

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Unpublished Opinion No. 2015-UP-361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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S.C. Supreme Court

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.

APPENDIX

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

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

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
CIRCUIT COURT

Clyde N. Davis, Jr., Special Referee for York County

Cases No. 2009-CP-46-03996

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 Appellant.

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JUL 23 2014

SC Court of Appeals

RECORD ON APPEAL

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

Michael J. Anzelmo
B. Rush Smith, III
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 11070
Columbia, SC 29211
Attorneys for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

JPMorgan Chase Bank, National Association

PLAINTIFF,

VS.

Leah B. Sample and JPMorgan Chase Bank,
National Association s/b/m to Providian
National Bank

DEFENDANTS.

(090268.00910)

IN THE COURT OF COMMON PLEAS

CASE NO. 2009-CP-46-03996

**SPECIAL REFEREE'S ORDER
DENYING DEFENDANT'S MOTION TO
SET ASIDE FORECLOSURE SALE AND
SUPPLEMENTAL ORDER**

FILED - RECEIVED
2013 JUL 25 PM 12:06
DAVID HAMILTON
C.C. C.P. & GS
YORK COUNTY, SC

Upon motion of the Defendant, Leah B. Sample, by and through her counsel, David B. Sample, this Court convened at 10:00AM the 23rd day of May, 2013, for hearing to determine whether there was sufficient cause to set aside: (1) the sale of the mortgaged premises, the subject in this foreclosure action, which occurred on February 5, 2013; and, (2) the Supplemental Motion and Order to the Special Referee's Order and Judgment of Foreclosure and Sale filed on January 11, 2013. Attending on behalf of the Plaintiff, JPMorgan Chase Bank, National Association, was Andrew M. Sullivan of the Scott Law Firm, P.A.

Following the oral arguments presented, the testimony offered and the facts ascribed to by the respective counsels for each party at hearing and upon consideration of same by this Court, I find insufficient grounds to grant the Defendant relief from either the foreclosure sale or the Supplemental Order as petitioned. I find that once an attorney makes an appearance in a case and provides an address to opposing counsel and the Clerk of Court, it is incumbent upon the attorney to notify opposing counsel and the Clerk of any change in address. To rule otherwise

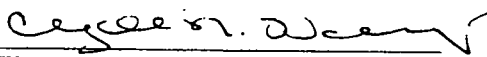
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would place an unreasonable burden on opposing counsel and the Clerk of Court to check the Attorney Information System before sending any hearing notice or other correspondence in the case.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant's Motion to Set Aside Foreclosure Sale and Supplemental Order is **DENIED**.

IT IS FURTHER ORDERED that the foreclosure sale occurring on February 5, 2013 remains valid and in effect with the highest bidder at sale free to enforce its rights consistent with those afforded it by any and all applicable laws.

AND IT IS SO ORDERED.


The Honorable Clyde N. Davis, Jr.
Special Referee for York County

York, South Carolina
July 20, 2013

STATE OF SOUTH CAROLINA

FILED - RECEIVED

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

2009 DEC 8 PM 4:15

CASE NO. 2009-CP-46-03996

Chase Home Finance LLC,

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

SPECIAL REFEREE'S
ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

PLAINTIFF,

DEFICIENCY DEMANDED
AGAINST LEAH B. SAMPLE

VS.

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

Non-Eligible under the Home Affordable
Modification Program

DEFENDANTS.

NOTICE: The original of this document was filed in
the office of the Clerk of Court for York County:

File Number 090268.00910

TO: Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
George O. Hallman, Jr., SC Bar
#2609
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

Leah Sample
c/o David B. Sample, Esq.
P.O. Box 12340
Rock Hill, SC 29731

JPMorgan Chase Bank, National
Association
s/b/m to Provident National Bank
Attn: General Agent
1111 Polaris Parkway
Columbus, OH 43240

Pursuant to Circuit Court Rule 53(e) of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said Order of Reference a hearing was held attended by the attorneys of record. A Record of Hearing was presented, which is herewith reported, and from the Record of Hearing and the documents and records received into evidence, I find, conclude and order as follows:

follows:

CD

FILED - RECEIVED
2009 DEC -9 AM 11:15
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

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FINDINGS

This Court has jurisdiction over the subject matter of this action and the parties hereto and it is the proper forum for the litigation of this matter.

