

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Philip E. Wright, Special Referee

Case No. 2013-002373

H & R Block Bank, FSB,

Respondent

v.

Ziraili M Elbey, a/k/a/ Ziraili Mohassan El Bey, WKFC Living Trust Under Trust Agreement dated June 4, 2010 by and through its Trustee Wellesley K. Clayton and American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation, Defendants,

Appellant

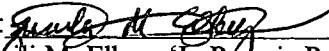
Of Whom Ziraili M. Elbey is the Appellant.

RECEIVED
AUG 10 2013
SC Court of Appeals

APPELLANT'S REPLY TO RESPONDENT'S ANSWER
TO MOTION TO STRIKE AND MOTION FOR DEFAULT JUDGMENT

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PLEASE TAKE NOTICE that Appellant was told by a clerk initially that a 'signature' on the original caption page was required, therefore, Appellant most definitely signed the original caption page with a signature on each document, previously submitted to this honorable court to be in compliance not only with the clerk's correction, but also with this Appellate court. Appellant, hereby responds to Respondent's response to Appellant's Motion to Strike filed on July 22, 2015 and Motion for Default Judgment filed on July 25, 2015 as follows:

1. As Respondent received deficiency notices from the clerk dated July 08, 2015, and again July 15, 2015 for deficiency corrections to their pleadings, it appeared, the required 'signature' Appellant was told to sign on the original caption page appeared not to be a deficiency issue for Respondent's counsel.

2. Appellant filed a Motion to Strike on July 22, 2015, after a review Respondent's briefs and Amended Appendix as it appeared that a 'signature' on the original caption page of documents fail to demonstrate a 'signature'. Therefore, Appellant, who is not an attorney nor an expert in Appellate court format, not seeing a 'signature' or a recognition symbol e.g. /s/ before the Respondent's counsel's name asked that Respondents' document be stricken as the original caption page did not contain the required signed 'signature' by Respondent's counsel. Appellant asked this honorable court to overlook any misunderstanding on behalf of this Appellant as to caption page 'signatures'.

3. However, in regard to Appellant's Motion for Default Judgment filed July 24, 2015 against Respondent and their standing to initially file a foreclosure Complaint dated January 14, 2011 in the Court of Common Pleas Lancaster county, South Carolina by Brock & Scott, PLLC, a law firm of attorneys is one of the **STATEMENT OF ISSUES ON APPEAL**, that being, **DID THE LOWER COURT ERR IN GRANTING, NOT CHALLENGING, PLAINTIFF'S, H & R BLOCK BANK, FSB, JURISDICTION and STANDING TO FILE A LAWSUIT ACTION IN THE STATE OF SOUTH CAROLINA?**

4. Appellant filed an Appeal to address the issue that was rule upon in the August 22, 2012 judgment of the special referee and is being appealed by this Appellant in regards to SCRPC Rule 11(a) states and agree that counsel has read the Compliant, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. And, further requires that a movant make a "good faith" effort to resolve any dispute before filing a motion.

SCRPC Rule 11(a) Note to 1989 Amendment:

The amendment to Rule 11(a) requires that a movant make a "good faith" effort to resolve any dispute before filing a motion and to so certify in the motion unless the consultation would serve no useful purpose or could not be timely held. This is similar to the Local Federal Rule. As in the Local Federal Rule, there is no duty to consult with pro se litigants, or about certain motions. Consultation may be oral or written.

The change makes clear that the court may impose sanctions for violations of this Rule and replaces the ambiguous language that "an attorney may be subject to appropriate disciplinary action." The change is more consistent with the language on sanctions for discovery abuse. The amendment does not change the standard for imposing sanctions which remains that of the pre-1983 Federal Rule.

5. Respondent never had **standing** in Lancaster county or the state of South Carolina to file foreclosure against Appellant as H & R Block Bank, FSB, the Respondent at the time of filing January 14, 2011 or prior to (a) initial Complaint had no standing stating that it was a business entity duly authorized to conduct business in the state of South Carolina. Movant moves for Default Judgment. [R. pg. 31 no. 1]; [R. pg. 240]; S.C.Code Ann. Sec 33-23-140(B) (Supp. 36*36 1986). (b) that counsel for Respondent fail to arbitrate or mediate prior initial Complaint. Movant moves for Default Judgment [R. pg. 36]; (c) that Respondent identified itself as the creditor¹ to whom a debt is owed. [R. pg. 37, line 4-5],[R. pg. 347,line 3-4]. Appellant did not have a contract with H & R. Block Bank, FSB as alleged in initial Complaint. Movant move for Default Judgment S.C. Ann. Code SECTION 15-35-920. (d) H & R Block Bank, FSB received an fraudulent Assignment or transfer of a debt solely for the purpose foreclosing Appellant or collecting a debt as they were not the Creditor. or party to. [R. pg. 37, line 3-4], [R. pg 283-287].

6. Finally, as this matter is on appeal on two issues for this appeal, Motion for Default Judgment and an Affidavit for Relief is the proper remedy to be issued from this Court: Appellant's argument 1 and argument 2 below:

1) the issue of **STANDING** is a rule of law. Further, the **Supreme Court** has made it clear that the burden of establishing **standing** rests on the plaintiff, that being the

¹ **Option One Mortgage Corporation, not H & R. Block Bank, FSB** is the original lender and creditor as defined under the FDCPA as Amended. As amended by Public Law 104-208, 110 Stat. 3009 (Sept. 30, 1996) Sec 803 Definitions [15 USC 1692a] Creditor: (4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

special referee initially in the Court of Common Pleas, Lancaster county, South Carolina. At each stage of the litigation—from the initial pleading stage, through summary judgment, and trial—the plaintiff must carry that burden. **Standing** must exist on the date the complaint is filed and throughout the litigation. Moreover, standing cannot be conferred by agreement and can be challenged at any time in the litigation, **including on appeal**, by the defendants or, in some circumstances, by the court sua sponte. Plaintiffs, that being H & R BlockBank, FSB must demonstrate **standing** for each claim and each request for relief. There is no “supplemental” standing: standing to assert one claim does not create standing to assert claims arising from the same nucleus of operative facts. Movant move for Default Judgment as Respondent never had standing to file the initial foreclosure Complaint, January 14, 2011. S.C. Coe Ann Sec 33-23-140(B) (Supp. 36* 1986), SC Code Ann Sec 33-15-102(a)(1990)

The primary question in this case is whether Sec 33-15-102 is jurisdictional or whether it merely affects a party’s capacity to **sue**.

