

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable Richard L. Booth, Sumter County Master-in-Equity

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Appellate Case No. 2015-000349

Circuit Court Case No. 2010-CP-43-00823

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Wells Fargo Bank, N.A., Respondent,

v.

Delores Prescott and Wells Fargo Financial Bank (SD), Defendants,

Of Whom Delores Prescott is the Appellant.

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REPLY TO RESPONDENT'S OPPOSITION TO HOLD IN ABEYANCE

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June 13, 2015

Delores Prescott  
10 Skytop Gardens, Apt. 23  
Parlin, New Jersey 08859  
Appellant  
(732) 485-8145

Matthew Todd Carroll, Attorney at Law  
Womble Carlyle Sandridge & Rice, LLP  
1727 Hampton Street  
Columbia, South Carolina 29201  
Attorney for Respondent  
(803) 454-7730

Appellant, Delores Prescott, did not receive a copy Respondent's Opposition to the Motion to hold in Abeyance until late Friday, June 12, 2015 due to her mail being delivered to an incorrect Apartment Number.

Appellant hereby prays to the South Carolina Court of Appeals to grant the Motion to hold the present case in Abeyance to allow Appellant to present the facts of this case to the Circuit Court by Motion pursuant to the authority granted in Rule 60(b)(1)-(3) of the South Carolina Rules of Civil Procedure allowing an independent action, not subject to the one-year limitation, for fraud on the court, or under the authority in Rule 60 SCRPC to hear an independent action for exceptional circumstances warranting equitable relief. *See Mr. T. v. Ms. T.*, 378 S.C. 127, 135, 662 S.E.2d 413, 417 (Ct. App. 2008) (stating Rule 60 permits these two potential independent attacks on a judgment).

The Supreme Court has explained that while in most circumstances there is a time limitation on a party seeking to reopen a final judgment, there is no limit when a party seeks to set aside a judgment due to fraud on the court. Chewning, 354 S.C. at 80, 579 S.E.2d at 609-10.

February 2009 Appellant was in Chapter 13 Case No. 05-01906 and current with her mortgage payments. Appellant received a successful discharge March 2009 and the case was closed August 2009. It was in this case [05-01906] Respondent and its agents convinced Appellant that to be eligible for a loan modification she had to default on her payments.<sup>1</sup>

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<sup>1</sup> Delores Prescott's Hardship letter to Wells Fargo Bank in March 18, 2009 presented as Exhibit 1, it was presented to Judge Booth by counsel as part of Amended Answer and Counterclaim briefing.

Beginning in June of 2009,<sup>2</sup> and continuing through April 2010,<sup>3</sup> Appellant entered into a series of “Forbearance Agreements” with agents and employees of Respondent. Respondent’s employees repeatedly represented to Appellant that if she successfully completed the payments outlined in the agreements that she would be considered for a loan modification and it was only because she relied on this representation that Respondent was able to initiate foreclosure proceedings.

Respondent **deliberately** withheld Appellant’s June 2010 trial payment<sup>4</sup> and then placed Appellant in active foreclosure.

After the commencement of Appellant’s bankruptcy August 2, 2010, Respondent applied her June 2010 payment to the mortgage statement dated August 5, 2010.<sup>5</sup>

The subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud amounting to fraud on the court. Chewning, 354 S.C. at 82-84, 579 S.E.2d at 610-11. Any claim of fraud on the court must be accompanied by particularized allegations.

Respondent and their attorneys S. Sterling Laney, III, A. Brooks Haselden, and Matthew Todd Carroll presented forged Federal Bankruptcy schedules and documents, [a]nd a fraudulent Bankruptcy Case citation to the Honorable Richard L. Booth, Master-In-Equity.

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<sup>2</sup> Wells Fargo Bank June 6, 2009 Special Forbearance Agreement presented as **Exhibit 2**, it was presented to Judge Booth by counsel as part of Amended Answer and Counterclaim briefing.

<sup>3</sup> Wells Fargo Bank April 12, 2010 Trial Payment Agreement presented as **Exhibit 3**, it was presented to Judge Booth by counsel as part of Amended Answer and Counterclaim briefing.

<sup>4</sup> Delores Prescott’s June 2010 trial payment to Wells Fargo Bank presented as **Exhibit 4**, it was given to counsel as part of Amended Answer and Counterclaim briefing

<sup>5</sup> Wells Fargo Bank August 5, 2010 Mortgage Statement presented as **Exhibit 5**, it was presented to Judge Booth by counsel as part of Amended Answer and Counterclaim briefing.

