



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

AUG 18 2015

SC Court of Appeals

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.

Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

This appeal results from a jury trial held in the Greenville County Court of Common Pleas where the jury unanimously found in favor of Respondents Ocwen Loan Servicing, LLC ("Ocwen") and American Home Mortgage Servicing, Inc. a/k/a Homeward Residential ("Homeward") (collectively "Respondents"). The property underlying this, and all other disputes between these Parties, is located at 6 Azalea Ct., Greenville, South Carolina, 29615 (the "Property"). On or about January 20, 2006, Appellant obtained title to the Property and, as financing for the purchase of the Property, Appellant obtained a mortgage loan (the "Loan") from American Brokers Conduit. R. pp. 177-195. The mortgage, which evidences Appellant's Loan, is recorded in the Greenville County Register of Deeds at Deed Book 4503, beginning at Page 950. R. pp. 180-195. Subsequently, the Loan was assigned from Mortgage Electronic Registration Systems, Inc. ("MERS"), acting as nominee for American Brokers Conduit, to Deutsche Bank National Trust Company, who is the current owner of Appellant's Loan. R. pp. 196-197. As of March 1, 2013, Ocwen became the servicer of the Loan. R. pp. 198-202.

Appellant subsequently filed a complaint ("Complaint"), alleging six separate causes of action: (1) breach of contract; (2) fraud (3) an action to quiet title; (4) request for declaratory judgment; (5) negligence; and (6) gross negligence. Compl. ¶ 15, *et seq.*¹ Thereafter, Appellant filed an Amended Complaint on September 6, 2013 (the "Amended Complaint"). R. 4-151. Respondents filed an Answer to the Amended Complaint on September 26, 2013. Am. Answer.²

¹ Upon review of the Record on Appeal filed with this Court, Appellant failed to include the documents identified in Respondents' Designation of Matter on Appeal, to wit: Complaint; Respondents' Answer and Affirmative Defenses; Entire Transcript of Court Proceedings on October 13-14, 2014; Defendants' Trial Exhibit 6 (Homeward Transaction History) and Defendants' Trial Exhibit 7 (Ocwen Transaction History). Respondents have filed a Motion to Supplement the Record on Appeal requesting that Appellant be required to supplement the Record to conform with the Respondents' Designation of Matter on Appeal, as all the aforementioned items that Appellant omitted are material and necessary elements of the Record.

² See *supra* note 1.

The case was tried on October 13-14, 2014. Two witnesses testified at trial. Appellant testified on her own behalf, and Kevin Flanagan (“Mr. Flanagan”), an employee of Ocwen Financial Corporation, testified on behalf of Respondents.

Appellant testified that Respondents breached the Settlement Agreement by charging her a fifty-five dollar fee. Tr. 98-99.³ Appellant also testified that she “absolutely agree[s] that [she] received a RESPA letter” from Respondents regarding the servicing transfer of her Loan. R. p. 162. On cross-examination, Appellant again admitted that she received the RESPA letter notifying her of the servicing transfer from Homeward to Ocwen and also admitted that she made payments directly to Ocwen after the servicing transfer. Tr. 113:12-25; 114:1-10.⁴ Appellant also agreed that Respondents had fully complied with the terms of the Settlement Agreement that had been entered into at the conclusion of previous litigation between the parties. Tr. 111:19-24.⁵ Appellant went on to admit that she completely stopped paying her mortgage and confirmed her prior testimony which stated that she believed that she was entitled to keep her home and have the mortgage loan cancelled even though she has refused to tender payments to Ocwen. Tr. 121:7-17.⁶

Respondents moved for a directed verdict at the conclusion of Appellant's case-in-chief. Tr. 125:6-21.⁷ The trial court granted directed verdict in favor of Respondents on all causes of action except Appellant's cause of action for breach of contract. R. pp. 169-170. Thereafter, Respondents presented their case-in-chief by calling Mr. Flanagan, a senior loan analyst for Ocwen, who testified about the servicing of Appellant's Loan and Respondents' compliance with federal regulations, including RESPA. Appellant made one objection during Mr. Flanagan's

³ See *supra* note 1.

