

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

DEC 19 2014

SC Court of Appeals

Hon. Ellis Drew, Master in Equity

74532

Appellate Case No. 2014-002122
Case No. 2011-CP-04-2097

Abe Chapman, by and through his attorney-in-fact,
Harold Rucker,Appellant,

v.

Titus Rucker and the Federal Deposit Insurance
Corporation, Respondents.

MOTION TO DISMISS APPEAL

Respondent, Federal Deposit Insurance Company (FDIC) moves to dismiss this appeal because Appellant, Abe Chapman, has died and Harold Rucker (Rucker) is not an aggrieved party and does not have standing to pursue this appeal.

FACTS

This is a dispute over ownership of property in Anderson County, South Carolina. Appellant, Abe Chapman, claimed Respondent, Titus Rucker, did not own the property and, therefore, a mortgage signed by Titus Rucker held by FDIC is invalid. FDIC was granted summary judgment on the issue of the validity of its mortgage and this appeal followed.

The appellant is identified as Abe Chapman. Rucker is identified as Mr. Chapman's attorney-in-fact. Paragraphs 7 - 10 of the amended complaint (attached as **Exhibit "A"**) allege (1) prior to his death, John A. Chapman owned the property, (2) upon John A. Chapman's intestate death, Abe Chapman, being the sole heir-at-law, acquired title to the property and (3) "at all relevant times ... Abe Chapman was and is the" owner of the property. Along with other relief, the complaint asks the court put Abe Chapman "back into possession" of the property. (Complaint, request for relief number 5).

The amended complaint identifies Rucker as Abe Chapman's attorney-in-fact. The complaint asserts Abe Chapman owns the property and requests relief only for Abe Chapman. There is no allegation Rucker has an interest in the property and no relief is requested for Rucker.

By letter dated December 4, 2014, counsel for Appellant informed the Court of Abe Chapman's death. The letter says counsel was informed by Rucker that Rucker was "authorized to continue as a proper party in this matter." (December 4, 2014, letter attached as **Exhibit "B"**).

ARGUMENT

SCACR, Rule 201(b) says only a party aggrieved by an order may appeal. "A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears on his or her interest." *Beaufort Realty Co. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). There is no material distinction between the principals of standing and status as an "aggrieved" party. *Id.* To have standing, one must have a personal stake in the subject matter of the lawsuit. *Charleston County Sch. Dist. v. Charleston County Election Comm.*, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999).

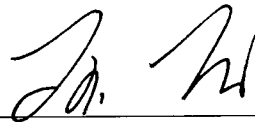
A power of attorney, unless coupled with an interest, is terminated by the death of the principal. *Dibble v. Thomas*, 301 S.C. 314, 316, 391 S.E.2d 729 (Ct. App. 1990), quoting *Godwin v. Wachovia Bank & Trust Co.*, 259 N.C. 520, 525, 131 S.E.2d 456, 460 (1963).

Abe Chapman is dead, and his death revoked the power-of-attorney under which Rucker was operating. The amended compliant does not allege Rucker has an interest in the property. The appealed-from order concerns only Abe Chapman's claim to own the property and the relief sought is only for the benefit of Abe Chapman. The order does not affect any interest of Rucker's nor does Rucker have a personal stake in the outcome of this action.

Rucker is not an aggrieved party and has no standing to pursue this appeal. The appeal, therefore, must be dismissed.

CONCLUSION AND RELIEF REQUESTED

The unfortunate death of Abe Chapman terminated Rucker's power to pursue this appeal. Rucker is not an aggrieved party and has no standing. The appeal, therefore, must be dismissed.



CALLISON TIGHE & ROBINSON, LLC
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Callison Tighe & Robinson, LLC
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Counsel for the Respondent, Federal Deposit
Ins. Co.



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF ANDERSON) C.A. #2007-CP-04-0574

 ABE CHAPMAN, by and through his)
 attorney in fact, HAROLD RUCKER,)
)
 Plaintiff,)
 v.)
 TITUS RUCKER AND INDYMAC BANK)
 F.S.B,)
)
)
 _____ Defendants.)

