

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Edgar Warren Dickson, Circuit Court Judge
Case No. 2008-CP-18-0821

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SC Court of Appeals

Beneficial South Carolina, Inc. Respondent,

v.

Melissa Vessell f/k/a Melissa K. Strange, and George Vessell are Appellants.

APPELLANTS ANSWER TO RESPONDENT'S MOTION TO DISMISS APPEAL

Appellants Melissa Vessell and George Vessell respectfully answers Respondent's Motion To Dismiss Appeal as follows:

First and foremost, Appellants deny Respondent's assertion "that this appeal has been filed solely for the purposes of delay and should be dismissed." Appellants are anxious to have this case resolved. However, actions out of the control of Appellants has caused delays. It is not the Appellant's fault that this case has not been settled or tried and new grounds for appeal have caused this new appeal to be filed.

Lower Court decisions and past and continuing actions by Respondent's lawyers, former Master-in-Equity Patrick Watts and lower court personnel violating Rule 407 South Carolina Rules of Professional Conduct, Rule 501 Code of Judicial Conduct, and Rule 506 Code of Conduct for Staff Attorneys and Law Clerks has caused continuous problems and delays in this case.

The Appellants suffered abuse of process at the hands of Respondent's lawyers and the previous Master-in-Equity which were the cause of the previous appeal. The previous appeal has delayed the resolution of this case by 4 years. The Appellants complained about this abuse of process to their state

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senator and the Governor's office. In response, the state senator and Governor's chief counsel investigated Appellants' complaints and then filed judicial misconduct charges against the Master-in-Equity who was forced to resign. Ironically, the former Master-in-Equity's resignation was announced as a "retirement". The Honorable Judge Edgar Warren Dickson immediately appointed former Master-in-Equity Patrick Watts as Special Referee to continue hearing Dorchester County foreclosure cases.

The South Carolina Court of Appeals in its order of December 28, 2010 instructed the circuit court to determine the status of appeal. Appellants believe this violates 1999 Act No. 55, Section 17 and SCRCF Rule 53 which require appeals from the Master-in-Equity to be heard by the South Carolina Court of Appeals or South Carolina Supreme Court. A full argument will be filed in the Appellants' appeal briefs.

On October 21, 2011 the Honorable Edgar Warren Dickson convened a hearing in Orangeburg, South Carolina without Appellant Melissa Vessell being able to attend. Mrs. Vessell was stationed in Germany on active duty in the U.S. Air Force. Her original requested protection under the Servicemembers Civil Relief Act (SCRA) for her activation from reserve status to active duty during the period of July 2010 - February 2011 was expired. Mrs. Vessell was discharged to reserve status in February 2011 and was prepared to go forward on this case. The issue of her rights under the SCRA became moot.

However, Mrs. Vessell was re-called from reserve status again in September 2011 and sent to Germany for duty until March 27, 2012. Mrs. Vessell was never properly served for the October 21, 2011 hearing, but upon being informed by her husband George Vessell of the upcoming hearing, she sent written notice to the court requesting SCRA protection since she could not attend court due to her new active duty overseas deployment which had just begun.

The court ignored Mrs. Vessell's request and instead held the hearing without her. The Honorable Edgar Warren Dickson ordered Mr. George Vessell, a non-lawyer, to represent Mrs. Vessell at the hearing despite Mr. Vessell's objections and without Mrs. Vessell's consent. Appellants firmly

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believe this constitutes unlawful practice of law.

During the October 21, 2011 hearing Mr. Vessell attempted to be heard on his version of the history of the case. The Honorable Edgar Warren Dickson cut Mr. Vessell off as soon as Mr. Vessell started to describe that his complaints against the former Master-in-Equity led to the Master-in-Equity recusing himself. The judge then asked Mr. Vessell a series of questions and Mr. Vessell was not allowed to argue his position at the hearing. Or, presumably Mrs. Vessell's position, either.

On March 22, 2012 the Honorable Edgar Warren Dickson signed an order created by lawyer John J. Hearn which was inconsistent with the judge's instructions to Mr. Hearn on how to prepare the order, despite numerous objections by Appellant George Vessell. The e-mail instructions (which were e-mailed) to Mr. Hearn on how to prepare the order and Mr. Vessell's objections are attached to this Answer To Respondent's Motion To Dismiss Appeal as Exhibit "A".

Specifically, the only issues ordered by the judge to be included in the order was the denial of the protection under the SCRA. The rest of the issues added into the March 22, 2012 order were added by the Respondent's lawyer, including "The court further finds that the order of reference should remain vacated, thus mooted the appeal and leaving the parties in the position they were in following the filling of the initial pleadings by Plaintiff and the Vessells."; "Finally, I find that Judge Watts' attempt to vacate the order of reference, though made in good faith, was ineffective. This case was on appeal at the time of Judge Watts order, he had no jurisdiction to take that action." (with case law references added); "Nevertheless, out of an abundance of caution and to afford the Vessells a full and fair opportunity to defend this action, this court believes the order of reference should be vacated, and so orders. The parties are therefore restored to the position they were in as of May 12, 2008, the date of the order of reference. The Vessells shall be allowed thirty days from the entry of this order to file any amended pleadings without further leave of this court."

The Honorable Edgar Warren Dickson signed the order containing all "the extras" on March 22,

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2012. No explanation was given for adding all “the extras” or proof of authority for Mr. Hearn to add “the extras”. The Appellants received no summary of ex parte communications or copies of any other documents relating to the reason given for adding “the extras”.