1. Based upon the facts and/or evidence presented, the Court has determined that this loan is not eligible under the Home Affordable Modification Program.

2. The Lis Pendens was filed on September 16, 2009; amended September 21, 2009.

3. The Summons and Complaint were filed on September 16, 2009; amended September 21, 2009.

4. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.

5. The Defendant(s), JPMorgan National Association s/b/m to Provident National Bank, is/are in default as is shown by the affidavit filed herein.

6. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing of this matter.

7. According to the affidavit filed herein, any Defendant in default is not in the Military Service of the United States of America, as contemplated under The Servicemembers' Civil Relief Act of 2003 and any amendments thereto.

8. For value received, Defendant(s), Leah B. Sample, made, executed and delivered a Note dated December 28, 2007, promising thereby to pay to the order of JPMorgan Chase Bank, N.A. the sum of \$585,000.00 with interest at the rate of 5.750% per annum. Other terms and conditions are stated in the Note, which is of record herein.

9. To better secure the payment of the Note described above, the said Defendant(s), Leah B. Sample, made, executed and delivered to JPMorgan Chase Bank, N.A. a Mortgage in writing, dated December 28, 2007, covering real property in York County, which is the same as that described in the Complaint. The Mortgage was filed on January 4, 2008, and is of record in the Office of the Clerk of Court for York County in Book 9721, at Page 258. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s). The Court finds also that this mortgage constitutes a first lien on the mortgaged premises and a purchase money lien as may apply under state law as well as the After Acquired Property Doctrine. Subsequently assigned to Chase Home Finance LLC by

CWD

assignment instrument dated September 23, 2009 and recorded on October 7, 2009 in Book 11058 at Page 320.

10. That the Court finds that the Plaintiff has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defense or objections as to the servicing of any applicable banking or consumer laws by the Plaintiff.

11. Payment due on the note has not been made as provided for in the note, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the note and mortgage in the hands of the attorney herein for collection.

12. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in legally prosecuting a real property credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt, I find that a reasonable attorney's fee in this matter would be \$5,000.00. This award is consistent with and pursuant to the common laws of this jurisdiction wherein our appellate courts have consistently held that any contract for fees that may exist or exists between the lawyer and the client (in addition to not being one of the six (6) fee review factors) is not binding on the trial court on the determination of the reasonableness of the fee. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750(1997); Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995); and Williamson v. Middleton, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007). Total representation of the Plaintiff's interests in this matter have been undertaken, including among many duties the researching of the referral file to serving as custodian of the loan documents to the filing of all pleadings and other legally required documents with the court, by the Scott Law Firm, P.A. Moreover, this Trial Court has specifically examined, and made its award herein of attorney fees to Counsel for the Plaintiff in compliance with the six (6) factors identified and enumerated in Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989).

13. On receiving testimony and other evidence during this hearing, I find that the Scott Law Firm, P.A., was engaged by the Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the accrual of interest and related adverse economic conditions such as depreciation or possible damage to the collateralized property. Upon receipt of the case file, the title was examined and studied to identify all parties having or claiming an interest in the subject real estate as well as being researched for salient legal questions and issues. Various attorneys as well as experienced paralegal staff have been responsible for (and expended extensive professional time) in the preparation of the following pleadings and other legally required services and documents:

1. Lis Pendens and any amendment thereto
2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Order of Publication
4. Affidavit of Default
5. Consent(s) to Order of Reference
6. Order of Reference
7. Notice of Hearing
8. Proposed Judgment of Foreclosure and Sale
9. Record of Hearing
10. Notice of Sale
11. Other documents as applicable pertaining to service and finalization of the action.