AMENDED
 COMPLAINT FOR DECLARATORY
 RELIEF TO DECLARE DEED AND
 MORTGAGE NULL AND VOID
 NON JURY

FILED-CLERK'S OFFICE
 ANDERSON SC
 2007 JUN 20 P 3:18
 COMMON PLEAS AND
 GENERAL SESSION

Plaintiff, hereby complains against defendants Titus Rucker and Indymac Bank, F.S.B. and on information and belief, alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff Abe Chapman, by and through his attorney-in-fact, Harold Rucker, brings this action pursuant to The South Carolina Uniform Declaratory Judgments Act §§ 15-53-10, *et seq.* (Declaratory Judgments Act) S.C Code Ann. to determine the validity of a deed and mortgage, and further to have said deed declared null and void and have said mortgage instrument declared null and void, among other things, and plaintiff brings this action to challenge the unlawful, arbitrary, knowing, willful and unfair of actions, conduct and/or omissions of the defendants in violation of and prohibited by §§ 15-67-10 *et seq* S.C. Code Ann. for the recovery of real property. Plaintiff seeks appropriate relief as well as the costs and expenses of this action.

PARTIES

2. Plaintiff Abe Chapman is an individual over the age of 18 years of age. At all times

relevant herein, plaintiff Abe Chapman was, and currently is, a resident of the State of Pennsylvania.

3. Defendant Titus Rucker is an individual over the age of 18 years of age. At all times relevant herein, defendant Titus Rucker was, and currently is, a resident of the State of California.

4. Defendant Indymac Bank F.S.B. is a corporation, organized and existing by virtue of the laws of one of the United States, with its office and principal place of business located in Pasadena, California. Defendant Indymac Bank F.S.B. is engaged primarily in the business of making loans secured by real or personal property to consumers.

5. The real estate which is the subject of this action is located in the County of Anderson, State of South Carolina.

6. This Court has jurisdiction over all parties, matters and things herein.

FACTUAL ALLEGATIONS

7. On July 19, 2001, John A. Chapman was seized and possessed and was the owner of the real property described in Exhibit A, which is attached hereto, and incorporated herein by reference.

8. The real property described in Exhibit A is located in the County of Anderson, State of South Carolina.

9. On July 19, 2001, John A. Chapman died intestate leaving as his sole heir at law, plaintiff, Abe Chapman. A copy of the Death Certificate is attached hereto, marked Exhibit B.

10. At all relevant times hereto, plaintiff Abe Chapman was and is the true lawful owner of the real property described in Exhibit A. See Deed of Distribution dated November 5, 2003 and recorded in RMC Office for Anderson County South Carolina, a copy of which is attached

hereto, marked Exhibit C.

11. A Quitclaim Deed (The Deed), a copy of which is attached hereto Marked Exhibit D was executed on December 9, 2000 and purportedly re-executed January 26, 2004, purportedly conveying the property described in Exhibit A to defendant Titus Rucker.

12. On information and belief, The Deed is a forgery and a fiction, and the purported conveyance(s) to defendant Titus Rucker is null and void *ab initio*.

13. The Deed was recorded in the Anderson County RMC Office in Book Number 5958 at page 210 and the purportedly amended version was recorded on January 20, 2004 and Book Number 5968 at page 48 recorded on January 28, 2004.

14. On or about April 14, 2004, defendant Titus Rucker executed and delivered unto defendant Indymac Bank F.S.B a mortgage (The Mortgage) in the amount of approximately Two Hundred and Thirty-One Thousand and 00/100 (\$231,000.00), a copy of which is attached hereto Marked Exhibit E.

15. The Mortgage was recorded in the Anderson County RMC Office in Book Number 6100 at page 142.

16. On information and belief, defendant Indymac Bank F.S.B. claims that the real estate described in Exhibit A is encumbered by The Mortgage, notwithstanding the fact that defendant Indymac Bank F.S.B. acted, by and through its agents, servants, and/or employees, at all times mentioned herein, negligently, gross negligently, willfully, wantonly, carelessly and/or recklessly in encumbering the real estate described in Exhibit A when defendant Indymac Bank F.S.B. knew or should have known that Plaintiff was the true and lawful owner of the real estate described in Exhibit A.

