

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Townes at Pelham Owners' Association, Inc.,  
Respondent,

v.

Donna Boyd, Bank of America, N.A. by Assignment  
From Mortgage Electronic Registration Systems,  
Defendants,

And

Donna Boyd, Third Party Plaintiff

v.

Eric Hedrick, in his Individual and Official Capacity as  
Owner or President of Cornerstone Realty, Inc. and  
Cornerstone Realty, Inc., Third Party Defendants,

Of whom Donna Boyd is the Appellant

Appellate Case No. 2014-000701

The Honorable Charles B. Simmons, Jr.  
Greenville County  
Trial Court Case No. 2102CP2303686

**RECEIVED**  
MAR 04 2015  
**SC Court of Appeals**

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**OPPOSITION TO RESPONDENT'S MOTION TO HOLD CASE IN ABEYANCE  
MOTION TO FILE OUT OF TIME**

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NOW COMES, the Appellant, Donna Boyd in opposition of the Respondent's motion to hold case in abeyance in the above referenced matter. This motion is based on the following facts:

The Respondent, Townes at Pelham Owner's Association, Inc. failed to file its initial brief and designation of matter on November 8, 2014. And on October 28, 2014, the Respondent moved for a (30) day continuance requesting to file its initial brief and designation of matter. Further, the Respondent asserted in its October 28, 2014, motion for continuance that it had elected to associate 'other counsel' to assist in the process of filing the brief.

Further, the Respondent gave the impression that 'other counsel' had reviewed the facts of the case and that counsel could not proceed with the preparation of the initial brief and designation of matter until the motion for continuance was granted. The Respondent's motion for continuance was extended until December 8, 2014; however, the Respondent again failed to submit its initial brief and designation of matter as ordered by the court.

Although the court graciously allowed the Respondent to file its initial brief and designation of matter by December 8, 2014, the Respondent continued to show an absolute disregard for the judicial process, the rules of court, and the court's time when the Respondent submitted a second motion on December 1, 2014, requesting an additional (90) ninety-day extension in hopes that the Appellant's property would be foreclosed upon if the motion was granted. As noted in the Order, the Respondent was granted the requested (30) thirty day extension and ordered to file its initial brief and designation of matter by December 8, 2014. However, in an effort to confuse and delay the proceeding, the Respondent submitted a second motion asking for a (90) ninety-day

continuance on December 1, 2014, even before receiving a response to its request for a (30) day continuance.

Further, the Respondent's actions evince that the Respondent had no intentions of electing 'other counsel' to assist with the preparation of its initial brief and designation of matter because as of date 'other counsel' has not been elected. The Appellant asserts that the Respondent's purported reason for the extension was simply a ploy to further delay the Appellant's appeal.

The Respondent argues that Appellant's appeal should be held in abeyance until the Foreclosure Plaintiff has adjudicated its pending mortgage foreclosure. But, the Appellant argues against the abeyance because it is unwarranted due to the fact that the property is subject to review for modification. Moreover, the Appellant has spoken at great length with the Foreclosure Plaintiff who has expressed no desire to displace a retired disabled veteran.

Next, the Respondent argues that the administrative and judicial economy will be well served and resources appropriately conserved by staying the Appellant's appeal pending resolution of the foreclosure. However, the Appellant argues that administrative and judicial economy will not be served because the aim of "judicial economy" is to avoid wasting the court's time and resources by efficiently managing litigation so as to minimize duplicative legal action. Here, the Appellant asserts that the parties and issues are not the same and therefore her issues are not duplicative in nature.

Moreover, the exercise of judicial economy is the court's discretion to decide one or more claims in a case on the grounds that the court has decided other claims in the case and that the court's decision on those claims should satisfy the parties involved. Here, the

Appellant asserts that 'judicial economy' is unwarranted because the parties and issues are not the same. Further, the Appellant asserts that her action before this Court has no bearing on the actions of the Foreclosure Plaintiff and would not preclude the Foreclosure Plaintiff from seeking remedy from the court. The judicial economy standard requires that common issues arise out of the same factual dispute.