⁴ See *supra* note 1.

⁵ See *supra* note 1.

⁶ See *supra* note 1.

⁷ See *supra* note 1.

testimony; however, the court ruled that the objection was not actually an objection but was instead a topic she could raise on cross-examination. Tr. 147:4-15.⁸ Appellant did not raise any other objections to any of the documentary exhibits admitted into evidence or any other testimony of Mr. Flanagan. *See* Tr. 40:1-3.⁹

Through Mr. Flanagan's testimony, Respondents tendered the following exhibits into evidence:

- Defendants' Exhibit 1 - Note and Mortgage; R. pp. 177-195; (In Record on Appeal filed by Appellant, pp. 963-964 of Bk. 4503 are missing. Page 963 reflects Appellant's signature on the Mortgage; page 964 is the Notary signature page.) Tr. 135:23-25; 136:1-5;¹⁰
- Defendants' Exhibit 2 - Assignment of Mortgage; R. pp. 196-197; Tr. 136:18-22;¹¹
- Defendants' Exhibit 3 - RESPA Letter; R. pp. 198-202; Tr. 141:9-13;¹²
- Defendants' Exhibit 4 - Settlement Agreement; R. pp. 203-212; Tr. 145:20-25;¹³
- Defendants' Exhibit 6 - Homeward Transaction History; Tr. 148:3-7;¹⁴
- Defendants' Exhibit 7 - Ocwen Transaction History; Tr. 148:3-7;¹⁵
- Defendants' Exhibit 8 - Proofs of Payment; R. pp. 213-214; Tr. 154:4-5;¹⁶
- Defendants' Exhibit 9 - Composite Exhibit of Letters between Parties; R. p. 215; Tr. 155-156.¹⁷

Mr. Flanagan testified that Exhibit 3, the RESPA Letter, met all the requirements under 12 U.S.C. § 2605. Tr. 142-145.¹⁸ He also testified that Respondents had complied with all the terms of the Settlement Agreement. Tr. 146:6-20.¹⁹ He additionally testified that Appellant was currently in default on her obligations under the Loan. Tr. 149:18-23.²⁰ He finally testified that

⁸ *See supra* note 1.

⁹ *See supra* note 1.

¹⁰ *See supra* note 1.

¹¹ *See supra* note 1.

¹² *See supra* note 1.

¹³ *See supra* note 1.

¹⁴ *See supra* note 1.

¹⁵ *See supra* note 1.

¹⁶ *See supra* note 1.

¹⁷ *See supra* note 1.

¹⁸ *See supra* note 1.

¹⁹ *See supra* note 1.

²⁰ *See supra* note 1.

the \$55 charge complained of by Appellant had been refunded to her account. Tr. 151:1-25.²¹ At the close of evidence, the court granted Respondents' motion to dismiss all parties other than Ocwen and Homeward. Tr. 176:1-6.²² The jury subsequently rendered a verdict for the Respondents. Tr. 220:1-17.²³ Appellant then timely appealed.

²¹ See *supra* note 1.

²² See *supra* note 1.

²³ See *supra* note 1.

ARGUMENT

I. APPELLANT'S FIRST ISSUE ON APPEAL REGARDING HEARSAY WAS NOT PRESERVED FOR APPELLATE REVIEW AND SHOULD BE DENIED.

Appellant's first issue on appeal is that Mr. Flanagan's testimony was hearsay. It is well-settled law that to preserve an issue for review on appeal there must be a contemporaneous objection that is ruled upon by the trial court that is sufficiently specific in manner that brings attention to the exact error being to which the party is objecting. *See Busillo v. City of N. Charleston*, 404 S.C. 604, 745 S.E.2d 142 (Ct. App. 2013). If a party fails to properly object, he is procedurally barred from raising the issue on appeal. *Id*; *see also State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003).