2) This Motion for default is more than counsel’s violation under SCRCP Rule 11, applying court sanctions to law firm, by a failure to validate and read the pleading and authenticate Complaint filed January 14, 2011 for **standing before filing** case no. 2011-CP-29-00035, to the best of their knowledge, remaining forthright with evidence to eliminate discovery abuse, and a belief there was good ground to support the above foreclosure case, by making a “good faith” to resolve a dispute with Appellant not to interpose for delay. How difficult can it be for a

law firm to validate Respondent's standing to file a lawsuit? The August 22, 2012 judgment is void. The Schwartzwald decision states that standing has to exist at the time the case is filed, and if it doesn't exist, the jurisdiction of the Common Pleas Court was not invoked. A court without jurisdiction cannot enter any judgment (except one dismissing the case for lack of jurisdiction).

A motion to vacate a void (as opposed to a voidable) judgment is not based on Civ. R. 60(B), it invokes the court's inherent power. *Patton v. Diemer*, 35 Ohio St. 3d 68 (1988). (R. p.311, line 1-25)

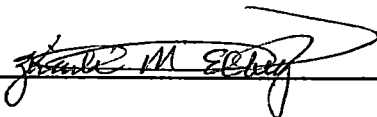
Movant moves the Motion for Default Judgment.

3) Special Referee never took ACTION on Rule12(b)(6) or Fed. Rule 17(a), and any of Appellant's paid motions to name a few filed in Lancaster Court of Common Pleas from 2011-2014. Denied Due Process. (R. pg.224-226, lines 1-25); (R. pg. 337), (R. P.1,line 1-24), (R. pp. 65-70), (R. pp. 95-104), (R. pp. 106-112),(R. pp.113-114), (R. p. 120),(R. p. 71), (R. p.72), (R. pp. 101-102), (R. pp. 142-147), (R. pp.244-245), (R. pp.95-99), (R. pp.151-153), (R. p. 157), (R. pp.158-163), (R. pp. 130-141).

WHEREFORE, Respondent request to deny Appellant's Motion for Default Judgment is nothing less than an illegal, fraudulent denied right of reasonable defense arguments, denied right to truth in evidence, slavery (Forced Compliance to Contracts, not held), denied right to provisions in the constitution, treason, conspiracy, extortion, mail, threats, fraud, falsification of documents, perjury, subornation of perjury, grand theft, racketeering, wrongful foreclosure and eviction of Appellant's deeded property through Respondent's manipulation using mortgages derivatives, copyrighted, patented, trademark mortgage and note documents to trade reaping large profits over, and over

again while foreclosing and evicting the Appellant with full intent to violate the law under Title 18, USC 3571. Appellant raised affirmative defenses, but denied due process. Appellant further ask the court to consider sanctions to Respondent where needed as Respondent fail to answer with Respondent's Initial Brief to this court as per SCACR 208(a)(2&4). Appellant, request this Court to grant her Affidavit for Relief and Motion for Default Judgment.

Movant moves Motion for Default Judgment with the Affidavit for Relief. Dated August 6, 2015

By:  _____

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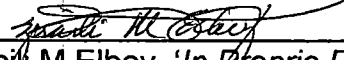
Ziraili M Elbey, a/k/a/ Ziraili Mohassan El Bey, WKFC Living Appellant
Trust Under Trust Agreement dated June 4, 2010 by and
through its Trustee Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One Mortgage
Servicing, Inc. s/b/m to Option One Mortgage Corporation,
Defendants,

Of Whom Ziraili M. Elbey is the Appellant.

PROOF OF SERVICE

I certify that Brock & Scott, PLLC, Counsel of Record, and Attn: Chad Burgess,
3800 Fernandina Rd., Ste 110, Columbia, South Carolina, 29210, Trent M. Grissom,
McGuireWoods LLP, 201 North Tryon Street, Ste 3000, Charlotte, North Carolina,
28202 received a copy of the **APPELLANT'S REPLY TO RESPONDENT'S ANSWER TO MOTION
TO STRIKE AND MOTION FOR DEFAULT JUDGMENT** by depositing a copy of it in the U.S.
Mail, postage prepaid, addressed to above counsel listed and this Appellate Court.

August 06, 2015

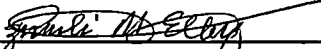
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Certificate of Appellant

The undersigned hereby certifies that the **APPELLANT'S REPLY TO RESPONDENT'S ANSWER TO MOTION TO STRIKE AND MOTION FOR DEFAULT JUDGMENT** contain no matter which is irrelevant to this appeal.

August 06, 2015

By: 
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LEVITICUS 25:10

And ye shall hallow the fiftieth year, and proclaim liberty throughout all the land unto **all** the inhabitants thereof: it shall be a jubilee unto you; and ye shall return every man unto his possession, and ye shall return every man unto his family.

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Jenny Abbott Kitching, Clerk of Court
South Carolina Court of Appeal
1015 Sumter Street
Columbia, South Carolina 29208

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