Here, the Appellant argues that there are no common issues before this Court because contrary to the claims posited by the Respondent, the Foreclosure Plaintiff's and Respondent's interests are antithetical to the Appellant's interests. Case in point, the Foreclosure Plaintiff seeks to foreclose on the Appellant's property whereas the Appellant aim is to retain her property and has taken the necessary steps to terminate the foreclosure.

Further, judicial economy requires that the common issues arise out of the same dispute. Here, the Appellant argues that the issues between her and the Foreclosure Plaintiff do not arise out of the same dispute because the Appellant's issues arose out of the Respondent's frivolous pursuits to foreclose upon her property.

Although the Foreclosure Plaintiff is the defendant and bona fide superior lien holder in the HOA foreclosure action against the Appellant, the Foreclosure Plaintiff was not involved in the dispute because the Respondent did not serve the Foreclosure Plaintiff with service of process. Moreover, the Foreclosure Plaintiff and Appellant interests are dissimilar because only the Appellant appealed to this Honorable Court with the intent to vacate the February 11, 2014, Order to Foreclose.

Last, the Appellant issues are different from the Foreclosure Plaintiff's and Respondent's because the Appellant appealed her case seeking a remedy at law. Since

the inception of this matter, the Appellant asserts that she has been denied Due Process and other constitutional protections. “Any limitation of plaintiffs’ rights to maintain their case would require showing a need in protecting the other litigation involved and would also require a balanced finding that such need overrides the injury to the parties being stayed.” This consideration is of particular importance where the claim being stayed involves not insubstantial claim of present and continuing infringement of constitutional rights.” *Dellinger v. Mitchell*, 442 F.2d 782, 786 (D.C. Cir. 1971)

The Respondent argues that the resolution of the mortgage foreclosure could be dispositive of some or all of the issues associated with the Appellant’s appeal. However, the Appellant contends that foreclosure would not be dispositive of any issues because foreclosure of the Appellant’s property by the Foreclosure Plaintiff is not an issue raised by the Appellant. Further, the Appellant argues that because the Foreclosure Plaintiff’s lawsuit does not arise out of the same dispute or issues as required by the ‘judicial economy’ standard, the Respondent’s claims that administrative and judicial economy will be well served and resources appropriately conserved by holding the Appellant’s case in abeyance pending the mortgage foreclosure are without merit.

As stated previously, the Respondent did knowingly submit a frivolous lis pendens on June 5, 2012. And on January 10, 2014, did improperly summon the Appellant to appear before the Honorable Judge Charles B. Simmons in an effort to intimidate and force the Appellant to make settlement with the HOA. The Appellant noted that the first question asked of her when she arrived to court was whether she would be willing to settle and only after the Appellant refused to make settlement with the HOA, did the Respondent go forward with litigation. Further, the Appellant was not prepared to litigate

because she had not been given notice that the purpose of the January 10, 2014, hearing was to foreclose upon the subject property.

Also, the Appellant noted that the court asserted in the February 11, 2014, Order, that Bank of America filed an answer on December 6, 2012, but did not attend the hearing, giving the false impression that Bank of America had notice but chose not to attend the hearing on January 10, 2014.

Also, the Written Order falsely asserted that all parties herein and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter. However, the Respondent now acknowledges that Foreclosure Plaintiff Lakeview Servicing LLC is the proper superior lien holder which evinces that the Respondent failed to conduct a title search of the said property. Also, it shows that the Foreclosure Plaintiff was never served with the lis pendens or given notice of the hearing held on January 10, 2014.

Moreover, the Respondent knew that the hearing was a waste of court time and resources because the lis pendens was not in accordance with South Carolina Statute 15-11-30. Further, the Appellant noted that the Foreclosure Plaintiff Lakeview Servicing, LLC was not present and had not been given notice at any time of the hearing held on January 10, 2014. However, the Respondent continues to pursue this action against the Appellant until this day. The Appellant asserts that the Respondent has had several opportunities to concede that its actions against the Appellant are unlawful; however, the Respondent continues to submit motion after motion in an attempt to delay the process and evade detection.

