

FINAL BRIEF OF APPELLANT

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Trial Court Case No. 2013CP23-02794

Alexander S. Macaulay, Circuit Court Judge

Appellate Case No. 2014-00297

Neva Steffens, Appellant,

v.

Ocwen Loan Servicing, LLC, Mortgage Electronic Registration Systems, Inc.,
MERSCorps, Inc., American Home Mortgage Servicing, Inc. a/k/a Homeward
Residential, Wells Fargo National Association, and Deutsche Bank National Trust
Company, Defendants, of whom Ocwen Loan Servicing, LLC, American Home
Mortgage Servicing, Inc. a/k/a Homeward Residential, are the Respondents.

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Did the Court Err in not noting there are additional violations of RESPA, the federal statute governing transfer of servicing rights addresses communications between servicers and borrowers in writing and timely under Section 6.

Did the Court err in stating that Ocwen had sustained money damages when Ocwen’s witness stated that no money had been paid to anyone including Deutsche Bank National GSAA Trust in place of Steffens’ mortgage payments.

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Statutes

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STATEMENT OF THE CASE

This is an action primarily brought against Ocwen Loan Servicing (Ocwen) for Breach of Contract. Ocwen allegedly became the servicer for Appellant Steffens' (Steffens) Note and Mortgage through a transfer from Homeward Residential (Homeward). Prior to the transfer Steffens and through another legal proceeding (Deutsche Bank v. Steffens 2011-CP-23-3284) a Confidential Full Release and Settlement Agreement (Settlement Agreement) had been executed on April 11, 2012. See Exhibit D-4. (R. pp. 203-212) Appellant Steffens paid \$513.84 a month beginning in May of 2012 to Ocwen.

In March a mortgage statement arrived at Steffens' home with a \$55 fee in violation of the Settlement Agreement. Steffens sent three certified letters to Ocwen Consumer Service Department and Ocwen Research Department dated March 8, 2013, March 11, 2013 and March 25, 2013. These letters also went to Office of the Comptroller of the Currency, Consumer Communications Federal Housing Finance Agency, Commission of Banking, Elizabeth Scott Moise of Nelson, Mullins, Riley & Scarborough, counsel in the previous action See Exhibit D-9 (R. p. 215). Appellant received two letters from Ocwen indicating they would need 20 days to answer, one dated March 26, 2013 and another dated April 2, 2013. Neither letter addressed the question of the \$55 previous mortgage servicer fee. To date, Steffens has never received any written communication from Ocwen about this fee.

At the beginning of May 2013, Steffens called Ocwen and asked about the fee on the mortgage statement, the certified letters of inquiry, and the fact that Steffens had entered into a Court-ordered Settlement Agreement with Ocwen by virtue of its merger

with Homeward. Steffens was told by a representative of Ocwen that “we do not accept Court-ordered Settlement Agreements only government loan modifications.” At this time, Appellant decided to sue Ocwen and Homeward for breach of contract and on other allegations which are not part of this appellate matter. Steffens v. Ocwen, et al. (2013-CP-23-02794)

In addition, a letter was sent from AHMSI (aka Homeward) after the Settlement was executed stating: “We are pleased to advise you that your request for a loan modification is approved.”¹

This matter went to trial on October 13 and 14, 2014, and the verdict was in favor of Ocwen and American Home a/k/a Homeward. The appeal was filed October 27, 2014 by Appellant.

FACTS

Steffens, brought this action on or about May 17, 2013 alleging Breach of Contract, Quiet Title, Bad Faith, Declaratory Judgment, Negligence and Gross Negligence Action pursuant to South Carolina law. Steffens claimed that Defendants breached the Confidential Full Release and Settlement Agreement dated and executed April 11, 2012 by Plaintiff, Steffens and the following entities: Ocwen Loan Servicing, LLC, Mortgage Electronic Registration Systems, Inc., MERSCorps; Inc., American Home Mortgage Servicing, Inc. a/k/a Homeward Residential, Wells Fargo National Association, and Deutsche Bank National Trust Company as Trustee for GSAA Home

¹ This letter arrived in May of 2012 the month following the date of the Settlement Agreement with the aforementioned entities dated April 11, 2012.

Equity Trust 2006-10, Trust 2006-10, Asset-Backed Certificates, Series 2006-10. (Trust) Defendants, Of whom Ocwen Loan Servicing, LLC, American Home Mortgage Servicing, Inc. a/k/a Homeward Residential, are the Respondents.