17. On information and belief, The Mortgage is a nullity and is a fiction, and further The

Mortgage is an illegal and unlawful encumbrance upon plaintiff's property described in Exhibit A.

**FIRST CAUSE OF ACTION
(Declaratory Relief)**

18. Plaintiff realleges and incorporates herein by reference the allegations of paragraphs 1 through 17, above.

19. An actual controversy has arisen between plaintiff, on the one hand, and defendants, on the other hand, as to their respective rights, remedies and obligations. Specifically, plaintiff alleges that The Deed is a forgery, fiction and a nullity and is void *ab initio* and is an unlawful cloud on the title to Plaintiff's property described in Exhibit A. Further plaintiff alleges that The Mortgage is a nullity and a fiction, and The Mortgage is an illegal and unlawful encumbrance and cloud on plaintiff's property described in Exhibit A.

20. Plaintiff further contends that he is the true and lawful owner of the real estate described in Exhibit A, and he never gave the defendants consent to encumber the real estate described in Exhibit A.

21. Plaintiff further contends that Defendants have been unjustly enriched at the expense and to the detriment of the plaintiff.

22. Accordingly, plaintiffs seek a declaration as to the respective rights, remedies, and obligations of the parties, in that among other things, plaintiff seeks a declaration that The Deed is void *ab initio*, is a nullity, a fiction, and constitutes a cloud on plaintiff's title to his property described in Exhibit A, and further plaintiff seeks a declaration that The Mortgage constitutes a cloud and an unlawful and illegal encumbrance on plaintiff's property described in Exhibit A.

23. Further, plaintiff seeks an order from this Court ordering that The Deed be canceled of

record.

24. Further, plaintiff seeks an order from this Court ordering that The Mortgage be canceled of record.

**SECOND CAUSE OF ACTION
(Recovery of Real Property)**

25. Plaintiff realleges and incorporates herein by reference the allegations of paragraphs 1 through 24, above.

25. Plaintiff institutes this cause of action against defendants pursuant to §§ 15-67-10 *et seq* S.C. Code Ann.

26. Plaintiff is the true and lawful owner of the property described in Exhibit A, and plaintiff is informed and believed that defendant Titus Rucker obtained possession of the real estate described in Exhibit A by fraud or trickery.

27. Defendants have unlawfully, illegally and without the plaintiff's consent entered upon the premises described in Exhibit A and/or are claiming some interest therein adversely to plaintiff's interests pursuant to The Deed and The Mortgage.

28. Plaintiff is informed and believes that he is entitled to an order of this court putting him back in possession of the property described in Exhibit A.

29. Plaintiff is informed and believes that defendants have made certain improvements on the real estate described in Exhibit A, and plaintiff is informed and believes that plaintiff is entitled to an order of this court declaring that defendants have forfeited any improvements and/or the value of any improvements thereon to the plaintiff.

31. Further, plaintiff seeks an order from this Court ordering that The Deed be canceled of record.

32. Further, plaintiff seeks an order from this Court ordering that The Mortgage be

canceled of record.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays for relief as follows:

1. For an order finding and declaring that The Deed and is a forgery, a nullity, a fiction and an unlawful cloud on plaintiff's title to his property described in Exhibit A;
2. For an order finding and declaring that The Mortgage constitutes an unlawful cloud and an unlawful and illegal encumbrance on plaintiff's property described in Exhibit A;
3. For an order from this Court ordering that The Deed be canceled of record;
4. For an order from this Court ordering that The Mortgage be canceled of record;
5. For an order from this Court putting plaintiff back into possession of the property described in Exhibit A;
6. For an order declaring the Defendants have forfeited any improvements and/or the value of any improvements done to the property described in Exhibit A to plaintiff;
7. For an award of costs and expenses incurred in the investigation, filing and prosecution of this action under any applicable provision of law;
8. For such other and further relief as the Court may deem just and proper.

SIGNATURE PAGE ATTACHED

THE GRIFFIN FIRM, LLC

BY:



Charles R. Griffin, Jr.

