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## STATE OF ISSUES ON APPEAL

- I. WHETHER THE SPECIAL REFEREE ABUSED ITS DISCRETION IN FINDING THAT THE MAGISTRATE COURT'S ORDER SELLING THE MOBILE HOME AT PUBLIC ACTION AS A RESULT OF A CIVIL ACTION FILED BY APPELLANT AGAINST RESPONDENT BANK OF AMERICA, SHIRLEY MCRAE DAVIS, THE CITIZENS BANK, AND FLEET MORTGAGE GROUP, WAS VOID AND WITHOUT EFFECT?
2. WHETHER THE SPECIAL REFEREE ABUSED ITS DISCRETION IN FINDING THAT APPELLANT WAS PREVENTED FROM CONTESTING THE ASSERTION THAT THE MOBILE HOME WAS REAL PROPERTY AND COLLATERAL TO THE MORTGAGE HELD BY RESPONDENT, PURSUANT TO THE DOCTRINE OF JUDICIAL ESTOPPEL?
3. WHETHER THE SPECIAL REFEREE ABUSED ITS DISCRETION IN FINDING THAT THE MOBILE HOME WAS A PERMANENT FIXTURE TO COLLATERAL REAL PROPERTY IN WHICH IT SAT?
4. WHETHER THE SPECIAL REFEREE ABUSED ITS DISCRETION IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT?

## STATEMENT OF THE CASE

On or about February 6, 2012 Respondent filed its Summons and Complaint against Appellant and the South Carolina Department of Motor Vehicle, seeking foreclosure and sale of property at 1317 Gordonville Court, Dillon, South Carolina. On or about March 3, 2012, Appellant filed a motion seeking dismissal of the Summons and Complaint, alleging that Respondent's action was barred by the doctrine of res judicata because the Respondent failed to answer or otherwise participate in an action which resulted in title to the mobile home being issued to Appellant. Appellant's motion to dismiss the Summons and Complaint was denied by order on or about June 4, 2012.

On or about June 13, 2012, Appellant filed an Answer and Counterclaim, denying Respondent's allegations and alleging that Appellant was not the legal owner of the property at the time Respondent executed a mortgage and that Respondent's foreclosure

action was barred by the doctrine of *res judicata*. Respondent filed a reply to Appellant's counterclaims on or about July 2, 2012. On or about April 25, 2013 Respondent filed a motion to dismiss Plaintiff's counterclaims.

On June 5, 2013, the action was referred to a Special Referee by order of the Court. On or about August 12, 2014, the Special Referee granted Respondent's motion to dismiss Appellant's counterclaims.

On or about October 10, 2014, Appellant filed a motion for summary judgement. A hearing on Respondent's motion for summary judgement was held on March 19, 2015. On March 27, 2015 the Special Referee issued an order granting Respondent's motion for summary judgement.

#### STATEMENT OF FACTS

On September 20, 2000 Shirley Mcrae Davis (hereinafter "Davis") filed a plat with the Dillon County Clerk of Court's for a piece of land (hereinafter the "Land") she owned. (Transcript of Summary Judgment Hearing, Bank of America vs. Shawn Bethea, Case No. 12-cp-17-0060, March 19, 2015, pages 6-7; "hereinafter Trans. pp. \_\_\_\_"). Situated on the Land was a mobile home (hereinafter the "Mobile Home") Davis was purchasing. (Trans. p. 8). The Mobile Home had a mortgage lien. (Id.) On September 14, 2000 Davis filed an "Manufactured Housing Affidavit" with the Dillon County Tax Assessor's office. (Id.); (See also, Manufactured Housing Affidavit of Shirley McRae, Davis, dated September 20, 2000; Record of Appeal, p. \_\_\_\_; hereinafter "Rec. of App. p. \_\_\_\_").

Steve Rogers of the Dillon County Tax Assessor's office submitted a response to Davis' Manufactured Housing Affidavit, dated September 27, 2000, which stated in pertinent part:

RE: ADDING MH TO PROPERTY CARD IN ORDER TO RECEIVE TAX NOTICE

\* \* \*

Based upon the forgoing and upon the Manufactured Housing Affidavit attached, the undersigned will cause said home to be listed on the same tax notice as the land referred to herein.

\* \* \*

PS

PLEASE KEEP IN MIND THAT THESE TRANSACTIONS WILL NOT OCCUR UNTIL 2001 TAX YEAR BECAUSE THAT IS WHEN THE LAND AND MOBILE HOME WILL APPEAR ON THE TAX RECORDS. ALSO, THIS MOBIEL HOME WILL **NOT BE DETITLED**. IT WILL STILL BE CLASSED AS SUCH. IT IS ONLY BEING ADDED WITH THE LAND SO THAT THE PROPERTY OWNER CAN RECEIVE ONE TAX NOTICE INSTEAD OF TWO.