The Master Servicer for the Deutsche Bank National Trust Company as Trustee is Wells Fargo Bank National Association and was not included on the caption of the Settlement Agreement but was the Master Servicer for the Trust. See Exhibit D-4, (R. pp. 203-212) the Settlement Agreement dated April 11, 2012.

Ocwen alleges they are now servicing Steffens' loan as loan number 7140102349. Homeward were the former servicers of Steffens' loan per the Confidential Full Release and Settlement Agreement and letter from Homeward dated February 13, 2013 entitled Notice of Servicing Transfer (RESPA) and Welcome to Ocwen Loan Servicing, LLC attached as Exhibit D-3 (R. pp. **198-202**). See Exhibit P-4 MERS ServicerID dated May 8, 2013 (R. p. 174) and Exhibit P-2 Registry of Register of Deeds dated May 9, 2013. (R. p. 172).

Plaintiff's note was sold into the Trust. There should be ample proof of that fact via documents relating to the sale or purchase of the Subject Loan and documents relating to the transfer of the promissory note. See Exhibit D-2 Corrective Assignment dated May 13, 2011 (R. pp. 196-197), before the Settlement was executed. However, Ocwen and Respondents did not produce direct evidence of purchase and transfer of the Note and Mortgage. The direct creditor of the Note has never been revealed other than through statements by opposing counsel that the Trust owns and holds the Note. Servicing of the loan is conducted by the servicer, in this case Ocwen. See Record on Appeal (R.p. 161-162) (R. p 163, lines 6 -25, R.p. 163) (R. pp.89-92 lines 1-25), R.p. 168 lines 1-25), (R.

p.p. 169 -170 lines 1-25). Plaintiff accessed the Greenville County real property records and found that the Assignment of Mortgage dated and filed October 4, 2013 was filed approximately 7 months after the RESPA letter of servicing transfer. South Carolina Law Title 30 Recordation essential for Validity. Which entity owned the Note and Mortgage and who was Steffens obligated to pay as holder in due course?

“The record does not contain a final written order of the court addressing the directed verdict motions. Instead, the record contains a discussion regarding the motions.”

DAMAGES AND INJURIES TO PLAINTIFF

Appellant believes there has been wrongful collection of sums from Plaintiff of monies on her note, wrongfully refusing to accept the Settlement and its terms, threatening to require additional loan modification submissions and that only a government loan modification agreement would be accepted, i.e. HAMP,

Plaintiff paid to James Sarratt, the court-ordered mediator and his company \$800 to mediate the settlement contained in the Settlement Agreement. Damage to Plaintiff's reputation and credit rating has occurred.

Repudiation occurs when one party by words or conduct or verbally indicates an intention not to perform part or all of a contract, which Ocwen did when a representative of Ocwen told Steffens that they would not accept the Settlement and that it had to be a “government loan modification.” (R.p. 168 lines 9-23). When such an event occurs, the corresponding party (Steffens) to the contract is excused from having to fulfill her obligations. South Carolina Code 36-2-611. Retraction of anticipatory repudiation.

Plaintiff is a licensed bail bondsperson (Acorn Bail Bonds) and a licensed school to teach insurance courses related to bail bonds (Apex Surety and Bonding School) and a licensed teacher of bail bonds. Plaintiff's business is located at 6 Azalea Court, Greenville, South Carolina in her home office. If the home office is rendered unusable because of foreclosure, Plaintiff's business(es) will be harmed. Plaintiff was informed by Ocwen that "only a government loan modification agreement would be acceptable" thereby refusing to honor the Confidential Settlement Agreement and causing great emotional distress and anxiety for Plaintiff.²

Plaintiff has also been injured because of hundreds of hours spent working on research, writing, reading and creating pleadings to defend and/or prosecute a lawsuit relating to the settlement agreement on her home. The hundreds of hours were not compensated and have caused untold amounts of emotional distress to Plaintiff. Plaintiff previously provided ten (10) loan modification packages to Homeward and received a letter after the Settlement Agreement was made that they had accepted Steffens's HAMP loan modification after the Settlement was signed and put in place.

Plaintiff suffers from severe anxiety and stress related to the anticipated loss of her home. Plaintiff also suffers from situational high blood pressure related to the above-referenced stress.

Ocwen sent a statement to Steffens stating that an additional fee of \$55.00 would be required as the previous servicer fee. That is in violation of the Settlement. Steffens

² Appellant is very familiar with the acts of servicers to push a borrower into foreclosure including illegal fees, forced-placed insurance, refusal of payments, accepting partial payments, losing documents for loan modifications. In fact, Appellant sent ten separate loan modification packages with Homeward Residential to more than one thousand pages.

lost \$15,000 for the down payment on her home. Steffens also lost over \$20,000 for improvements on her home. The Settlement calls for an unconscionable \$60,000 balloon payment. All in all, the house located at 6 Azalea Court, Greenville, South Carolina is underwater to the tune of \$40,000.

