

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Master in Equity

Ellis B. Drew, Jr., Master in Equity, Anderson County

Appellate Case No: 2014-000796

Corrie Ann Martin

v.

Green Tree Servicing, LLC, and John Skipper, as Sheriff of Anderson County, Respondents

Of who Corrie Ann Martin is Appellant

INITIAL BRIEF OF RESPONDENT

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RIM Associates v Blackwell, 359 S.C. 170, 597 S.E. 2d 152 (S.C. Ct. App. 2004)
Venture Engineering, Inc V Tishman Const Corp Of South Carolina, 360 S.C. 156, 600 S.E.2d 547 (Ct. App. 2004), reh'g denied, (Aug 24, 2004).

STATEMENT OF ISSUES ON APPEAL

- I. APPELLANT'S ISSUES ON APPEAL ARE BARRED BY THE DOCTRINE OF RES JUDICATA**

STATEMENT OF THE CASE

This appeal presents seven issues on appeal all of which were previously raised and ruled upon or which should have been raised in the prior litigation and appeal.

STATEMENT OF FACTS

On March 18, 1997, Appellant, executed and delivered to Green Tree Financial Servicing Corporation a Note ("Note") in the principal sum of Fifty-Eight Thousand Five Hundred Eighty-Seven and 52/100 (\$58,587.52) Dollars, with interest at the rate of 8.99 % per annum (2010-CP-04-03548 Master in Equity's Order and Judgment of Foreclosure and Sale ¶ 8). Appellant promised to repay Respondent the amounts advanced under the Note. Simultaneously with the execution of the Note, and to secure the repayment of the Note and the debt, Appellant executed and delivered to Green Tree a Mortgage dated March 18, 1997 ("Mortgage") (2010-CP-04-03548 Master in Equity's Order and Judgment of Foreclosure and Sale ¶ 9). The Mortgage was recorded on March 18, 1997 in Mortgage Book 2574 at Page 189 in the Office of the Anderson County Register of Deeds. (2010-CP-04-03548 Master in Equity's Order and Judgment of Foreclosure and Sale ¶ 9)

To further secure the repayment of the amounts due under the Note, Appellant granted Green Tree a security interest in a 1997 Omni Mobile Home, Serial #056276A&B (the "Collateral"), and pursuant to the Note, Green Tree recorded its lien on the face of the Certificate of Title of the Collateral described in the Note. (2010-CP-04-03548 Master in Equity's Order and Judgment of Foreclosure and Sale ¶ 10)

On October 4, 2012, after Appellant's default under the terms of the Note and Mortgage, Respondent filed an Amended Lis Pendens, Summons and Complaint seeking repossession of the subject mobile home and foreclosure of the real estate mortgage. (Civil Action Number 2010-CP-04-03548, hereinafter referred to as "The Foreclosure Action") On

October 7, 2010, the Amended Lis Pendens and Summons and Complaint were personally served upon Appellant (2010-CP-04-03548 Affidavit of Service). Having received no answer, or request for extension of time to answer, Respondent filed its affidavit of default and Motion for Order of Reference on December 2, 2010 (2010-CP-04-03548 Affidavit of Default). On December 2, 2010, Martha D. Newton, Clerk of Court for Anderson County executed and recorded an Order of Reference under which the subject case was referred to Ellis B. Drew, Jr., Master in Equity for Anderson County (2010-CP-04-03548 Order of Reference). Subsequently, a hearing was scheduled and the Respondent forwarded a Notice of Hearing to the Appellant at her record address on December 17, 2010 (2010-CP-04-03548 Notice of Hearing). The Notice of Hearing and Certificate of Service were filed with the Court.

The final hearing in the subject action was held on January 24, 2011 at 11:00am and on January 24, 2011 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 Anderson County (2010-CP-04-03548 Transcript of Testimony, Master in Equity's Order and Notice of Sale).

A foreclosure sale was held on March 1, 2011 at 11:00a.m. and the deficiency sale was held on March 31, 2011. (2010-CP-04-03548 Notice of Sale). On April 7, 2011, the Honorable Ellis B. Drew, Jr. executed a Master in Equity's Deed by Foreclosure conveying the subject real property to Green Tree Servicing, LLC, the high bidder at the foreclosure sale. The deed was recorded in the Office of the Anderson County Register of Deeds on April 20, 2011, in Book 10000 at Page 107 (2010-CP-04-03548 Master's Deed). On April 7, 2011, the Honorable Ellis B. Drew, Jr. executed an Order of Deficiency Judgment against Appellant in the amount of \$21,620.62. Said Order was recorded in the Office of the Clerk of Court for Anderson County on April 12, 2011 (2010-CP-04-03548 Order of Deficiency

Judgment).

Subsequently, due to the subject property still being occupied, a Writ of Assistance was issued by the Honorable Ellis B. Drew, Jr. on June 2, 2011 (2010-CP-04-03548 Writ). The Anderson County Sheriff's Office served the Appellant with the Writ of Assistance on June 13, 2011 (2010-CP-04-03548 Affidavit of Service). On or about June 27, 2011, the Respondent's attorney received a letter from Robert P. Lusk, Esquire, that there were outstanding issues that needed to be addressed and the Respondent cancelled the lock-out that had been scheduled with the Anderson County Sheriff's Office.

