage prepaid, on October 13, 2014, addressed to Appellant Henrietta Rouse at 235 Keels Road, Sumter, South Carolina 29154.

  
\_\_\_\_\_  
Jason D. Wymah (SC Bar # 100271)  
ROGERS TOWNSEND & THOMAS PC  
220 Executive Center Drive – Suite 109 (29210)  
P.O. Box 100200  
Columbia SC 29202-3200  
Telephone (803) 744-1305  
Attorneys for Respondent Wells Fargo Bank, N.A.

October 13, 2014

**RECEIVED**

OCT 13 2014

**SC Court of Appeals**