

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph E. Strickland, Master in Equity

Appellate Case No. 2012-213558

RECEIVED

DEC 18 2014

SC Court of Appeals

74522

SCBT, N.A.

Respondent,

v.

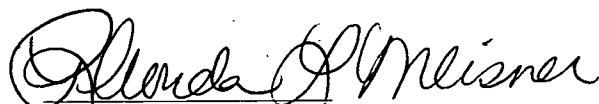
Sand Dollar 31, LLC; Rhonda
Meisner, of Whom Rhonda
Meisner is

Appellant.

PETITION FOR REHEARING PURSUANT TO SCACR RULE 220(b)

Rhonda Meisner respectfully requests a rehearing of the Order entered by the Court of Appeals on December 3, 2014 for all of the reasons attached to this motion via memorandum.

December 18, 2014



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Appellant

Other Counsel of Record:

Jason David Wyman and Teri Kimball-Callen Stomski both of
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The Appellant, Rhonda Meisner (hereinafter " Meisner") respectfully submits this petition for rehearing. The Appellant requests clarification of part of the Order by the Court as well as requests the Court to review certain facts the Appellant may not have presented effectively for the Courts' review. The foreclosure actions against Sand Dollar 31, LLC by the Plaintiff bank SCBT, N.A. (hereinafter "Bank") demanded a deficiency judgment pursuant to S.C. Code Ann. §29-3-660. **(R.p. 14) (R.p.51)** Meisner and Sand Dollar 31, LLC pled a counter claim of requesting a declaratory judgment regarding the parties respective rights and liabilities under a note, mortgage and guaranty agreement. **(R.p.53)**. Sand Dollar and Meisner also asserted their rights to obtain an appraisal via the appraisal statutes and the Bank did not object. **(R.p.24 lines 1-2)**. Meisner timely filed an application for appraisal pursuant to S. C. Code Ann.§ 29-3-680.

The Bank's foreclosure suit based on S.C. Code Ann. §29-3-660 by statute requires multiple steps that include 1) the judgment of foreclosure against the mortgagor (Sand Dollar 31, LLC) 2) sale of the mortgaged properties 3) application for appraisal 30 days after the sales of the property (Sand Dollar 31, LLC and Meisner) 4) final valuation of the property by substituting the higher of the appraisal or the sales price of the property in the case to determine the deficiency, if any.

In this particular case, the standard process was interrupted by the Bank's filing of the motion to vacate both deficiency sales prior to the return of the appraisers; which, if granted, would moot the valuation of the property via the appraisal statutes and require the entire judicial sales process to begin again. The

case was further complicated by the fact the Master in Equity did not have a Court reporter available at the November 6, 2014 hearing regarding the motion to vacate and the valuation of the properties. The Master in Equity stated he would hold another hearing when a Court reporter was available to put the hearing on the record. (*Final brief of Appellant* at p. 6 lines 16-22) see also EXHIBIT A (affidavit of Rick Gleissner, Esquire). At the conclusion of the November 6, 2014 hearing, the Master in Equity, in front of all of the participants, signed an Order denying the Motion to Alter and Amend the Judgment amounts against Rhonda Meisner which were previously entered for the full amount of the foreclosure judgments against Sand Dollar 31, LLC by the Bank; therefore, requiring appeal within 30 days of the Order.

ARGUMENT

July 18, 2012 Motion to Alter and Amend Hearing

While the Motion to Alter and Amend was entitled as a S.C. Rules of Civ. P. Rule 59-e motion; the body of the motion *also referenced* as did the memorandum in support a S.C. Rules of Civ. P. Rule 60 motion for relief from judgment. (**R.p. 30¶ 2**) In a Rule 60, motion in a judge alone trial a judge can re-open testimony and take new evidence based on mistake of the parties or inadvertence which the Judge did when he stated at the July 18, 2012 motion hearing "[M]aybe with regard to the limitations and the guaranty agreement, I might benefit from a more fleshed out brief on that issue." (**R.p.107 at 22**). Mr. Bowens also reiterated to the Court that the guaranty was first pled as part of the answer and counterclaim to the mortgage foreclosure action; requesting a

declaratory judgment on the guaranty agreement. **(R.p.94 at 11-21)** Additionally, a court of equity having assumed jurisdiction of the cause will retain and dispose of all issues pled. *Holly Hill Lumber Co. v. McCoy*, 203 S.C. 59, 26 S.E. 2d 175, 148 A.L.R. 285 (1943). Additionally, the Judge ruled the appraisal process should begin. **(R.p. 108 at 1-23)**. The Court additionally ruled that the deficiency had not been determined. **(R.p.109 at 22-25)**