Appellant only made one objection during Mr. Flanagan's testimony. Tr. 147:4-15.²⁴ During direct examination, Mr. Flanagan was testifying regarding the actions taken pursuant to the Settlement Agreement and Appellant stated "Objection" and then began asking Mr. Flanagan questions about the parties to the Settlement Agreement. Tr. 147:4-7.²⁵ The trial judge properly ruled that this was not an actual objection, but was more appropriately a question to be asked on cross-examination. Tr. 147:9-10.²⁶ At no other point did Appellant raise objections to any of Mr. Flanagan's testimony. Appellant is therefore barred from raising this issue for the first time on appeal. *See Busillo*.

Even if the court finds that Appellant's arguments were preserved for review, this court should nonetheless reject Appellant's argument because Mr. Flanagan's testimony was

²⁴ *See supra* note 1.

²⁵ *See supra* note 1.

²⁶ *See supra* note 1.

admissible under the business records exception to the hearsay rule.²⁷ “The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.” *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 57-58 (2010). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law.” *Id.* at 444, 710 S.E.2d at 58 (*quoting State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000)).

Pursuant to Rule 803(6) of the South Carolina Rules of Evidence, the business records exception provides that certain records are admissible so long as they are: (1) made at or near the time of the event recorded; (2) created by, or from information transmitted by, a person with knowledge; (3) prepared in the regular course of business; and (4) identified by the custodian or a qualified witness who can testify regarding the mode of preparation of the record. *See* S.C. Code Ann. § 19-5-510; SCRE 803(6). The exception requires that the evidence be given by a “custodian or other qualified witness” and that said witness need not be the individual who drafted or created the record. *Twelfth RMA Partners, L.P. v. National Safe Corp.*, 335 S.C. 635, 642, 518 S.E.2d 44, 48 (Ct. App. 1999).

Mr. Flanagan competently testified before the jury regarding his position as a Senior Loan Analyst at Ocwen and his knowledge regarding Appellant’s Loan. Tr. 132:10-25.²⁸ He not only provided the jury with testimony regarding the processes utilized by mortgage loan servicers throughout the industry but also provided them information regarding Ocwen’s servicing records which are kept and maintained in the ordinary course of business. *See* Tr.

²⁷ Appellant entirely fails to address this issue in her initial brief and fails to provide any reason or argument as to how or why the trial court abused its discretion in admitting Respondents’ evidence. Appellant’s Initial Brief is entirely silent on the issue except for the blanket statement in the Table of Contents. Initial Brief, p. ii.

²⁸ *See supra* note 1.

133:6-17; 140:9-20.²⁹ Mr. Flanagan testified as to how Ocwen maintained its records stating that documents are normally scanned into a database once received and original documents are kept in Ocwen's vault. Tr. T. 158:4-11.³⁰ Accordingly, Mr. Flanagan's testimony was more than sufficient to fall under the business records exception. Mr. Flanagan's comprehensive testimony combined with the fact that Appellant failed to make a single hearsay objection should cause this Court deny this issue on appeal and affirm the trial judge's dispositive rulings and the jury verdict, finding that the lower court did not abuse its discretion in admitting Respondents' documentary or testimonial evidence.

II. APPELLANT'S SECOND ISSUE ON APPEAL REGARDING ADDITIONAL RESPA VIOLATIONS SHOULD BE DENIED BECAUSE THERE IS NO EVIDENCE TO SUPPORT THESE CLAIMS.

Appellant's second issue on appeal consists of the vague allegation that the trial court erred in failing to acknowledge additional violations of RESPA. However, she fails to specify what those violations were or point to where evidence can be found in the record to support these allegations. At no point during trial did Appellant request the trial court to take notice of any separate alleged RESPA violation. Notably, the only cause of action involving RESPA was Appellant's claim for negligence; however, Appellant entirely failed to present any evidence whatsoever exhibiting Respondents' alleged non-compliance. In fact, Appellant's own testimony demonstrated Respondents' textbook compliance with the federal statute.

The only section of RESPA addressed at trial was 12 U.S.C. § 2605, which governs the duty of loan servicers regarding the transfer of servicing rights. Section 2605 states that "each servicer of any federal related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person." 12 U.S.C. §

²⁹ See *supra* note 1.

³⁰ See *supra* note 1.