(Memorandum of Steve Rogers, dated September 27, 2000; Record of App., p. \_\_\_\_; hereinafter "Rec. of App., p. \_\_\_\_").

Sometime thereafter, Davis executed a general warrant deed, transferring the Land to LaSalle National Bank. (Trans., p. 9-10). The Land was transferred to Appellant by Corporate Title to Real Estate, executed by LaSalle National Bank on November 13, 2001. (Trans., p. 11); (See also, Corporation Title To Real Estate of LaSalle National Bank, dated November 13, 2001, Rec. of App., p. \_\_\_\_). The Corporation Title to Real included a paragraph referencing the Mobile Home. (See, Rec. of App., p. \_\_\_\_). Attorney Steven G. Mikell (hereinafter "Attorney Mikell") was the closing attorney. (Id.).

The Land was refinanced multiple times between 2001 through 2002, with the last refinancing with County Wide Home Loans, which subsequently was acquired by Respondent. (Trans. pp. 14-17). Neither refinancing made direct references to the Mobile Home; however the documents referenced fixtures to the Land. (Trans. pp. 14-17).

In 2010 Attorney Mikell made attempts to persuade EMC Mortgage, the successor to LaSalle National Bank, to submit a clean title to the Mobile Home after Appellant was unable to refinance the Mobile Home because the Mobile Home title remain in the name of Davis. (Letter of Steven G. Mikell to EMC Mortgage, date October 18, 2010; Rec. of App., p. \_\_\_\_). By handwritten letter dated December 23, 2010, Attorney Mikell apologized to Appellant for failing to have title to the Mobile Home transferred to Appellant upon the purchase of Land by Corporate Title to Real Estate of LaSalle National Bank in November 2001. (Letter to Steven G. Mikell to Shawn, dated December 23, 2010; Rec. of App., p. \_\_\_\_).

When Attorney Mikell was unable to persuade EMC Mortgage to issue a title to Appellant, <sup>Shawn Bethea</sup> ~~he~~ filed an action with the Dillon County Magistrate Court naming as defendants Shirley Mcrae Davis; The Citizen Bank; Bank of America, N.A.; and Fleet Mortgage Group seeking the sale of the Mobile Home to satisfy storage charges he has assess against Davis, the title holder, and all potential mortgage companies with some interest in the Mobil Home. (Trans. p. 22-27); (See also, Notice of Public Sale of Mobile Home, Shawn Bethea v. Shirley Mcrae Davis, et al., Case No. 2011cv1710100987, Rec. of App. p. \_\_\_\_). The Dillon

County Magistrate Court ordered sale of the Mobile Home at public action when no named defendant answered or otherwise plead. Id.

## ARGUMENT

### A. STANDARD OF REVIEW

“When reviewing a grant of summary judgment by a trial court pursuant to Rule 56(c), SCRPC, the appellate court applies the same standard.”

Froneberger, et al. v. Smith, 406 S.C. 37; 748 S.E.2d 625, 629 (S.C. App. 2013);  
Quoting, Turner v. Milliman, 392 S.C. 116, 708 S.E.2d 766, 769 (2011).

“Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” Id. “To determine whether any trial issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. Id., quoting, quoting, McLaughlin v. Williams, 379 S.C. 451; 665 S.E.2d 667 (Ct. App. 2008). “To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence.” Id., quoting, Hancock v. Mid-South Mgmt. Co. Inc., 381 S.C. 326; 673 S.E.2d 801 (2009). “The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” Id., quoting, Miller v. Blumenthal Mills, Inc., 365 S.C. 204; 616 S.E.2d 722 (Ct. App. 2005).

#### I. WHETHER THE SPECIAL REFEREE ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR BY GRANTING SUMMARY JUDGMENT WHERE THE MOBILE HOME HAD BEEN SOLD BY THE MAGISTRATE

**COURT AS A RESULT OF AN ACTION WHICH THE  
RESPONDENT WAS NAMED AND SERVED AS A PARTY?**

Section 29-15-10(A) of South Carolina law states is in pertinent part:

(A) A proprietor, an owner, or an operator of any towing company, storage facility, garage, or repair shop, or any person who repairs or furnishes any material for repairs to an article may sell the article at public auction to the highest bidder if:

- (1) the article has been left at the shop for repairs or storage and the repairs have been completed or the storage contract has expired;
- (2) the article has been continuously retained in his possession; and
- (3) thirty days have passed since written notice was given to the owner of the article and to any lienholder that the repairs have been completed or the storage contract has expired.

The article must be sold by a magistrate of the county in which the repairs were done or the article was stored.