Attorney at Law
136 N. Main Street
Anderson, SC
29621
864-231-8870
Fax 864-231-7797

Attorney for Plaintiff

Dated: June 20, 2007

The Law Offices of
The Griffin Firm, LLC

210 North McDuffie Street • Ste 103 • Anderson, SC 29621 • Bus (864) 231-8870 • Fax (888) 682-7317

December 4, 2014

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Harold Rucker, Appellant vs Titus Rucker and the Federal Deposit Insurance Corporation,
Respondents,
Appellate Case#: 2014-002090
Common Pleas Case #: 2011CP0402097

Dear Ms. Kitchings:

In accordance with Rule 25 SCRPC (Death of a Party) which provides in part, "Counsel of record for such deceased party shall give notice to all other parties of the death of such party as soon as practicable after obtaining such knowledge and of the name and address of the proper parties who should be substituted, I am notifying the Court and other counsel of record that I have been informed today of the death of Abe Chapman. Mr. Harold Rucker has informed me that he is authorized to continue as a proper party in this matter.

With kind regards, I am,

Sincerely,

Charles R. Griffin, Jr.

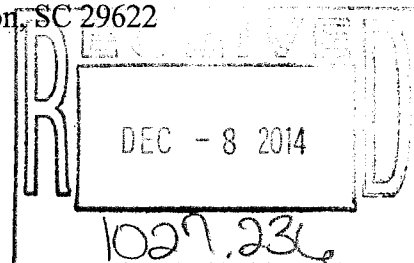
cc:

Harold Rucker
26739 Wauchula way
Hayward, CA 94545

Louis H. Lang, Esq.
1812 Lincoln Street
PO Box 1390
Columbia SC 29202

Alex Turner, Esq.
117 West Benson Street
PO Box 2506
Anderson, SC 29622

EXHIBIT "B"



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

SC Court of Appeals

Hon. Ellis Drew, Master in Equity

Appellate Case No. 2014-002122
Case No. 2011-CP-04-2097

Abe Chapman, by and through his attorney-in-fact,
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v.

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PROOF OF SERVICE

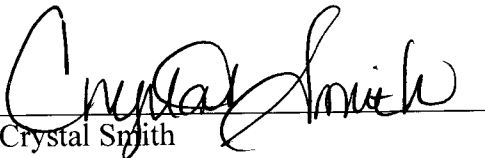
I, Crystal Smith, an employee of Callison Tighe & Robinson LLC, Attorneys for the
Respondent, Federal Deposit Insurance Company (FDIC), do certify I have served a copy of
the **Motion to Dismiss Appeal** by mailing it to opposing counsel at their last known addresses,
by depositing it in the United States Mail, postage prepaid, addressed to counsel of record at the
following addresses:

Counsel for Appellant:

Charles R. Griffin, Jr., Esq.
The Griffin Law Firm, LLC
136 N. Main St.
Anderson SC 29621

Counsel for Titus Rucker:

Earle Alexander Turner, III, Esq.
Chapman Byrholdt & Yon, LLP
PO Box 2506
Anderson SC 29622


Crystal Smith

December 19, 2014
Columbia, South Carolina

LOUIS H. LANG – Attorney
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LouisLang@callisontighe.com

December 19, 2014

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SC Court of Appeals

Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter St.
PO Box 11629
Columbia SC 29211

Re: Abe Chapman v. Titus Rucker
Appellate Case No. 2014-002090
CTR No. 1027.236

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the following document concerning this case:

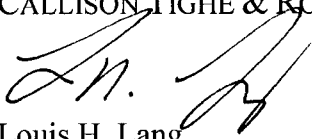
1. Motion to Dismiss Appeal.

Please file the original and its copies, and return a clocked copy to me. By copy of this letter, I am serving a copy of the same upon all other counsel of record.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC



Louis H. Lang

Enclosures

cc: Charles R. Griffin, Jr., Esq. (w/ encl.)
Melanie R. McDonald, CR (w/ encl.)
Earle Alexander Turner, III, Esq. (w/ encl.)