2605(b)(1). The notice is required to be given “not less than 15 days before the effective date of transfer of the servicing of the mortgage loan.” 12 U.S.C. § 2605(b)(2)(A). Pursuant to 12 U.S.C. § 2605(b)(3), the notice of servicing transfer must contain the following information: (1) the effective date of transfer; (2) the name, address, and telephone number of the transferee servicer; (3) a toll-free or collect number for an employee of the transferor and transferee servicer or the department of the transferor and transferee servicer that can be contacted by the borrower to address inquiries relating to transfer; (4) the date on which the transferor servicer will cease to accept payments relating to the loan and the date when the transferee servicer will begin to accept payments; (5) any information concerning the effect the transfer may have, if any; and (6) a statement that the transfer of servicing does not affect any term or condition of the security instruments other than the terms which related directly to the servicing of the loan. 12 U.S.C. § 2605(b)(3).

Appellant clearly admitted that she received the transfer of servicing notice from Respondents. Tr. 113:12-25; 114:1-7.³¹ In addition to this admission, Mr. Flanagan also testified that the transfer of servicing notice strictly complied with the requirements set forth in RESPA. Mr. Flanagan testified that the transfer notice, sent by first class mail, explicitly stated: (1) the effective date of transfer was March 1, 2013; (2) the name, address and telephone number of Ocwen, the transferee servicing company; (3) a toll-free or collect telephone number of both the transferee and transferor servicer; (4) the date upon which Homeward would discontinue accepting payments, being February 28, 2013; (5) the date upon which Ocwen would begin to accept payments, being March 1, 2013; (6) disclosures and frequently asked questions; and (7) a statement indicating that the transfer of servicing does not affect the terms and conditions in the

³¹ See *supra* note 1.

security instrument. Tr. 142-144³²; *see also* R. pp. 198-202.

It is clear from the documentary and testimonial evidence at trial that Respondents complied with RESPA. Additionally, Appellant failed to plead or provide evidence of any other alleged violations. Therefore, this Court should deny this issue on appeal and affirm the trial judge's dispositive rulings and the jury verdict entered in favor of Respondents.

III. APPELLANT'S THIRD ISSUE ON APPEAL IS ENTIRELY UNSUPPORTED BY THE RECORD ON APPEAL AND THEREFORE SHOULD BE DISREGARDED BY THIS COURT.

Appellant's last issue on appeal, an issue left entirely unaddressed in Appellant's Initial Brief, states that the trial court improperly found that Ocwen sustained money damages. Appellant's Initial Br. ii. However, this is an entirely inaccurate statement that is not supported by the trial transcript or any other document within the record before this Court. Ocwen's Answer did not include a claim for money damages against Steffens. At no point during the trial did Ocwen seek an award of damages from the trial court, nor did the trial court *sua sponte* award any damages to Ocwen. The issue of damages to Ocwen was not presented to the jury. This issue is entirely unsupported by the record on appeal and it should be disregarded by this Court.

³² *See supra* note 1.

CONCLUSION

Appellant failed to preserve for review her issue regarding hearsay. Even if it had been preserved, it fails on the merits. Appellant's second and third issues regarding additional RESPA violations and allegations of money damages in favor of Ocwen also fail because there is no proof to support either. The trial court's grant of directed verdict and dismissal of certain Defendants and the jury verdict should be affirmed.

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Appellate Case No. 2014-00297
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CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Final Brief of Respondents filed contemporaneously herewith complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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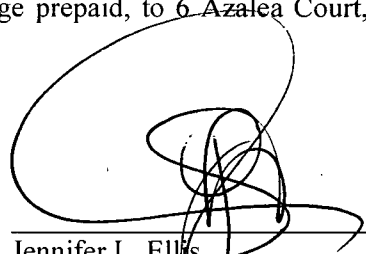
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PROOF OF SERVICE

I certify that on the 12th day of August, 2015, I served the *Final Brief of Respondents* on Neva Steffens, by depositing a copy in the U.S. Mail, postage prepaid, to 6 Azalea Court, Greenville, South Carolina 29601.



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