29-15-10(A) permit any proprietor, owner, or operator of a towing company, storage facility, garage, repair shop, or any other person who repairs or furnishes any material for repairs to any article may petition the local magistrate court for the sale of that article to recover money for repairs or storage of the article. S.C. Code Ann. §29-15-10(A) (2011). By memorandum dated March 21, 2011, Appellant notified Davis, the named property owner, that he intended to charge storage on the Mobile Home because it had not been removed from the Land. (Notice of Storage Charges by Shawn Bethea, dated March 21, 2011; Rec. of App. \_\_\_\_). Around August 31, 2011, Appellant filed an action pursuant to 29-15-10(A) for storage fees he was due. *Id.* Davis, Bank of America, N.A., The Citizen Bank, and Fleet Mortgage Group were all named as party defendants and served with the summons and complaint. (Trans. pp. 22-27) (See also, Magistrate Court Summons; Case No. 2011cv1710100987, dated August 31, 2011; Rec. of

App., p. \_\_\_\_). After no defendant answer or otherwise plead, the magistrate court order the sale of the Mobile Home and scheduled a hearing for September 26, 2011. (Rec. of App., p. \_\_\_\_). When no defendants appear at the September 26, 2011 hearing, the Mobile Home was sold by the magistrate court. The Mobile Home was purchased by Appellant and a title issued on October 3, 2011 in the name of Appellant.

Respondent's foreclosure action was barred because the interest and ownership of the Mobile Home was litigated in the magistrate court action, the Respondent was named as a defendant, with all opportunity to assert its rights or interests, and the ownership of the Mobile Home was completely adjudicated when the Mobile Home was sold by the magistrate court.

"In order for *res judicata* operate as a bar to [to a legal action] ... the following elements needed to be proven: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Judy v. Judy, 393 S.C. 160; 712 S.E.2d 408, 412 (S.C. 2011).

It is anticipated that Respondent will argue that the magistrate lacked jurisdiction to because the Mobile Home had been permanently affixed to the Land pursuant to the September 20, 2000 Manufactured Housing Affidavit of Davis. (Rec. of App., p. \_\_\_\_). However, the Dillon County Tax Assessor deny Davis' petition to permanently affix the Mobile Home to the Land. (Rec. of App., p \_\_\_\_). In written response to Davis' affidavit, the tax assessor notified Davis that the Mobile Home would not be detitled and that the Mobile Home would only be affixed for billing purposes only. (Id.).

**II. WHETHER THE SPECIAL REFEREE ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR BY FINDING THAT**

**APPELLANT WAS BARRED FROM ASSERTING THAT THE  
MOBIL HOME WAS NOT A FIXTURE TO THE LAND  
PURSUANT OF THE DOCTRINE OF JUDICIAL ESTOPPEL**

The purpose of judicial prevent a litigant from manipulating the judicial system by takin completely inconsistent positions in a judicial proceeding when it becomes convenient. Quinn v. Sharon Corp., 343 S.C. 411, 540 S.E.2d 474 (S.C. App. 2000). Judicial estoppel is intended to protect the integrity of the judicial process, not the protection of litigants from improper conduct by an adverse party. Id.

In the present case, Respondent claims that Appellant should be judicial estopped from alleged the Mobile Home is not a permanent fixture to the Land because the Mobile Home was listed as a real property in his Schedule A Chapter 7 bankruptcy filing. However, such listing is not the type of inconsistency that bring into to question the integrity of the foreclosure proceeding. Bankruptcy are complicated form driven judicial actions. Appellant hire and relied on his attorney to prepare the documents correctly (Trans. p. 27). Furthermore, Respondent could not take advantage of the doctrine of judicial estoppel because he is without clean hands.

The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct.App.1998). “The expression ‘clean hands’ means a clean record with respect to the transaction with the defendants themselves and not with respect to others.” Arnold v. City of Spartanburg, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity.

Respondent is without clean hands in this action because Respondent failed to defend its interest in the magistrate court action after it was properly served and provided notice of Appellant attempt to content title and interest in that action. Responded had every opportunity to protect its interest in the Mobile Home but failed to do so. Now Respondent claims foul when Appellant raised the issue that the Mobile Home was never detitled and it was on notice of the same before filing the foreclosure action.

**III. THE SEPECIAL REFEREE ABUSED ITS DISCRETION AND COMMITTED REVERSIBLE ERROR BY FINDING THAT THE MOBILE HOME HAD BEEN DETITLED AND MADE A PERMANENT FIXTURE TO THE LAND**

Respondent knew or should have known that the Mobile Home was never detitled and made a permanent fixture to the Land. By the Dillon County Tax Assessor's memorandum/letter dated September 27, 2000, the tax assessor stated in bold language:

**PLEASE KEEP IN MIND THAT THESE TRANSACTIONS WILL NOT OCCUR UNTIL 2001 TAX YEAR BECAUSE THAT IS WHEN THE LAND AND MOBILE HOME WILL APPEAR ON THE TAX RECORDS. ALSO, THIS MOBILE HOME WILL NOT BE DETITLED. ITS WILL STILL BE CLASSED AS SUCH. IT IS ONLY BING ADDED WTH THE LAND SO THAT THE PROPERTY OWNER CAN RECEIVE ONE TAX NOTICE INSTEAD OF TWO.**

(Rec. of App., p. \_\_\_\_). Respondent was always aware of this and took action correct that matter; however, misrepresented to the court that the Mobile Home was permanent affixed to the Land by Davis's Manufactured Home Affidavit.