On or about January 6, 2012, the Defendant, by and through counsel, Andrew Gaines, filed a Motion for Relief from Judgment pursuant to Rule 60(b), SCRPC (2010-CP-04-03548 Motion). On January 23, 2012, the hearing on Appellant's Motion for Relief from Judgment was heard by the Honorable Ellis B. Drew, Jr (2010-CP-04-03548 Motion Transcript). After review of the pleadings and arguments of counsel, Judge Drew denied Appellant's Motion, finding that Appellant had failed to make the motion for relief within a reasonable time. The Supplemental Order denied Appellant's motion for relief and further ordered Appellant to vacate the subject property within thirty (30) days from the date of said Order, which was filed on March 13, 2012 (2010-CP-04-03548 Order).

On or about May 07, 2012, Appellant filed a Notice of Appeal as to the Foreclosure Action and subsequent denial of the Rule 60 motion. (Said appeal is Appellate Case number 2012-210846 and hereinafter referred to as "the First Appeal".) By order of the Court of Appeals for the State of South Carolina, the decision of Judge Drew was affirmed. (November 20, 2013 Order of the Court of Appeals)

On April 23, 2012, while the First Appeal was pending, Appellant brought an independent action bearing civil action number 2012-CP-04-1576 (hereinafter referred to as "Appellant's First Lawsuit") in which she asserted related claims regarding the Foreclosure

Action referenced above. In response, Respondent filed a Motion for Summary Judgment on April 04, 2013, seeking dismissal of Appellant's First Lawsuit pursuant to SCR 60 as the issues in Appellants First Lawsuit were identical to those matters under appeal. Respondent's motion was heard by the Honorable R. Lawton McIntosh on May 9, 2013. By Order filed June 7, 2013, Judge McIntosh held that the Appellants First Lawsuit shall be stayed until a decision was made on Appellants Application to the South Carolina Court of Appeals for leave to pursue Appellants First Lawsuit or until the Appellate Court ruled on the First Appeal. (June 7, 2013 Order). On July 8, 2013, counsel for Appellant filed a motion for leave to proceed under Rule 60 in Appellant's First Lawsuit, and on September 16, 2013, the South Carolina Court of Appeals denied said motion.(Court of Appeals Order in Appellate Case number 2012-210846 filed September 16,2013) Appellant filed a petition for writ of certiorari seeking review of the Court of Appeals September 16, 2013 Order, which petition was denied by the South Carolina Supreme Court by order dated October 24, 2013. (Supreme Court Order dated October 24, 2013). Appellant's First Lawsuit was thereafter dismissed with prejudice by Order of Judge McIntosh on December 05, 2013. (Order of Dismissal). The dismissal of Appellant's First Lawsuit was not appealed.

On March 17, 2014, Appellant Corrie A. Martin then initiated a second independent action bearing civil action number 2014-CP04-00463 alleging violations of the Home Affordable Modification Program, the Fair Debt Collection Practices Act, and conversion, all related to the underlying mortgage loan and Foreclosure Action. (civil action 2014-CP-04-00463 is hereinafter referred to as "Appellants Second Lawsuit") On March 19, 2014, Appellant filed a Motion to Vacate Writ of Assistance. By Order dated March 31, 2014 Judge Drew denied Appellant's Motion to Vacate Writ of Assistance and dismissed Appellant's Second Lawsuit with prejudice.

This is the appeal of the dismissal of Appellant's Second Lawsuit.

ARGUMENT

I. APPELLANT'S ISSUES ON APPEAL ARE BARRED BY THE DOCTRINE OF RES JUDICATA

The doctrine of res judicata requires “identical parties or their privies; (2) identity of subject matter and (3) adjudication of the issue in the former suite.” *Ford v Watson*, 282 S.C. 66, 316S.E.2d 429 (Ct. App 1987) *Venture Engineering, Inc V Tishman Const Corp. Of South Carolina*, 360 S.C. 156, 600 S.E.2d 547 (Ct. App. 2004), reh’g denied, (Aug 24, 2004). The doctrine of res judicata bars not only claims that were actually raised in a prior action, but also those issues which might have been raised in the former suit. *RIM Associates v Blackwell*, 359 S.C. 170, 597 S.E. 2d 152 (S.C. Ct. App. 2004) All elements of the doctrine of res judicata are present here: Appellants Second Lawsuit, the dismissal of which is the subject of this appeal, involved the identical parties in the Foreclosure Action - Civil Action 2010CP0403548, the First Appeal - Appellate Case Number 2012-210846, and the Appellant’s First Lawsuit - Civil Action 2012-CP-04-1576. Equally, all seven issues in the present appeal were raised or could have been raised in one of the aforementioned actions. All of the Appellant’s issues on appeal regard the mortgage loan that was the subject of the Foreclosure Action, and are issues that were raised or could have been raised in those previous actions. In sum, the issues raised in Appellant’s Second Lawsuit are barred by the doctrine of res judicata. Each issue is addressed below as follows:

