

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Clyde N. Davis, Jr., Special Referee

Unpublished Opinion No. 2015-UP-361
(S.C. Ct. App. filed July 15, 2015)

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SC Court of Appeals

COPY

JP Morgan Chase Bank, National Association, Respondent,

v.

Leah B. Sample and JP Morgan Chase Bank, National
Association s/b/m to Provident National Bank,
Defendants,

Of whom Leah B. Sample is the Petitioner.

PETITION FOR A WRIT OF CERTIORARI

David B. Sample
1506 Ebenezer Road
Rock Hill, South Carolina 29732
(803) 981-9900
ATTORNEY FOR PETITIONER

Other Counsel of Record:

Michael J. Anzelmo
B. Rush Smith, III
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street / 17th Floor
Post Office Box 11070
Columbia, South Carolina 29211
(803) 799-2000
Attorneys for Respondent

INDEX

Certificate of Counsel.....2

Questions Presented.....2

Statement of the Case2

Argument

1. The Court of Appeals should have held that the Circuit Court erred in denying Petitioner’s Motion to Set Aside Foreclosure Sale and Supplemental Order.....3

Conclusion.....5

CERTIFICATE OF COUNSEL

Counsel for the petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on September 17, 2015.

QUESTION PRESENTED

1. Did the Court of Appeals err in affirming the decision of the Circuit Court in denying Petitioner’s Motion to Set Aside Foreclosure Sale and Supplemental Order?

STATEMENT OF THE CASE

Respondent filed a foreclosure action against Petitioner on September 16, 2009. Subsequently the parties entered into negotiations and the action was put on hold until June 8, 2011, when the Respondent filed a Notice of Mortgagors Right to Foreclosure Intervention as required by South Carolina Supreme Court Administrative Order 2011-05-02-01. It is undisputed that this document, as well as all subsequent filings and notices in the case were served upon the Petitioner by sending them to her counsel at a former address that was no longer being forwarded by the U.S. Postal Service. Subsequently a foreclosure sale took place and the

Petitioner's property was purchased by the Respondent. Also, a deficiency judgment was entered against the Petitioner.

On March 6, 2013, Petitioner filed a Motion to Set Aside Foreclosure Sale and Supplemental Order seeking to set aside the foreclosure sale and the deficiency judgment on the grounds that service upon Petitioner's counsel at an outdated address of the Notice of Mortgagors Right to Foreclosure Intervention and all subsequent notices and filings was a violation of the Petitioner's due process rights. By order filed on July 25, 2013, the Court denied the Petitioner's motion to set aside the sale and subsequent order.

The Court of Appeals affirmed the judgment of the circuit court. Leah B. Sample v. JP Morgan Chase, National Association, Op. No. 2015-UP-361 (S.C. Ct. App. filed July 15, 2015).

Petitioner seeks a writ of certiorari to review that decision.

ARGUMENT

1. The Court of Appeals should have held that the Circuit Court erred in denying Petitioner's Motion to Set Aside Foreclosure Sale and Supplemental Order.

The Circuit Court ruled that it was the duty of Petitioner's attorney to notify opposing counsel and the clerk of court of a change of address, and therefore the Respondent had properly served all disputed documents by sending them to counsel's former address. (R.p. 1, lines 11-13). However, it is undisputed that Petitioner's counsel had properly updated his address with the South Carolina Bar Association and with the South Carolina Attorney Information System. (R.p. 25, lines 21-24). Furthermore, Respondent did not dispute the assertion that the disputed documents would have been returned undeliverable and thus Respondent's counsel would have been on notice that the Petitioner nor her counsel had received actual notice of the documents.

(R.p. 30, lines 17-24). Counsel for Petitioner pointed out to the Court that even after filing the Petitioner's Motion to Set Aside Foreclosure Sale and Supplemental Order, setting forth in the grounds that Petitioner's counsel had a new address, Respondent served a notice of hearing for Petitioner's motion upon the Petitioner by sending it to the same invalid address that was used to serve the prior documents at issue. (R.p. 35, lines 14-25).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652 (1950). "Such notice must give the parties a reasonable time to make their appearance and the means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.*

Based on the above language "under the circumstances", the Petitioner asserts that the trial court failed to properly apply the law of due process. The case had been pending for several years, lending itself to an address change taking place. Counsel for Petitioner had properly registered his address with the South Carolina Bar and the South Carolina Attorney Information System. Counsel for the Respondent did not dispute that his firm likely received the disputed documents back from the postal service marked undeliverable. It is also undisputed that neither the Petitioner nor her counsel received actual notice. The Petitioner asserts that under these circumstances, due process requires that the foreclosure sale and subsequent orders be vacated and the Petitioner should be required to be properly served with a Notice of Mortgagors Right to Foreclosure Intervention.

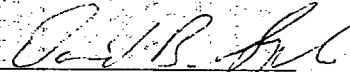
The failure to consider this violates the due process clause of the United States and South Carolina Constitutions and is therefore in error.

CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for a writ of certiorari.

October 15, 2015

Respectfully submitted,



David B. Sample

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Rock Hill, South Carolina 29732

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ATTORNEY FOR PETITIONER

THE STATE OF SOUTH CAROLINA
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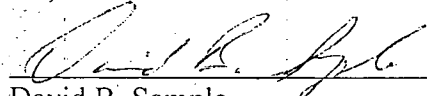
Leah B. Sample and JP Morgan Chase Bank, National
Association s/b/m to Provident National Bank,
Defendants,

Of whom Leah B. Sample is the Petitioner.

CERTIFICATE OF SERVICE BY MAIL

I certify that I have served the Petition For a Writ of Certiorari on Respondent JP Morgan Chase Bank National Association by placing a copy of same in the United States Mail to the attorneys for the Respondent, Michael J. Anzelmo and B. Rush Smith, III, Post Office Box 11070, Columbia, South Carolina 29211 on October 15, 2015.

October 15, 2015



David B. Sample
1506 Ebenezer Road
Rock Hill, South Carolina 29732
(803) 981-9900

ATTORNEY FOR PETITIONER

DAVID B. SAMPLE
Attorney at Law

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Leah B. Sample v. JP Morgan Chase
2015-UP-361

Dear Ms. Kitchings,

Enclosed for filing is a petition for writ of certiorari in the above-referenced case for filing.

Thank you.

Sincerely,



David B. Sample
Attorney for Petitioner

Enclosure

Cc: Michael J. Anzelmo
B Rush Smith, III