

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

Court of common Pleas

M4158

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2007-CP- 46- 4305

SunTrust Mortgage, Inc.,.....Respondent,

v.

Mark Ostendorff,.....Appellant.

MOTION TO EXTEND TIME FOR REPLY

Mark Ostendorff
135 Cedar Creek Circle
Central, SC 29630
(864) 640-3340
Appellant, Pro Se

Tatum Law Firm
Brian S. Tatum
PO Box 11250
Charlotte, NC 28220
(704) 307-4197
Attorney for Respondent

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NOV 14 2014

SC Court of Appeals

COMES NOW Mark Ostendorff, Appellant, and files with this Court his MOTION TO EXTEND TIME TO REPLY under rule Rule 240 (a) , SCARC.

Ostendorff would like more time to reply to Respondent's Initial Brief.

Ostendorff is currently preparing his Writ to the US Supreme Court for the related compulsory counterclaim. Ostendorff's research of cases related to the issue of compulsory counterclaim would be in addition of C & S Real Estate Services, Inc., v. Massengale.

In the event the Motion is denied, in C & S Real Estate Services v. Massengale , the SC Supreme Court laid out the proper procedure that when " the defendant has the right to a jury trial on the counterclaim. In that case , the proper procedure is as follows:

(c) If there are factual issues common to both claims, absent the "most imperative circumstances," ..., the "at law" claim must be tried first....."

Judge Kimball's Order to Dismiss Counterclaim was under Rule 56 (c) , absence of genuine issue of material fact. Under Anderson v. Liberty Lobby , the US Supreme Court determined that an genuine issue of material fact is one left up to a jury...

The SC Court of Appeals is to correct orders where there was no evidentiary support. Judge Kimball's Order to Dismiss Counterclaim had no evidentiary support. Tolk v. Weinstein.

Had SunTrust completed its contract obligation to provide construction financing , there would not of ever been a foreclosure case.

All issues raised are common to both the counterclaim and the foreclosure. Thus, issues are preserved for both the counterclaim and the foreclosure for appellate review. Wider Corp. v. Wilke.

In the original counterclaim case regarding the due date issue, "... opposing party may not be aware of the relevance of the evidence to the non-pleaded issue. " Sunvillas Homeowners' Ass'n , Inc., v. Square D Co.

Any reasonable person would conclude that the counterclaim Writ was denied by the Clerk's office at the SC Supreme Court and that no Justice ever reviewed it.

The correspondence with the Clerk's office showed confusion.

It was odd that no comments were made regarding the denial of the Writ especially since Judge Kimball's order involved key issues of:

-) The retroactive assignment of a due date from the mortgage (which showed no due date) that was conveniently missed by the defendant.
-) The jury trial for the counterclaim was circumvented by Judge Kimball's Order to Dismiss.
-) The compulsory counterclaim should have been heard first before the foreclosure as the counterclaim had facts that would have bearing on the foreclosure.
-) A judge denied Defendant's Motion to Compel Discovery as being "untimely" which was at the hearing for Plaintiff's Motion to Dismiss for a jury trial.

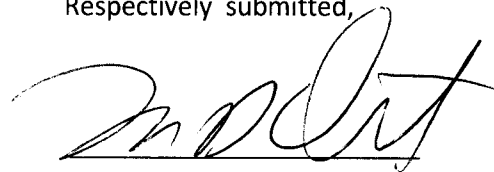
Ostendorff filed a Motion to Reinstate the Writ because it was obvious that Ostendorff's Writ was denied because Ostendorff did not file opposition to SunTrust's Motion to Dismiss. SunTrust file its Motion to Dismiss with both Supreme Court and Court of Appeals. Ostendorff did not know to file his opposition to the Supreme Court because SunTrust's caption was to the Court of Appeals. Rules of Court require the correct captions , that way the other party knows what Court it needs to file its opposition. SunTrust never objected to Ostendorff's Motion to Reinstate.

Regarding sending mail to known last address, the US Postal Service may be slow but in Ostendorff's affidavit with this appeal, Ostendorff has always received all mail regarding this case except for the Notice of Hearing and the Notice of Sale. Ostendorff has had addresses in Greenville and Central and has always had mail properly rerouted to him , before and after the dates of the Notice of Hearing and Notice to Sell.

Ostendorff has always denied owing any debt to SunTrust. Judge Kimball's Order to Dismiss commenting on Ostendorff not disputing Susan Walker's affidavit exhibit was a "bait and switch" of discussion during the hearing by the judge.

Ostendorff asks for extension of time to file a Reply to Respondent's Initial Brief.

Respectively submitted,

A handwritten signature in black ink, appearing to read "M. Ostendorff", written over a horizontal line.

Mark Ostendorff

November 7, 2014

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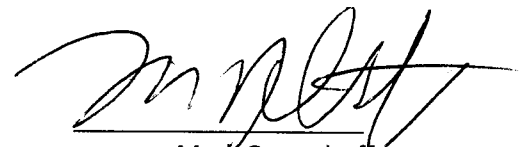
Mark Ostendorff,.....Appellant.

CERTIFICATE OF SERVICE

I, Mark Ostendorff, certify that I placed a copy o Appellant's MOTION TO EXTEND TIME FOR REPLY in the US Postal Service, with the proper postage attached to Respondent's attorney at:

Tatum Law Firm, Brian S. Tatum, PO Box 11250, Charlotte, NC 28220.

November 10, 2014



Mark Ostendorff
135 Cedar Creek Circle
Central, SC 29630
(864) 640-3340
Appellant , Pro Se

November 10, 2014

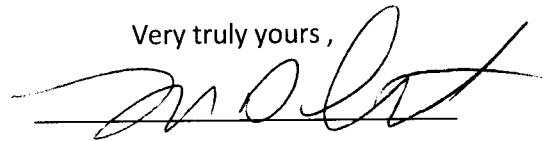
Jenny Abbott Kitchens
SC Court of Appeals
PO Box 11629
Columbia , SC 29211

Re: SunTrust Mortgage, Inc., v. Mark Ostendorff
Appellate Case No. 2013-002432
Lower Court Case No. 2007CP4604305

Dear Ms. Kitchens:

Enclosed you will find my Motion to Extend Time for Reply and the filing fee of \$ 25.00.

Very truly yours ,

A handwritten signature in black ink, appearing to read 'M. Ostendorff', written over a horizontal line.

Mark Ostendorff
135 Cedar Creek Circle
Central, SC 29630
(864) 640-3340
Appellate, Pro Se

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COLUMBIA, SC 29211