Counsel may also prepare for the Plaintiff the Statutory Foreclosure Deed and any other documents necessary in this particular action as ordered or authorized by this Court.

Jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

14. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee and allowable costs and charges allowable under and secured by the Note and Mortgage, is as follows:

(a) Principal due	\$575,348.00
(b) Interest from April 1, 2009 to December 9, 2009	\$22,870.77
(c) Late Charges	\$ 682.80
(d) Escrow Adjustments (Itemized in Plaintiff's Disbursement Record)	\$11,001.95

(e)	Appraisal	\$ 168.00
(f)	Property Inspections	\$ 84.00
(g)	Suspense Balance	(\$4,400.00)
(h)	Costs of collection prior to hearing	\$ 836.66
(i)	Attorney's fees and costs	
	(Foreclosure & applicable Bankruptcy)	<u>\$5,000.00</u>
	TOTAL DEBT secured by note and mortgage including interest to date shown	<u>\$611,592.18</u>

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt": to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 5.7500% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

15. Based upon a search of the public records of the aforesaid county, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

16. The Plaintiff is seeking the usual foreclosure of mortgage and has in the Complaint expressly demanded the right to a personal or deficiency judgment against Leah B. Sample.

17. The Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, JPMorgan Chase Bank, National Association s/b/m to Providian National Bank by virtue of a Judgment by Default against Leah B. Sample dated December 10, 2001 in the original amount of \$3,504.22 and recorded on December 12, 2001 in the Office of the York County Clerk of Court as Case Number 2001-CP-46-1393.

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18. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

CONCLUSIONS OF LAW

I therefore, conclude as follows:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

2. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

3. The Plaintiff should have a personal or deficiency judgment against Leah B. Sample.

Now, on motion of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

2. This case is not subject to the stay provisions of the Order of the Supreme Court of South Carolina dated May 4, 2009, as amended and superceded by Order dated May 22, 2009.

3. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$611,592.18, representing the total debt due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

4. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 5.7500% percent per annum.

C.W.D.

8

5. That the Defendants liable for the aforesaid Mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

a. FOR CASH: The undersigned Special Referee will require a deposit of 5% on the amount of the bid (in cash or equivalent), said 5% deposit being due and payable immediately upon the closing of the bidding, same to be applied to the purchase price only upon compliance with the bid, but in case of non-compliance within 20 days same to be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 5.7500% percent.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

d. This mortgage constitutes a first lien covering the real estate and improvements therein described, including any mobile home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action.

e. Purchaser to pay for deed stamps and cost of recording the deed with the Plaintiff to pay the Statutory allowed fee of \$25.00 to the preparer of said deed (be it this Court or Counsel for Plaintiff).

7. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, the Plaintiff may pay to the Special Referee only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

C.D.

8. Personal or deficiency judgment being demanded, the bidding will remain open for a period of thirty (30) days after the sale date.

9. That the Special Referee will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. Special Referee will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action may become a purchaser at such sale, and that if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within 20 days after the date of sale, then the Special Referee may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event the Plaintiff is the successful bidder, at its/his option, or the option of its/his assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more fully described. In the event the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

10. The sale will not be held unless the Plaintiff, its attorney, or its bidding agent is present at the sale or has advised the Special Referee's office of its bidding instructions.

11. In the event of a third party bidder and that any third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to the Office of the Special Referee by close of bidding on the day of the sale, the Special Referee will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

12. That the Special Referee shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expense of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of the Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and Plaintiff's attorney shall receive and disburse such funds only in total and absolute

compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees and taxable costs;

NEXT: Any surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

13. It is further ORDERED, that if the successful bidder is other than the Defendant in possession herein, the Sheriff of York County is ordered and directed to evict and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

14. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the South Carolina Department of Motor Vehicles is directed and ordered to provide the new Certificate of Title to the attorneys for the Plaintiff as agent for the grantee on the deed upon payment of the required title fees on any mobile home which is herein located on the subject property and intended to be collateralized by the Plaintiff's security documents as heretofore received into evidence by this Court, or which may be received into evidence at any necessary hearing post sale of the subject property.