**CONCLUSION**

Based upon the forgoing arguments and law, Appellant believes that the Special Referee abused its discretion and committed reversible error by granting Respondent's motion for summary judgment.

Respectfully submitted,

*Shawn Bethea*

---

Shawn Bethea  
1317 Gordonville Court  
Dillon, SC 29536

Dillon, SC

June 26, 2015

EXHIBIT 1. This is a copy of the ruling on September 26, 2011 in the Magistrate's Court in Dillon County at 10:00am pertaining only to the mobile home because it was personal property that was not apart of the "real" property. EXHIBIT 2. THIS is a copy of the manufactured housing affidavit that Ms. Shirley McRae Davis requested so that she could pay one tax, but the manufacturing home is not Detitled. It will still be classed as such. It was only being added with the land so Ms. Shirley can receive one tax notice instead of two. The home was not done by the South Carolina codes of law 56-19-530 and 56-19-540. This was sign by the Dillon County Tax Assessor STEVE ROGERS. EXHIBIT 3. This is a copy of the summary judgement that the special referee ruled on March 19, 2015. EXHIBIT 4. This is a copy of the summons and complaint that BANK OF AMERICA filed on FEB. 6, 2012 seeking foreclosure and sale on my property. EXHIBIT 5. This is showing where I, SHAWN BETHEA filed a Motion TO DISMISS on May 25, 2012 with the Clerk Office. EXHIBIT 6. THIS is the answer and counterclaim that Marcus woods Attorney at Law requesting for a jury trial. EXHIBIT 7. This is a certificate of service from BANK OF AMERICA asking the courts to dismiss the counter claim on April 24 2013. EXHIBIT 8. This is a copy of the courts dismissing my counterclaim. EXHIBIT 9. This is the transcript of the testimony of myself, Shawn Bethea V. Bank Of America. EXIBIT 10. On March 27, 2015 the special referee issued an order granting respondent's motion for a summary judgement. EXIBIT 11. This is a copy of a general warrant deed, transferring the Land to LaSalle National Bank. The Land was transferred to Appellant by Corporate Title to Real Estate, executed by LaSalle National Bank on November 13, 2011. EXIBIT 12. These are the disbursements at closing for 2001-2002. EXIBIT 13. This is a copy where attorney Mikell made attempts to persuade EMC Mortgage the successor to LaSalle National Bank to submit a clean title to the mobile home after I was unable to refinance dated October 18, 2010. EXIBIT 14. This is a hand written letter to me from attorney Mikell apologizing for failing to have a title to the mobile home transferred to me the Appellant upon the purchase of Land by Corporate Title to Real Estate of LaSalle National Bank dated December 23, 2010. EXIBIT 15. This a copy of the storage charges I assessed against Ms. Davis and all potential mortgage companies with some interest in the mobile home. EXIBIT 16. These are copies of the certified notices to a summons and complaint mailed to Ms. Davis, Bank of America, The Citizen Bank and Fleet Mortgage Group pertaining to storage fees owed because the mobile had not been removed from the land and all mentioned were named as party defendants. EXIBIT 17. This a copy of the title that was issued by the Magistrate's court. EXIBIT 18. This is a copy of my bankruptcy and debtor's statement which shows that the property is claimed as exempt. EXIBIT 19. This is a letter from attorney Mikell to attorney Mr. Rosiello at LaSalle National Bank pertaining to obtaining a clear title to my property that Mr. Mikell NEVER received. EXIBIT 20. This a copy of the DMV title search made on 9/26/11 showing no interest in me. EXIBIT 21. This is a letter from Investors Title Insurance Company stating that they received my letter and that they would investigating the policy number I provided. EXIBIT 22. This a copy of a letter from Investors Title Insurance Company stating that I had no interst in the land or the mobile home therefore they have no liability to me. EXIBIT 23. This is copy of a letter from Fannie Mae informing me that they brought my property. EXIBIT 24. This is a copy of the Appeals letter that I received on May 12, 2015. EXIBIT 25. This a letter from me, Shawn Bethea to the Office of Disciplinary Counsel against attorney Mr. Mikell. EXIBIT 26. This a letter that I, Shawn Bethea wrote to the Office of Disciplinary Counsel stating that my due process rights was violated.

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