On January 23, 2015, this Honorable Court denied the Respondent's motion for a (90) ninety-day continuance and ordered the Respondent to serve and file its initial brief and

designation of matter within (30) thirty days. As of date, the Respondent still has not complied with the Court's Order to file its initial brief and designation of matter but instead has chosen to utilize its time wasting the Court's time and resources by submitting one motion after another in an effort to delay the Appellant's appeal. Moreover, it appears that the Respondent is strategizing its defense by vigilantly monitoring the actions of the Appellant and Foreclosure Plaintiff via the Greenville County Public Index in an effort to force the foreclosure of the Appellant's property and delay the submission of its brief.

In response to the Respondent's argument that hardship would arise if the Foreclosure Plaintiff is not allowed to pursue its foreclosure action against the Appellant, the Appellant asserts that the Respondent's claims are disingenuous because for the last (120) one hundred-twenty days, the Respondent has filed several motions to delay the Appellant's appeal, in contemplation that the Appellants property would be foreclosed upon.

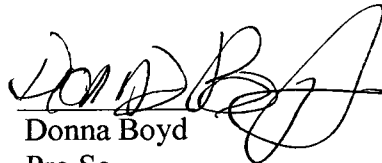
Moreover, the foreclosure of the Appellant's property would benefit the Respondent because the Respondent would avoid having to account for the frivolous cause of action filed on June 5, 2012, and subsequent actions. On the other hand, the foreclosure of the Appellant's property would cause hardship to the Appellant because the said property is the primary residence of the Appellant. Further, the Appellant asserts that the Respondent's financial hardship is due to the Respondent's own failure to exercise due diligence before pursuing a course of action that could not be sustained by the rule of law. The Appellant submits email correspondence between Third Party Defendant Eric Hedrick and the Respondent Attorney to show that the Respondent and Third Party

Defendant Eric Hedrick had been wasting court resources by submitting frivolous causes of action for several years in its efforts to harass and threaten the Appellant. Exhibit A

The Appellant appealed the Written Order on April 2, 2014, praying that this Honorable Court would hear this matter to its conclusion.

The Appellant respectfully request that this Honorable Court grant the Appellant's motion to file return out-of-time and deny Respondent's Motion to Hold Case in Abeyance. I am currently dealing with serious medical issues which delayed the submission of the return. I apologize for any inconvenience.

Respectfully,

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

Donna Boyd  
Pro Se  
Post Office Box 1168  
Mauldin, SC 29662

Mauldin, South Carolina  
March 1, 2015

Exhibit A

From: [REDACTED]  
 To: [REDACTED]  
 Date: 12/07/2011 07:10:54 EST  
 Subject: FW: Legal Fees for Foreclosure Actions  
 Attachments: [Homeowner Assoc. foreclosure fees.doc \(33KB\)](#)

**Please do not let anyone see this email. FYI Use it when you and if you must. It could be Eric, assumes I am speaking to you and is feeding me disinformation.**

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 SC Court of Appeals

All:

I spoke with Chris Brown at Babb & Brown last week about something that he was handling for me in another community. While I was speaking with him, I discussed two other issues that I am dealing with in two other communities, and I asked him if he could give me an overview of the foreclosure process for an HOA for non-payment of dues. I then asked him to send me an email with a short description that I could forward to you. That email follows. Chris also attached a cost breakdown for each step in the process that is fairly easy to follow. That fee schedule is attached. Please review this information prior to our next meeting so that we can discuss it. If anyone has questions for the attorney prior to the meeting, please let me know.

I called David Wilson's office prior to sending this email to get an update, and his assistant was not in and he was not available, so I left a message. I then called the Master in Equity's office and spoke with a clerk about this case and was told that a new Order and Rule to Show Cause for Contempt had been filed yesterday, and it was being "clocked in", and would then be forwarded back to the attorney's office (the hearing has been scheduled for Jan. 31, 2012). Once it gets back to the attorney, he will have Ms. Boyd served. Hopefully, she will not know that this is coming, and the service will go quicker this time.