15. And it is further ORDERED, ADJUDGED AND DECREED that Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

16. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee, and the Clerk of Court/Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

17. The Special Referee will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may effect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Writ of Assistance.

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18. Upon issuance of a Special Referee's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

Mortgage from Leah B. Sample to JPMorgan Chase Bank, N.A., dated December 28, 2007, covering real property in York County, filed on January 4, 2008, and is of record in the Office of the for York County in Book 9721, at Page 258.

19. The following is a description of the premises herein ordered to be sold: All that certain piece, parcel, or lot of land lying, and being situate in the State of South Carolina, County of York, City of Rock Hill, and being designated as Lot 6 of The Village of Mountain Laurel at Laurel Creek, Phase VI, as is shown on a plat thereof prepared by James T. Poore, Jr., SCPLS, dated June 27, 2005, recorded in Plat Book D-7 page 7, which plat is incorporated herein by this reference and having such metes, bounds, courses, and distances as by this reference to said plat will more fully appear.

This being the same property conveyed to Leah B. Sample by deed of Sloan Adams Custom Homes, LLC dated December 28, 2007 and recorded on January 4, 2008 in the Office of the York County Clerk of Court in Book 9721 at Page 256.

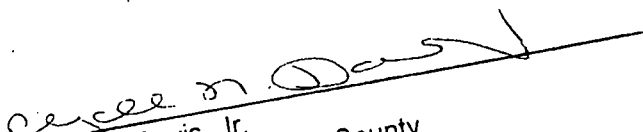
TMS No. 6350701025

Property address: 621 Deberry Hollow
Rock Hill, SC 29732

20. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day as ordered by this court.

21. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

22. IT IS ORDERED that the Plaintiff is entitled to a personal or deficiency judgment against Leah B. Sample.


Clyde N. Davis, Jr.
Special Referee for York County

York, South Carolina
December 9, 2009

STATE OF SOUTH CAROLINA)
)
 COUTNY OF YORK)
)
 Chase Home Finance LLC,)
)
 Plaintiffs,)
)
 v.)
)
 Leah B. Sample and JPMorgan Chase Bank)
 National Association s/b/m Providian)
 National Bank,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2009-CP-46-03996

MOTION TO SET ASIDE FORECLOSURE
 SALE AND SUPPLEMENTAL ORDER

FILED-RECEIVED
 2013 MAR -6 PM 12:55
 DAVID HAMILTON
 C.C. CP & G.S. SC
 YORK COUNTY, SC

The Defendant Leah B. Sample, by and through her undersigned attorney, shall move on the tenth day hereafter or at such time as directed by the Court, to set aside the foreclosure sale of February 5, 2013 and the Supplemental Order of the Court filed January 11, 2013 on the grounds that no proper notice was served upon the Defendant, nor was the Defendant properly served with the Notice of Mortgagor's Right to Foreclosure Intervention as required by South Carolina Supreme Court Administrative Order 2011-05-02-01. Furthermore, the notice that ran in the newspaper states that the sale was to take place "Monday, Tuesday, February 5, 2013." This is confusing since there was a sale held on Monday, February 4, 2013. Failure to properly serve the Defendant with notice of hearings and notice of her rights under the Administrative Order violates her rights under the Due Process Clause of the United States Constitution as well as that of the South Carolina Constitution.