The documents were introduced into evidence April 4, 2014 in Respondent's Memorandum in Opposition of Motion to Dismiss<sup>6</sup> as an attachment [Exhibit A]<sup>7</sup> and on page 5 of the Memorandum at Footnote 3, it references' the fraudulent bankruptcy case as "at 11 (Dkt. No. 8 in In re Prescott, Case No. 10-05552-dd (Bankr. D.S.C.) (filed Aug. 15, 2010).<sup>8</sup>

The same fraudulent Bankruptcy documents are also referenced as "Summary of Schedules" at 7 (Dkt. No. 8 in *In re Prescott*, Case No. 10-5552-dd (Bankr. D.S.C. Aug. 15, 2010) on page 2B ¶2 in the Order of Summary Judgement signed by the Honorable Richard L. Booth dated January 9, 2015.<sup>9</sup>

The Federal Bankruptcy documents that Respondent's counsel submitted to the Circuit Court as "Exhibit A" and as evidence in support of its allegations for judicial estoppel, collateral estoppel and res judicata have been materially altered to reflect a bankruptcy "filed" and "entered" date of 08/15/2010 at 19:38:46, which is Sunday, August 15, 2010 at 7:38 p.m.

Respondent and its counsel altered the documents to support is allegation that Appellant entered "NONE" on her bankruptcy schedules when asked to disclose all "contingent" or unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims which was the correct answer at the time Appellant filed bankruptcy to prevent Respondent from foreclosing on her home August 2, 2010.

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<sup>6</sup> Wells Fargo Bank April 4, 2014 Memorandum in Opposition of Motion to Dismiss presented as **Exhibit 6**, it was presented to Judge Booth by its counsel as part of Appellant's Motion to Dismiss briefing.

<sup>7</sup> Wells Fargo Bank's Exhibit A [the fraudulent bankruptcy schedules] presented to as **Exhibit 7**, and presented to Judge Booth by its counsel as part of the Opposition to Motion to Dismiss.

<sup>8</sup> Wells Fargo Bank April 4, 2014 Memorandum in Opposition of Motion to Dismiss page 5, footnote 3 presented as **Exhibit 8**, it was presented to Judge Booth by its counsel as part of Appellant's Motion to Dismiss briefing.

<sup>9</sup> Order of Summary Judgment signed by Judge Booth January 9, 2015 presented as **Exhibit 9**

The Voluntary Petition pages, and other vital documents that require the signatures of both Appellant and the bankruptcy attorney are not included within the fraudulent documents.

1. At the top of each page of Respondent's Exhibit A, pages 1 to 46 reflects the date filed and entered to the bankruptcy court as 08/15/2010 19:38:46.
2. At the top right the case number is affixed to each page.
3. Page 9 of 46 the NADAguides.com Report shows the "computer generated" actual date Appellant's bankruptcy counsel retrieved the report as August 2, 2010 and at the bottom of the page shows the date retrieved and the alignment on the page is not proper.
4. Page 31 of 46 "Declaration under penalty of perjury" the date has been altered to 08/15/2010 and Delores Prescott's name has been electronically affixed to it.
5. Page 39 of 46 "Declaration under penalty of perjury" the date has been altered to 08/15/2010 and Delores Prescott's name has been electronically affixed to it.

The Voluntary Chapter 13 Consumer Case 10-05552-dd was filed August 2, 2010<sup>10</sup> and all documents were signed in the relevant areas, and each page was dated and initialed by Appellant.

- The case was dismissed January 19, 2011 and closed March 16, 2011,
- The Judge in the case was Honorable David R. Duncan
- The attorney was J. Steven Huggins
- The Trustee was Joy Goodwin

March 2011 Respondent continued to represent that Appellant was eligible for a loan modification.<sup>11</sup> When Appellant completed her 2<sup>nd</sup> bankruptcy petition she check "NONE" when asked to disclose all "contingent" or unliquidated claims of every nature,

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<sup>10</sup> Wells Fargo Bank's Exhibit B [see page 2 *All Bankruptcy Cases filed within last 8 years*] presented as Exhibit 10, it was presented to Judge Booth by its counsel as part of Opposition to the Motion to Dismiss briefing.

<sup>11</sup> Wells Fargo Workout Correspondence sent to bankruptcy counsel March 31, 2011, presented as Exhibit 11, it was given to counsel as part of Amended Answer and Counterclaim briefing.

including tax refunds, counterclaims of the debtor, and rights to setoff claims.

May 2011 Appellant's bankruptcy attorney approved the communication with Respondent to discuss a loan modification.<sup>12</sup>

In its Motion Opposing the Abeyance, Respondent alleged that Appellant is displaying "gamesmanship" or trying to create confusion by taking completely inconsistent positions.