The Statutes for foreclosure are different for Mortgagors and for Guarantors. The amounts of the judgments entered in the public roles should be done in accordance with the form 4 instructions which reflect the intent of the statute the foreclosure suit relied on or more specifically S.C. Code Ann. §29-3-660 (Deficiency Judgment).This process protects the rights of the parties so as not to prejudice the parties during the pendency of the entire multi-step procedure. While S.C. Code Ann §29-3-650 states the Court may render judgment against the parties liable for the payment of the debt *secured by the mortgage* and order sale of the premises at the same time that was referenced in the Court of Appeals Order of December 3, 2014. The S.C. Code Ann. §29-3-650 is silent as to non-mortgagors. Here, the bank initiated a foreclosure action under S.C. Code Ann §29-3-660 which states:

In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage *and if the debt be secured by the covenant or obligation of any person other than the mortgagor* the plaintiff may make such person a party to the action and the court may adjudge payment of the *residue of such debt* remaining unsatisfied *after a sale of the mortgaged premises* against such

other persons and may enforce such judgment as in other cases.(emphasis added by Appellant)

Here the only mortgagor was Sand Dollar 31, LLC as Meisner signed the Mortgage loan in her capacity as member of Sand Dollar 31, LLC which was noted above the signature line on the mortgage **(R.p.44)** The difference between the two statutes (S.C. Code Ann. §29-3-650 and §29-3-660) reflects the legislative intent in mortgage foreclosure proceedings that require a deficiency and *have persons or entities other than* the mortgagor potentially responsible for the debt .(emphasis added by Appellant). In non-deficiency cases there would be no judgment enrolled other than the judgment of foreclosure because the amount is satisfied with the foreclosure of the property. The best evidence of legislative intent is the text of the statute. *Wade v. State* 348 S.C. 255, 259, 559 S.E. 2d 843, 844 (2002) (internal quotations and citations omitted.)

The Master in Equity, the Honorable Joseph Strickland, contrary to the statute sued upon (better known as the deficiency statute)(S.C. Code Ann. 29-3-660)**(Rp.17 at ¶18)**, contrary to his instructions to the Bank in his Order of Foreclosure **(R.p.19 at ¶ 33)**, and contrary to the Form 4 instructions **(R.p. 203)** allowed the Bank to enter judgments against Meisner prior to the judicial deficiency sale and prior to the determination of the value of the property via the appraisal statutes. The Form 4 plainly states that when an order of foreclosure is filed, neither the parties nor debt owed should be listed in the information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-

650 of the SC Code. **(R.p.204 at 10)** Since the foreclosure was initiated under S.C. Code Ann. §29-3-660 the entry of the full judgment amounts against the guarantor Rhonda Meisner was in error.

Therefore, the form 4 instructions reflect the language in the deficiency statute and protect the rights of the Defendants throughout the process of being "saddled" with excess debt for which they are not responsible. This is an important point for the citizens of South Carolina because if they have had a temporary set -back; premature entry of a judgment exacerbates their injury by attaching to other properties and inflating the amount (which will eventually be reduced by the judicial sale credits and further reduced if not eliminated by the appraisal of the property.) This is critical if equity from other properties is needed to refinance and prevent other owned properties to be damaged other than those contemplated in the agreement of the parties. In this appeal, the evidence reflects Meisner signed the guaranty agreement for the loan but was never the mortgagor of the loan..

Importantly, neither the evidence before the Court via the testimony of the witnesses (Ms. Wolfman for the bank or Ms. Meisner) nor the guaranty agreement itself gave evidence as to the capacity under which Ms. Meisner was operating when she signed the guaranty agreement that is, as the member of Sand Dollar 31, LLC or in her individual capacity. Ms. Wolfson's testimony regarding the note, mortgage and guaranty agreement is found in the record. **(R.p.68 lines 4-25;69 lines 1-13)** Ms. Wolfson or the documents do not reflect that Ms. Meisner was acting on her own behalf instead of Sand Dollar 31, LLC in her

testimony. Ms. Meisner's only reference to her relationship with Sand Dollar 31, LLC is in the following interchange:

Q: And explain your relationship to Sand Dollar 31, LLC.

A: I'm the member of Sand Dollar 31, LLC¹.

If the Court denied the motion to alter and amend and the motion to reopen the case to review the terms and intent of the guaranty agreement, then the Plaintiff Bank, during the foreclosure hearing, did not show how Ms. Meisner in her individual capacity under the guaranty agreement owes the amounts Sand Dollar 31, LLC borrowed as the language in the guaranty does not implicate Meisner in her individual capacity; she is the signatory on the Guaranty agreement for the account of Sand Dollar 31, LLC (**R.p.48**) *Dutch Fork Development Group II, LLC and Dutch Fork Realty, LLC v. SEL Properties, LLC and Stephen E. Libscomb of whom Stephen E. Lipscomb is the Appellant*. Opinion number 27139 Heard May 2, 2012- refiled August 22, 2012.