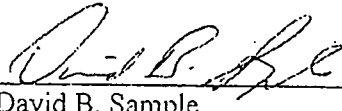
The record of the Court reflects that the notices referred to herein were served upon undersigned counsel at P.O. Box 12340, Rock Hill, South Carolina 29731. Undersigned counsel hereby certifies that this address has not been correct since at least early 2010, and the one-year

forwarding period ended prior to the above-mentioned items being served. Undersigned counsel was at all times properly registered with the South Carolina Bar Association, and with the South Carolina Attorney Information System. Therefore, service at the last known address of counsel would have required sending notices to counsel's current address. Failure to do so deprives the Defendant of notice, violating her procedural due process rights. For this reason, the Defendant moves this court to set aside all documents not properly served, and to set aside the foreclosure sale.

Respectfully submitted,

Rock Hill, South Carolina

March 5, 2013



David B. Sample
Attorney for the Defendant
2424 India Hook Road, Suite 160
Rock Hill, SC 29732
(803) 981-9900
(803) 981-9909 (facsimile)

STATE OF SOUTH CAROLINA)
COUTNY OF YORK)
Chase Home Finance LLC,)
Plaintiffs,)
v.)
Leah B. Sample and JPMorgan Chase Bank)
National Association s/b/m Providian)
National Bank,)
Defendants.)

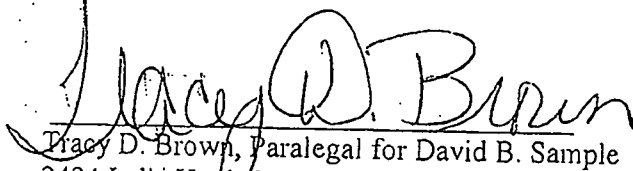
IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2009-CP-46-03996

CERTIFICATE OF SERVICE

I, Tracy D. Brown, Paralegal for David B. Sample, attorney for Defendant, Leah B. Sample, hereby certifies that I have served all attorneys of record listed at the Scott Law Firm, Attorneys for Plaintiff, with the Motion to Set Aside Foreclosure Sale and Supplemental Order by mailing a copy of the same by United States Mail, postage prepaid, this 6th day of March, 2013, to all parties at the following address:

Parties Served: Ronald C. Scott, Esquire
Elizabeth R. Polk, Esquire
Brett F. Kline, Esquire
Angelia J. Grant, Esquire
Douglas E. Thomas, Esquire
Priti M. Patel, Esquire
Kevin T. Hardy, Esquire
SCOTT LAW FIRM, PA
Post Office Box 2065
Columbia, South Carolina 29202


Tracy D. Brown, Paralegal for David B. Sample
2424 India Hook Road, Ste. 160
Rock Hill, South Carolina 29732
Phone: (803) 981-9900
Fax: (803) 981-9909

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Chase Home Finance LLC,

PLAINTIFF,

VS.

Leah B. Sample and JPMorgan Chase Bank,
National Association s/b/m to Providian National
Bank,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2009-CP-46-03996

NOTICE OF MORTGAGOR'S RIGHT TO
FORECLOSURE INTERVENTION

FILED-RECEIVED
2011 JUN -8 AM 11:14
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

(090268.00910)

TO THE DEFENDANT(S) LEAH B. SAMPLE:


PLEASE TAKE NOTICE THAT pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01, you may be eligible for foreclosure intervention programs for the purpose of resolving the above-referenced foreclosure action. If you wish to be considered for a foreclosure intervention program, you must contact Scott Law Firm, P.A., 2712 Middleburg Drive, Suite 200, Columbia, South Carolina 29204 or call (803) 252-3340 within **thirty (30) days** from the date of this notice.

Scott Law Firm, P.A. represents the Plaintiff in this action. We do not represent you. The South Carolina Rules of Professional Conduct prohibit our firm from giving you any legal advice.

IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN THIS FORECLOSURE INTERVENTION PROCESS, THE FORECLOSURE ACTION MAY PROCEED.