Appellant’s Issue 1 A mistake occurs when the court relies upon an order which is vacated by a subsequent order in the same case

Appellant previously raised this identical issue for the first time in Appellant’s First Appeal and again here. As evidenced by the current Record on Appeal and the

Record on Appeal in the First Appeal, Appellant did not raise this issue in any pleadings, hearings, motions or oral arguments in the Foreclosure Action although it was a compulsory counterclaim. And the South Carolina Court of Appeals found it was not preserved for appeal. (Court of Appeals Order filed November 20, 2013)

Appellant's Issue 2 Has a party making a motion pursuant to Rule 60(b) filed the motion within a reasonable time if the explanation for the delay is that he party was unaware of the lawsuit giving rise to the judgment

This identical issue was also presented and ruled on in the Appellant's First Appeal of the foreclosure and denial of the Rule 60 motion. As Appellant offered no explanation for the almost one year delay in filing a Rule 60(b) motion in the Foreclosure Action this Court affirmed the denial in Unpublished Opinion No. 2013-UP-425, filed November 30, 2013. (See Supplemental Order and Appellate Order) Appellant seeks to relitigate the same issue asserted in an earlier appeal.

Appellant's Issue 3 Action was taken to retain an attorney as rapidly as possible after party was aware that a foreclosure suit had commenced without knowledge

The issue of service was previously raised and ruled upon by the lower court in Appellant's First Lawsuit. Said action was dismissed by Supplemental Order filed December 5, 2013, which was not appealed and the time to consider this issue has passed. Equally, this issue was one that should have been but was not addressed in Appellant's First Appeal and thus barred.

Appellant's Issue 4 Party continued to make payments on mortgage throughout the entire foreclosure proceeding

The issue of payments made under the terms of the note and mortgage that were the subject of the Foreclosure Action, was one that should have been raised and was not

raised in any prior action. Appellant failed to file an Answer in the Foreclosure Action and failed to make this argument or present any evidence of any such payments in her Rule 60(b) motion made in the same action. The appropriate time to assert this argument was in the Appellant's Rule 60 motion or the subsequent appeal.

Appellant's Issue 5 *The amount paid to respondent by the way of mortgage payment after foreclosure was commenced is the amount of \$8,262 85*

The issue of payments made under the terms of the note and mortgage that were the subject of the Foreclosure Action, was one that should have been raised and was not raised in any prior action. Appellant failed to file an Answer in the Foreclosure Action and failed to present any evidence of any such payments through affidavit in support of the Rule 60(b) motion made in the same action. Once again, this was an issue that was required to be asserted in Plaintiff's First Appeal but was not.

Appellant's Issue 6 *Party was never served with the foreclosure papers in the suit*

The issue of service was previously raised and ruled upon by the lower court in Appellant's First Lawsuit, civil action 2012-CP-04-01576. Said action was dismissed by Supplemental Order filed December 5, 2013, and the issue of service was not appealed any further.

Appellant's Issue 7 *Party was not in arrears on mortgage*

The issue of payments made under the terms of the note and mortgage that were the subject of the Foreclosure Action, was one that should have been raised and was not raised in any prior action. Appellant failed to file an Answer in the Foreclosure Action and failed to make this argument or present any evidence of any such payments in her Rule 60(b) motion made in the same action. The appropriate time to assert this argument

was in the Appellant's Rule 60 motion or the subsequent appeal.

CONCLUSION

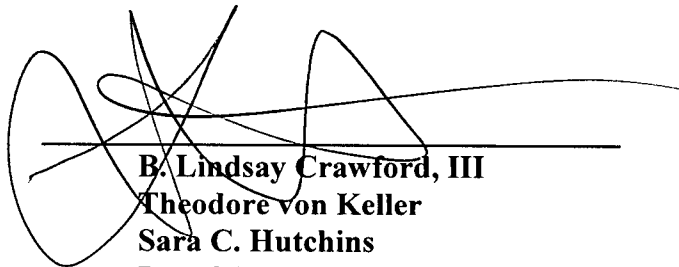
This appeal seeks to relitigate the same matters that were either expressly raised and ruled on in Appellant's First Appeal or dismissed with prejudice in Appellants First Lawsuit and not appealed from or not asserted in the First Appeal. The doctrine of res judicata is expressly intended to prevent repetitive, meritless, vexatious litigation such as this. Appellant seeks to relitigate matters long since ruled on with finality. Appellant's present appeal should be dismissed.

Respectfully submitted,

April 15, 2015

CRAWFORD & VON KELLER, LLC

BY:

A large, stylized handwritten signature in black ink, appearing to read 'B. Lindsay Crawford, III', is written over a horizontal line. The signature is highly cursive and loops around the line.

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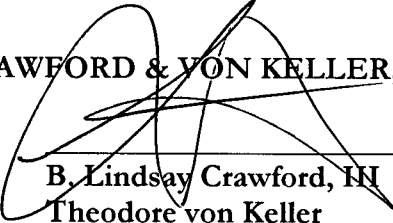
PROOF OF SERVICE

I certify that I have served the Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on April 15, 2015, addressed to its Appellant at the following address:

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