On the contrary, it is Respondent and its counsel who are responsible for creating fraud on the court and confusion for years. Respondent has denied Appellant the opportunity to embrace the essential feature of her successful Bankruptcy Discharge which gives debtors their "fresh start." Appellant is simply attempting to seek justice for the financial injury and damages she has suffered by Respondent's fraudulent behavior and negligent misrepresentation since February 2009.

For years Respondent and its counsel have submitted fraudulent documents and distorted the truth to the Circuit Court and the South Carolina Bankruptcy Court in regards to this foreclosure action. Most specifically, Respondent has altered and forged Appellant's electronic signature on bankruptcy documents and presented the documents to the Honorable Richard L. Booth to obtain judgment[s] in their favor.

Respondent's "Exhibit A," which was presented to the Court of Appeals in its Motion Opposing the Abeyance June 5, 2015 [***Prescott's Bankruptcy Filing Abandoning Her Interest in the Subject Property***] is misplaced.<sup>13</sup>

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<sup>12</sup> May 11, 2011 Letter of Approval from bankruptcy counsel to discuss loan modification with Wells Fargo Bank, presented as Exhibit 12, it was given to counsel as part of Amended Answer and Counterclaim briefing.

<sup>13</sup> Wells Fargo Bank Exhibit A sent to the Court of Appeals June 5, 2015 and presented to Judge Booth April 14, 2014 and at the summary judgement hearing, presented as Exhibit 13.

The section that is highlighted in "blue" is simply advising all creditors of the fact that *Respondent received relief from stay in September 2012.*

The bankruptcy trustee abandoned interest in the property *June 17, 2013* because the property was no longer in bankruptcy.

Appellant was advised by counsel she must pursue her allegations of Respondent's fraud, forgery of mortgage documents and the results of the Independent Foreclosure Review received April 2013 in State Court because the property was no longer in bankruptcy.

The trustee's abandonment of the property was in accordance with 11 U.S.C. § 554(a) of the Bankruptcy Code which provides "After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate."

"Property of a bankruptcy estate can be abandoned by three methods: (1) after notice and hearing, the trustee may unilaterally abandon property that is 'burdensome or of inconsequential value' (11 U.S.C. § 554(a)); (2) after notice and hearing, the court may order the trustee to abandon such property (11 U.S.C. § 554(b)); (3) any property which has been scheduled, but which has not been administered by the trustee at the time of closing of a case, is abandoned by operation of law. (11 U.S.C. § 554(c).)"

The entry of an order for abandonment or the completion of a technical abandonment removes the property from the estate and returns it to the debtor. Upon abandonment, "ownership and control of the asset is reinstated with all rights and obligations as before filing a petition in bankruptcy. Abandoned property is no longer estate property and not usually subject to the jurisdiction of the bankruptcy court, a

creditor must still take steps under non-bankruptcy law to pursue its remedies. Once the trustee abandons the estate property in which a secured creditor holds a lien, the secured creditor can then pursue its remedies under state law, such as commencing a foreclosure action. Some practitioners erroneously believe that an order lifting the automatic stay under 11 U.S.C. § 362 releases the estate's interest in the property as it does in an abandonment. In that instance, the estate still maintains an interest in the property for any amounts that exceed the creditor's claim. In the event an objection is filed to the notice of abandonment or the motion requesting abandonment, the court will schedule a hearing.

Respondent did not object or attend any hearing regarding the petition of abandonment June 2013.

There were no additional request[s] made by Appellant nor any specific ruling by the Bankruptcy Court construing the surrender as surrendering ownership of the property actually to Respondent, nor any Order as to same. The abandonment petition in Respondent's Exhibit A to the Circuit Court and the Court of Appeals is a debtor-in-possession, and it merely surrendered the property to the Appellant and Respondent as if it had never been part of the bankruptcy.

Respondent and its attorneys are distorting the fact that the bankruptcy trustee released the property back to Appellant to pursue the issues regarding the fraudulent mortgage documents. At the advice of counsel, Appellant *voluntarily dismissed the bankruptcy case March 2014*.

Appellant's former counsel, Robert C. Ray and Donald Matthison were given all relevant mortgage documents, bankruptcy documents and all information with regards to

this case. However, counsel did not present the relevant information in the pleadings or documents to the Circuit Court in the appropriate manner due to counsel's admitted lack of experience and knowledge regarding bankruptcy procedures. Otherwise, any competent attorney would have objected and disputed Respondent's fraudulent behaviors and have it documented in the record and demand a court reporter to be present at all three of the hearing[s] in this complex foreclosure action.