NOTICE: THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION YOU PROVIDE WILL BE USED FOR THAT PURPOSE. HOWEVER, IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE FROM BANKRUPTCY, THIS MESSAGE IS NOT AND SHOULD NOT BE CONSTRUED AS AN ATTEMPT TO COLLECT A DEBT, BUT ONLY AS A REQUIREMENT PURSUANT TO THE ABOVE-REFERENCED ADMINISTRATIVE ORDER.

SCOTT LAW FIRM, P.A.

By: 
Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
Douglas E. Thomas, SC Bar #76864
Priti M. Patel, SC Bar #79835
Kevin T. Hardy, SC Bar #76015
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

June 7, 2011

16

18

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Chase Home Finance LLC,

PLAINTIFF,

VS.

Leah B. Sample and JPMorgan Chase Bank, National Association s/b/m to Providian National Bank

DEFENDANTS.

090268.00910

IN THE COURT OF COMMON PLEAS

CASE NO. 2009-CP-46-03996

CERTIFICATE OF SERVICE
BY MAIL

FILED-RECEIVED
2011 JUN -8 AM 11:14
DAVID HAMILTON
C.C.C.P. & C.S.
YORK COUNTY, SC

The undersigned hereby certifies that she is an employee of Scott Law Firm, P.A. and is a person of such age and discretion as to be competent to serve papers and that on June 7, 2011, she mailed a copy of the Notice of Mortgagor's Right to Foreclosure Intervention by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at the Scott Law Firm office, 2712 Middleburg Drive, Suite 200, Columbia, SC 29204.

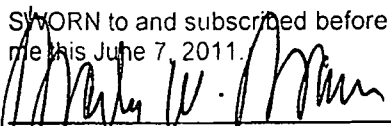
Addressee:

Leah Sample
c/o David B. Sample, Esq.
Attorney at Law P.O. Box 12340
Rock Hill, SC 29731



Ronda Barton
SCOTT LAW FIRM, P.A.
2712 Middleburg Dr., St 200 (29204)
P.O. Box 2065 (29202)
Columbia, South Carolina

SWORN to and subscribed before
me this June 7, 2011.


Notary Public for South Carolina

My Commission Expires: 5/15/2016

(L.S.)

Special Referee's
NOTICE OF SALE
2009-CP-46-03996

FILED-RECEIVED
2013 JAN 11 PM 1:29
DAVID HAMILTON
C.C.P. CLERK
YORK COUNTY
COURTHOUSE
CMT

BY VIRTUE of a decree heretofore granted in the case of: JPMorgan Chase Bank, National Association vs. Leah B. Sample et al., I, the undersigned Clyde N. Davis, Jr., Special Referee for York County, will sell on ~~Monday, February 4, 2013~~, at 11:00 a.m., at the York County Equity Court, ~~One North Congress Street, York, South Carolina~~, to the highest bidder:

Two South CMT
Tuesday, February 5 CMT

All that certain piece, parcel, or lot of land lying, and being situate in the State of South Carolina, County of York, City of Rock Hill, and being designated as Lot 6 of The Village of Mountain Laurel at Laurel Creek, Phase VI, as is shown on a plat thereof prepared by James T. Poore, Jr., SCPLS, dated June 27, 2005, recorded in Plat Book D-7 page 7, which plat is incorporated herein by this reference and having such metes, bounds, courses, and distances as by this reference to said plat will more fully appear.

This being the same property conveyed to Leah B. Sample by deed of Sloan Adams Custom Homes, LLC dated December 28, 2007 and recorded on January 4, 2008 in the Office of the York County Clerk of Court in Book 9721 at Page 256.