All for now.

Eric,

It was a pleasure speaking with you this morning. I have attached a list of legal fees specifically for foreclosure actions. These fees are incurred incrementally as the work is being done throughout the foreclosure process. All of these fees are not collected for every foreclosure action. For instance, if we prepare a summons and complaint, file it with the court and serve it on the homeowner and then they pay the lien, the HOA would only pay for those services and it would not incur any more legal fees for the particular action.

As we discussed, you may foreclose on HOA liens when there is a mortgage against the property. We always have to name the mortgage company as a defendant and serve them with the complaint. The

2012

FW: Legal Fees for Foreclosure Actions

mortgage company, will either pay the lien (and add the amount of the lien to the principal balance owed them under the terms of the loan) or they may do nothing other than file an answer to the complaint. The mortgage company normally has a superior lien and the HOA would eventually take ownership of the property with the lien attached. Therefore, the HOA needs to be prepared to sell or rent the property quickly to minimize any additional costs. We have found that the majority of homeowners will pay the lien once they are served with the foreclosure complaint. However, if the HOA has to proceed with the foreclosure, the homeowner may want to stay in the home and some HOAs will allow the previous owner to become a tenant at that point.

I realize there are many options for HOAs to consider when dealing with assessment collection and a number of special circumstances can affect a HOA's decision to file a foreclosure. I am always willing to assist with evaluating a particular situation or answering your questions.

I hope you and your family have a very happy holiday.

Chris

*Babb and Brown, P C.  
505 West Butler Road  
Greenville, SC 29607  
Telephone 864-422-0022  
Direct Dial 864-422-2009  
Facsimile 864-422-0001*

Exhibit A

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons, Jr., Circuit Court Judge

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Case No. 2014-000701

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Townes at Pelham Owners'  
Association, Inc.

Respondent,

v.

Donna Boyd,

Appellant.

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PROOF OF SERVICE

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I certify that I have served the Opposition to Hold Case in Abeyance for the above referenced action by overnight delivery to the South Carolina Court of Appeals at 1015 Sumter Street, Columbia, South Carolina, 29201 and by depositing a copy of it in the United States Mail, postage prepaid, on Tuesday, March 3, 2015, addressed to the Respondent, J. Chris Brown, 505 W. Butler Road, Greenville, South Carolina 29607.

March 1, 2015

*Donna Boyd*  
s/ Donna Boyd  
Post Office Box 1168  
Mauldin, South Carolina 29662  
29662

March 1, 2015

VIA OVERNIGHT DELIVERY

Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

RE: Townes at Pelham v. Donna Boyd  
Appellate Case No. 2014-000701

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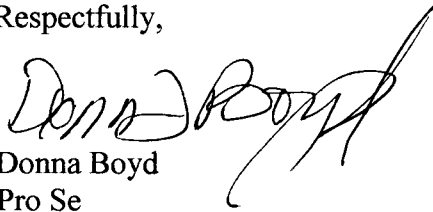
MAR 04 2015

**SC Court of Appeals**

Dear Ms. Kitchings:

I have enclosed an original and one copy of Opposition to Respondent's Motion to Hold Case in Abeyance, Motion to file Return Out of Time, and Proof of Service for the above-referenced matter, as well as a money order in the amount of \$25.00 to cover the motion fee. Please file the original documents and clock and return the copy to me in the self-addressed envelope provided.

Respectfully,

  
Donna Boyd  
Pro Se



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Date Accepted (MM/DD/YY) 3/3/15	Scheduled Delivery Time <input type="checkbox"/> 10 30 AM <input type="checkbox"/> 3 00 PM <input checked="" type="checkbox"/> 12 NOON	10 30 AM Delivery Fee \$		Return Receipt Fee \$		Live Animal Transportation Fee \$	
Time Accepted 4:30 PM	Weight 5 lbs	Sunday/Holiday Premium Fee \$		Total Postage & Fees 16.95		Acceptance-Employee Initials [Signature]	

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