In addition, a letter was sent from AHMSI (aka Homeward) stating: "We are pleased to advise you that your request for a loan modification is approved." This letter arrived in May of 2013 the month following the date of the Settlement Agreement with the aforementioned entities dated April 11, 2012. Exhibit P-6.

LEGAL ARGUMENT

In order "to recover for breach of contract accompanied by a fraudulent act, a plaintiff must establish (1) the contract was breached; (2) the breach was accomplished with a fraudulent intention; and (3) the breach was accompanied by a fraudulent act. Minter, 322 S.C. at 529-30, 473 S.E.2d at 70. Ocwen never responded in writing to Steffens' three certified letters and to date has not responded even though RESPA states that the servicer must respond and is given a 20 day time limit to respond. The last letter sent by Steffens was March 25, 2013. As of May of 2013 no letter was sent to Steffens addressing the issue of the \$55 fee. Several additional letters stating that Ocwen had more time to answer were sent to Steffens. Not one letter from Ocwen addressed the \$55 fee. The first letter was dated February 17, 2013 and given the full 30 day extension should have arrived at Steffens' home by March 17, 2013. Nothing was even sent to Steffens regarding the \$55 fee. Mr. O'Connor stated in my deposition that the fee was rescinded, but Steffens never received anything in writing one way or the other from

Ocwen. The deposition date is October 7, 2014. So, Steffens was not informed in any way other than through Mr. O'Connor about the rescission of the fee, seventeen months after the lawsuit was filed and just before the trial started on October 13, 2014. R.p. 169, lines 12-25, R.p. 170 lines 1-5. This entire matter did not have to be brought at all if Ocwen had answered just one of the three certified letters Steffens sent and required under RESPA.

"In an action for breach of contract accompanied by a fraudulent act, the fraudulent act element is met by any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design." Perry v. Green, 313 S.C. 250, 254, 437 S.E.2d 150, 152 (Ct. App. 1993).

To not answer any of the written inquiries by Steffens is dishonest and unfair because Steffens is fully aware of the danger of foreclosure and the loss of her home and livelihood. See RoTec Servs., Inc. v. Encompass Servs., Inc., 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct.App.2004).

holding that the implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract). Rather, Purchasers asserted a cause of action for breach of contract, and Sellers' liability may be based on a breach of any of the contract's terms including the implied covenant of good faith, as long as the breach caused damage to Purchasers.

"See Williams, 339 S.C. at 274, 529 S.E.2d at 40 ("[T]he implied covenant of good faith and fair dealing has been viewed as *another contract term*." (emphasis added))."

Real Estate Settlement Procedures Act (RESPA)

Title 12, Chapter 27 of the United States Code, 12 U.S.C. §§ 2601–2617

Loan servicing complaints

Section 6 provides borrowers with important consumer protections relating to the servicing of their loans. Under Section 6 of RESPA, borrowers who have a problem with the servicing of their loan (including escrow account questions), should contact their loan servicer in writing, outlining the nature of

their complaint. The servicer must acknowledge the complaint in writing within 20 business days of receipt of the complaint. Within 60 business days the servicer must resolve the complaint by correcting the account or giving a statement of the reasons for its position. Until the complaint is resolved, borrowers should continue to make the servicer's required payment.

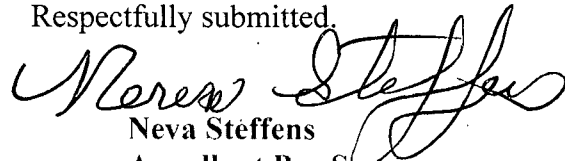
A borrower may bring a private law suit, or a group of borrowers may bring a class action suit, within three years, against a servicer who fails to comply with Section 6's provisions. Borrowers may obtain actual damages, as well as additional damages if there is a pattern of noncompliance.

CONCLUSION

For the aforementioned reasons, this Court should reverse the judgment of the circuit court and jury and remand for further proceedings.

July 24, 2015

Respectfully submitted,

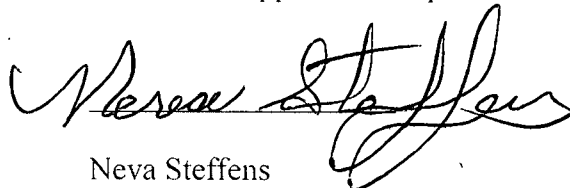


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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b) of the SCACR.

July 24, 2015



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