

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Case No. 2013-CP-42-0362

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SC Court of Appeals

U.S Bank National Association as Trustee on behalf of Manufactured Hosing Contract
Senior/Subordinate Pass-Through Certificates 1996-6 by Green Tree Servicing LLC, as servicer
with delegated authority under the transaction documents Respondent,

v.

Kim Byrd and South Carolina Department of Revenue. Defendants

Of Who Kim Byrd is Appellant

INITIAL BRIEF OF RESPONDENT

THEODORE VON KELLER
SARA C. HUTCHINS
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TABLE OF AUTHORITIES

Cases

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Roberson v. S. Finance, of S.C. , Inc., 365 S.C. 6, 11, 615 S.E.2d 114, 115 (2005).
Harbor Island Owners Association v. Preferred Island Properties, Inc. 369 S.C. 540, 549, 633 S.E.2d 497, 500 (2006)
Hill v. S.C. Dep't of Health and Env'tl. Control, 389 S.C. 1, 698 S.E.2d 612 (2010)
Bank of America, N.A. v. Draper, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013)

Other Authorities

§36-3-31 of the Code of Laws of South Carolina (1976, as amended).
§36-1-201(20), Code of Laws of South Carolina (1976, as amended)
Rule 17, South Carolina Rules of Civil Procedure
Rule 210, South Carolina Rules of Appellate Procedure

STATEMENT OF ISSUES ON APPEAL

- I. RESPONDENT WAS THE OWNER/HOLDER OF THE SUBJECT NOTE AND MORTGAGE AND THEREFORE HAD STANDING TO PURSUE FORECLOSURE**

STATEMENT OF THE CASE

This appeal presents one (1) issue: Did the trial court err in finding that respondent was the owner and holder of the mortgage note and thus had standing to pursue foreclosure. Appellant, Kim Byrd made two (2) motions to dismiss due to lack of standing and both motions were denied resulting in the August 19, 2014 Order denying Defendants Motion to Dismiss and the November 5, 2014 Master's Order of Judgment of Foreclosure and Sale.

STATEMENT OF FACTS

On June 15, 1999, Mr. Travis Dill, executed and delivered to Green Tree Financial Servicing Corporation ("Green Tree"), a certain Note in the principal sum of ninety-three Thousand one hundred forty-eight and 00/100 (\$93,148.00) Dollars, with interest thereon at the rate of 8.75% per annum ("Note"). Mr. Dill promised to repay Green Tree the amounts advanced under the Note. On October 14, 2009, Travis J. Dill executed a Manufactured Home Affidavit For Retirement of Title ("Affidavit"). Said Affidavit was filed on November 6, 2009, in the Spartanburg County Register of Deeds Office in Book in Book 94-X at Page 677. As a result the mobile/manufactured home was converted and/or transmuted from personal property into real property subject to the lien of the Plaintiff's mortgage. Simultaneously with the execution of the Note, and to better secure the repayment of the Note and the debt evidenced thereby, Mr. Dill executed and delivered unto Green Tree, a certain Mortgage dated June 15, 1999 ("Mortgage"), covering the real property that is the subject of this foreclosure action ("Mortgaged Property"). That Green Tree by Assignment of Mortgage dated December 3, 2012, assigned the subject mortgage unto Plaintiff. Said Assignment of Mortgage was recorded February 4, 2013 in the Office of the

Register of Deeds for Spartanburg County in Book 4684 at Page 564. Said Assignment of Mortgage was executed by Green Tree Servicing LLC f/k/a Conseco Finance Servicing Corporation f/k/a Green Tree Financial Servicing Corporation. See Affidavit of Kathryn K. Davis.

On January 29, 2013, after default under the terms of the Note and Mortgage, Respondent filed an Amended Lis Pendens, Summons and Complaint foreclosure of the real estate mortgage. On January 29, 2013, the Amended Lis Pendens and Summons and Complaint were personally served upon Appellant (Affidavit of Service), and Appellant through counsel filed an Answer. On July 03, 2013, after completion of foreclosure intervention, Respondent filed a Certificate of Compliance with Administrative Order 2011-05-02-01. On March 17, 2014, M Hope Blakeley/Debbie Greene, Clerk of Court for Spartanburg County executed and recorded an Order of Reference under which the subject case was referred to Gordon G. Cooper, Master in Equity for Spartanburg County (Order of Reference). Subsequently, Appellant filed a Motion to Dismiss and on August 12, 2014, a hearing was held on said motion. An Order Denying Defendant's Motion to Dismiss was entered August 19, 2014

A final trial of the matter was held October 21, 2014 and on November 5, 2014 a Master in Equity's Order and Judgment of Foreclosure and Sale and a Notice of Master In Equity Sale were entered in the Office of the Clerk of Court for Spartanburg County (Transcript of Testimony, Master in Equity's Order and Notice of Sale).

A foreclosure sale was held on December 1, 2014 at 11:00a.m., and this appeal followed.

ARGUMENT

I. RESPONDENT WAS THE OWNER/HOLDER OF THE SUBJECT NOTE AND MORTGAGE AND THEREFORE HAD STANDING TO PURSUE FORECLOSURE

“A mortgage foreclosure is an action in equity.” *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) In an appeal from the master’s findings, the “master’s findings of fact must be upheld unless wholly unsupported by the evidence or controlled by an error of law.” *Harbor Island Owners Association v. Preferred Island Properties, Inc.* 369 S.C. 540, 549, 633 S.E.2d 497, 500 (2006) citing *Roberson v. S. Finance, of S.C. , Inc.*, 365 S.C. 6, 11, 615 S.E.2d 114, 115 (2005). In the present matter, the master’s finding that Respondent was the owner and holder of the subject note and mortgage is supported by the evidence in the record, specifically the affidavit of Kathryn K. Davis and the presentation of the original note and mortgage.

Because the master’s finding of fact was wholly supported by the evidence in the record the only question is whether the master’s finding was controlled by an error of law. Standing refers to a party’s right to make a legal claim or seek judicial enforcement of a duty or right and to have standing a party must be a real party in interest to the litigation. *Bank of America, N.A. v. Draper*, citing *Hill v. S.C. Dep’t of Health and Envtl. Control*, 389 S.C. 1, 698 S.E.2d 612 (2010). A “real party in interest” for the purposes of standing is a party with real, material, of substantial interest in the outcome of the litigation. Rule 17(a), SCRPC.

The present action is an action for foreclosure of a certain note and mortgage. Pursuant to §36-3-31 of the Code of Laws of South Carolina (1976, as amended), a “person entitled to enforce” an instrument means “(I) the holder of the instrument...”. A holder is

a person in possession of the instrument drawn, issued, transferred or indorsed to him.
§36-1-201(20), *Code of Laws of South Carolina (1976, as amended)*. This Court, in *Bank of America, N.A. v. Draper*, held that where the evidence indicates that the bank does hold the note then they are the holder and real party in interest authorized to enforce the same. 405 S.C. 214, 746 S.E. 2d 478 (Ct. App. 2013). In this case, the master was presented with and examined the original note, that was in the possession of Respondent. This is clear evidence that Respondent was the holder in possession of the note, the real party in interest having standing to pursue foreclosure.

CONCLUSION

For the reasons stated, this Court should affirm the judgment.

Respectfully submitted,

February 20, 2015

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