Also S.C. Code Section 33-44-303(a) provides:

Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort or otherwise, are solely the debts obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

If the Court of Appeals rules that the foreclosure hearing was not properly re-opened via the S.C. Rules of Civ. P. Rule 60 motion by the Master in Equity, then the record during the foreclosure hearing and properly before the Court does not implicate Ms. Meisner's personal responsibility for the debts of Sand Dollar

¹ R. p.73 at lines 18-23

31, LLC to any degree via the guaranty agreement. The judgment amounts entered as a result of the foreclosure hearing are inaccurate based on the deficiency statute as well as the fact the Bank during the foreclosure hearing did not prove or show how Ms. Meisner owes individually for Sand Dollar 31, LLC's debts via the guaranty agreement as it does not indicate the capacity of Ms. Meisner and only indicates she signed the agreement "for the account" of Sand Dollar 31, LLC. Additionally, the guaranty agreements that were part of the foreclosure hearing were in the amounts of \$31, 140 and \$36, 000. (R. p. 31;p. 48-49) The fact the guaranty agreements themselves did not reflect the capacity of Ms. Meisner was argued in the initial appellate brief. **Final Brief of Appellant,(R.p. 22 at12-20)**

THE BANK'S MOTION TO VACATE THE SALE OF THE PROPERTIES

The Bank initiated a motion to vacate the sale on September 6, 2012 during the Appraisal process. (R.p.260)This action had the effect of interrupting the appraisal process as a grant of the Bank's motion to vacate the sale would moot the appraisal.

NOVEMBER 6, 2012 HEARING WITHOUT A COURT REPORTER

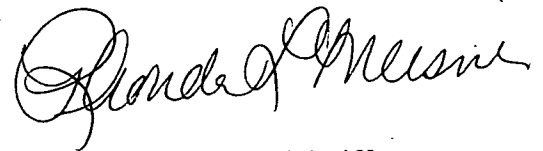
The Master in Equity approximately 4 weeks prior to the hearing scheduled on November 6, 2012 sent out a notice of hearing to rule on the Motion to Vacate the sale. Unfortunately due to the presidential elections a Court reporter was not available so the motion to vacate the sale while discussed was not ruled on. This ruling was required prior at the same time as the hearing to the value the properties; otherwise a favorable ruling for the Defendants on the Motion to

Vacate the sale would moot the need for valuation of the properties as the process would need to begin again at the auction phase. The Master in Equity stated a new hearing would be held if necessary on the record. At the end of the hearing the Master in Equity denied motion to alter and amend the judgments submitted on June 7, 2012 and entered prior to the sale of the mortgaged properties; thereby allowing the judgments to stand.

The denial of the motion to alter and amend the judgments required appeal of the denial within 30 days or risk losing the ability to appeal the inaccurate amounts. The motion to vacate the sale was dismissed by the Plaintiffs in July of this year (2014). As a result of the circumstances and timing of this case, the Appellant Rhonda Meisner respectfully requests the Court of Appeals Reverse and Remand the Judgment against her considering the above arguments or in the alternative clarify that the Court of Appeals Order did not include a determination of the issues still under review by the Master in Equity such as the motion to vacate the sale and the valuation of the properties under the appraisal statute. The simultaneous deferral of ruling on key issues until the Court reporter was available and the Master in Equity's denial of the motion to alter and amend the judgment entered against Meisner (which was effectively a ruling on the outstanding issues) was erroneous based on the evidence of the foreclosure hearing. The irregularity of proceedings based on the lack of a Court Reporter at a noticed hearing for Bank's Motion to Vacate the Sale further provides evidence that the Court should remand the judgment to prevent a violation of Due Process in the Courts. The Appellant respectfully requests the Court of Appeals to

review the difference between the Statutes S.C. Code Ann. §29-3-650 and S.C. Code Ann. §29-3-660 and the reporting process as well as the record before the Court at the Foreclosure hearing with regard to Meisner's purported liability. Alternatively, the Appellant requests you review the remand for the case for a final determination of the entire liability of the parties based on the award of attorney fees, the guaranty agreement, the appraisal statutes and the motion to vacate the sale arguments. The Appellant Rhonda Meisner respectfully requests oral argument if the Court finds it appropriate.

Respectfully submitted

A handwritten signature in cursive script, appearing to read "Rhonda Meisner".

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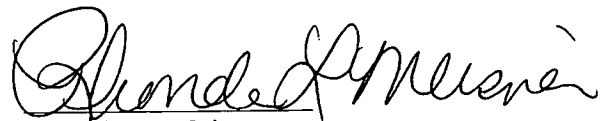
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Appellant.

PROOF OF SERVICE PETITION FOR REHEARING JUDGEMENT OF
DECEMBER 3, 2014

Rhonda Meisner, Appellant has effected service on the following parties by placing a copy of the motion and memorandum in the mail to the following parties at the following addresses US mail postage pre -paid this day. Jason David Wyman and Teri Kimball-Callen Stomski both of Rogers Townsend and Thomas, PC of Columbia 220 Executive Center Drive Columbia, South Carolina 29210 (803)771-7900

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