Appellants believe the March 22, 2012 order is ambiguous because it leaves open so many issues for interpretation. Specifically, “The parties are therefore restored to the position they were in as of May, 12, 2008.” What exactly does this mean? On May 12, 2012 the Vessells allegedly owed a specific balance on the disputed mortgage. Is the mortgage balance restored to the May 12, 2008 balance? What about other costs demanded from the Respondent's such as attorney fees, late charges, costs, etc...? Are statutes of limitations extended for adding parties? What about all the subsequent orders ordered by the former Master-in-Equity? The Vessell's were found in contempt for refusing to attend depositions because the Respondent's attorney refused to pay them witness fees and mileage. Is that contempt charge vacated?

The March 22, 2012 order does not specifically vacate all other orders issued by the former Master-in-Equity. There is an additional party in this case – defendant King's Grant Homeowner's Association, Inc. which was placed in default on or about May 12, 2008. The order does not specify the mode of trial on appeal.

Very importantly, the case was filed March 2008. Therefore, the case would ordinarily automatically transfer to the jury trial roster 12 months later. Since this case has been restored to the May 12, 2008 position, how does this affect the jury trial roster transfer? Mr. Hearn has informed Appellant Mr. Vessell that he will ask for a trial “this summer”. This does not afford the Appellants the normal or adequate time allowed to conduct discovery.

Respondents motion this court to dismiss this appeal on the grounds that “Judge Dickson's order is not a final judgment”. Appellants disagree. It is a final judgment which does not vacate the order finding the Vessell's in contempt of court. The March 22, 2012 order restoring the parties to the position they were in as of May 12, 2008 is ambiguous and does not clearly vacate the order of

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contempt, which should clearly be vacated as the Vessells were not in contempt.

Additionally, the March 22, 2012 order found that the SCRA protection sought for the 2010 deployment of Mrs. Vessell was moot. It did not address the issue of the 2011 deployment protection sought which was ongoing and clearly not a moot issue. In October 2011, Mrs. Vessell e-mailed her request in writing (from Germany while deployed in the U.S. Air Force) for protection under the SCRA. The order of March 22, 2012 denying her rights under the SCRA is a final judgment.

Judge Dickson's order prevents appeal of the contempt issue and protection under the SCRA. Respondent claims the Vessells are getting "full bite at the apple, allowing them to proceed free of any of the rulings that emanated from the prior master-in-equity." The Appellants disagree. Appellants remain burdened with the ambiguity of the language of the March 22, 2012 order as previously described.

The March 22, 2012 order vacates the order of reference which affects the mode of trial and is immediately appealable. Orders affecting a substantial right, including mode of trial, are immediately appealable. An order affecting mode of trial must be immediately appealed or the right to appeal is lost. Therefore, this appeal should be allowed to proceed.

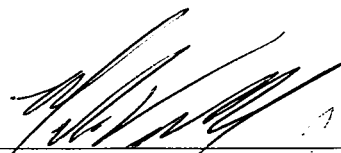
The March 22, 2012 order also affects Mrs. Vessell's rights under the SCRA. The denial of her rights under the SCRA is a final judgment of a substantial right and not interlocutory. It must be immediately appealed or the right to appeal is lost.

Appellants hereby answer the Respondent's Motion To Dismiss Appeal and requests this court deny Respondent's motion to dismiss appeal and allow the appeal to continue, or in the alternate remand this case back to the circuit court to cure the ambiguity issues argued by the Appellants in this answer, including: vacating **all** orders by former Master-in-Equity Patrick Watts in this case, clearly stating the Vessells were not in contempt of court, clearing up whether or not defendant King's Grant Homeowner's Association, Inc. is in default, scheduling this case to be transferred to the Jury Trial

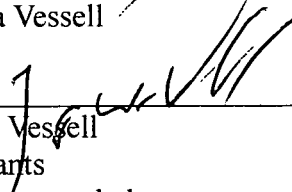
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Roster no sooner than 12 months from issuance of a new order, ordering the issue of protection under SCRA to be re-evaluated should Mrs. Vessell be re-activated and sent overseas again, ordering interest, attorney fees and all other costs on the disputed mortgage to be canceled for the period of May 12, 2008 through the date of the new order, ordering a jury trial, allowing the Vessells 30-days to amend the complaint from the date of the new order, recognizing that Appellant George Vessell is a non-lawyer and unable to represent Mrs. Vessell as a lawyer, and any other relief the court deems necessary to clear up ambiguity in the March 22, 2012 order and to restore the Vessells to the position they were in on May 12, 2008.

Respectfully submitted,



Melissa Vessell



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Summerville, SC
June 5, 2012

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Melissa and George Vessell
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The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
P.O. Box 11629
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June 5, 2012

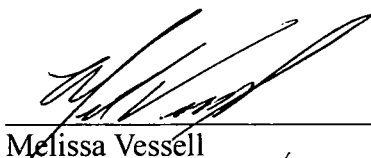
RE: Beneficial vs. Vessell
Appeals Case No. 2012-211951

Dear Ms. Kitchings:

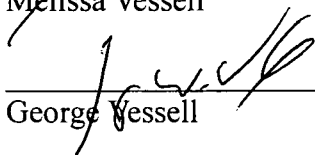
Enclosed are an original and seven copies of Appellants Answer to Respondent's Motion To Dismiss Appeal in this case. Please file the original and return a clocked copy to us in the envelope provided.

Thank you.

Sincerely,



Melissa Vessell



George Vessell

cc:
John J. Hearn, Esquire
Rogers Townsend & Thomas PC

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