There was no court reporter present at any of the hearings and none of the relevant documents, disputes at the hearing[s], or objections are on file with the Circuit Court or particularized in pleadings. Most specifically, the email communications regarding this case between all counsel and the Honorable Judge Booth, a copy of Appellants true bankruptcy schedules and filing dates and copies of the Independent Foreclosure Review determination which were given to Appellant's counsel to present to the Circuit Court.


Respondent and its counsel presented and relied on forged bankruptcy schedules and misrepresenting the 11 U.S.C. § 554 bankruptcy code on abandonment to wrongfully seek foreclosure, disallow Appellant's counterclaims and obtain a favor of Summary Judgment.

"An abuse of discretion occurs either when the court is controlled by some error of law or where the order, based upon findings of fact, lacks evidentiary support."  
Townsend v. Townsend, 356 S.C. 70, 73, 587 S.E.2d 118, 119 (Ct. App. 2003)."

"An act is willful if "done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the

law." Spartanburg County Dept. of Social Services v. Padgett, 296 S.C. 79, 82-3, 370 S.E.2d 872, 874 (1988).

Respectfully, for the reasons stated above Appellant prays to the Court of Appeals to grant her Motion to Hold Appeal in Abeyance or Motion to Dismiss with leave to file the Notice of Appeal again rather than hold the appeal in Abeyance.

  
\_\_\_\_\_  
Delores Prescott, Saturday, June 13, 2015


CERTIFICATE OF SERVICE

The undersigned hereby certifies on the 13<sup>th</sup> day of June 2015, she served a copy of the foregoing Reply to Opposition to Hold In Abeyance by depositing same in the United States Mail first class, mail, proper postage, affixed, addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es):

Matthew Todd Carroll, Esquire  
Womble Carlyle Sandridge & Rice, LLP  
1727 Hampton Street  
Columbia, SC 29201  
Attorney for Plaintiff  
(803) 454-7730

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Parlin, New Jersey 08859  
Appellant  
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Wells Fargo Bank, N.A., Respondent,

v.

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Of Whom Delores Prescott is the Appellant.

AFFIDAVIT

June 13, 2015


Delores Prescott  
10 Skytop Gardens, Apt. 23  
Parlin, New Jersey 08859  
Appellant  
(732) 485-8145

Matthew Todd Carroll, Attorney at Law  
Womble Carlyle Sandridge & Rice, LLP  
1727 Hampton Street  
Columbia, South Carolina 29201  
Attorney for Respondent

Appellant, Delores Prescott, hereby states the following:

1. Respondent's Opposition to Hold In Abeyance is dated Friday, June 5, 2015.
2. Appellant did not receive Respondent's mail until late Friday, June 12, 2015 due her mail being delivered to an incorrect Apartment Number.
3. Appellant prepared the reply on Saturday, June 13, 2015 and was unable to mail until Monday, June 15, 2015.
4. The following documents have been included in the Reply Motion in Opposition to Hold Appeal in Abeyance due to the fact that documents are relevant to this present action but do not appear anywhere or are vaguely mentioned in the record.
  - a. **Exhibit 4:** Appellant's June 2010 Trial Payment to Wells Fargo
  - b. **Exhibit 5:** Appellant's Mortgage Statement from Wells Fargo dated August 5, 2010.
  - c. **Exhibit 11:** Workout Correspondence Wells Fargo mailed to bankruptcy counsel March 31, 2011.
  - d. **Exhibit 12:** Correspondence from Bankruptcy counsel to Wells Fargo dated May, 11, 2011.
5. These documents will be presented to the Circuit Court along with Appellant's Bankruptcy schedules which are dated and signed August 2, 2010 along with other pertinent documents to prove that Respondent continued to represent that Appellant was eligible for a loan modification throughout her bankruptcy proceedings in 2010 and 2011.
6. There are no transcripts available to determine if the documents were presented by counsel.... discussed.... or.... reviewed for a ruling, but they are relevant to the Court of Appeals so a complete understanding of Appellant's issues won't be distorted by Respondent and its counsel.

The above statements are true and the documents referenced above were given to Robert  
C. Ray, Esquire to present to the Circuit Court.

  
Delores Prescott June 13, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies on the 13<sup>th</sup> day of June 2015, she served a copy of the foregoing AFFIDAVIT by depositing same in the United States Mail first class, mail, proper postage, affixed, addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es):


Matthew Todd Carroll, Esquire  
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1727 Hampton Street  
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Attorney for Plaintiff  
(803) 454-7730

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JUN 18 2015

SC Court of Appeals

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June 13, 2015

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