TMS No. 6350701025

Property address: 621 Deberry Hollow
Rock Hill, SC 29732

TERMS OF SALE: The successful bidder, other than the Plaintiff, will deposit with the Special Referee, at conclusion of the bidding, five percent (5%) of said bid is due and payable immediately upon closing of the bidding, in cash or equivalent, as evidence of good faith, same to be applied to purchase price in case of compliance, but to be forfeited and applied first to costs and then to Plaintiff's debt in the case of non-compliance. In the event of a third party bidder and that any third party bidder fails to deliver the required deposit in certified (immediately collectible) funds with the Office of the Special Referee, said deposit being due and payable immediately upon closing of the bidding on the day of sale, the Special Referee will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff. Should the last and highest bidder fail or refuse to comply with the balance due of the bid within 20 days, then the Special Referee may re-sell the property on the same terms and conditions on some subsequent Sales Day (at the risk of the said highest bidder).

Personal or deficiency judgment being demanded, the bidding will remain open for a period of thirty (30) days after the sale date. The Plaintiff may waive its right to a deficiency judgment prior to sale, in which case the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

Purchaser to pay for documentary stamps on Special Referee's Deed. The successful bidder will be required to pay interest on the amount of the bid from the date of sale to date of compliance with the bid at the rate of 3.25000% per annum.

The Plaintiff may waive any of its rights, including its right to a deficiency judgment, prior to sale.

The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

The sale or any resale will not be held unless the Plaintiff or its attorney's bidding agent

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
 COUNTY OF YORK) C/A No. 09-CP-46-03996
 Chase Home Finance, LLC,)
)
 Plaintiff,)
)
 v.)
)
 Leah B. Sample, et al,)
)
 Defendants.)
 -----)

COPY

HEARING

Thursday, May 23, 2013
 10:00 a.m. - 10:21 a.m.

The hearing before the Honorable Clyde Davis, Special Referee for York County, was taken at 6 South Congress Street, Conference Room A, York, South Carolina on the 23rd day of May, 2013 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

APPEARANCES

Andrew M. Sullivan, Esquire
Scott Law Firm, PA
Post Office Box 2065
2712 Middleburg Drive
Columbia, South Carolina 29202
Attorney for the Plaintiff

David B. Sample, Esquire
Attorney at Law
2424 India Hook Road, Suite 160
Post Office Box 36787
Rock Hill, South Carolina 29732
Attorney for Defendant Sample

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Certificate 20

EXHIBITS

(There were no exhibits marked during the hearing.)



1 THE COURT: All right. This case is Chase Home
2 Finance versus Sample, Case Number
3 09-CP-46-3996. And, Mr. Sample, I understand
4 you've got a motion to set the sale aside; is
5 that right?

6 MR. SAMPLE: Yes, sir.

7 THE COURT: And just so I'm clear on the thing,
8 we've -- we've sold the house and the deed has
9 gone to the Plaintiff. Has -- the Plaintiff
10 hasn't deeded it out to anybody else, have
11 they?

12 MR. SULLIVAN: We have not. We have not.

13 THE COURT: All right. And is the Defendant still
14 living in the house?

15 MR. SAMPLE: Yes.

16 THE COURT: Okay. All right. I just wanted to make
17 sure I understood where we're going. All
18 right. Go ahead.

19 MR. SAMPLE: Okay. The basis of my motion is that
20 everything that was served on the Defendant was
21 served upon me after I made an appearance in
22 the case.

23 I did initially have the address of P.O. Box
24 12340, Rock Hill, South Carolina 29731 when
25 I -- when I made my first appearance or



1 notified counsel that I was involved in the
2 case.

3 Subsequently, in April of 2010, I moved my
4 office to Fort Mill, South Carolina, to 104
5 Stone Village Drive in Fort Mill. At that
6 time, or soon thereafter, my post office box in
7 Rock Hill ran out and, ultimately, mail
8 forwarding ended and that was no longer a good
9 address for me.

10 Everything that was served in the case
11 continued to be served on the P.O. Box 12340,
12 Rock Hill address, including the notice of
13 Mortgagor's Right to Foreclosure Intervention
14 required by Chief Justice Toal's Administrative
15 Order.

16 I've also mentioned in my written motion that
17 the notice that ran in the newspaper was
18 somewhat confusing. I'm not heavily relying on
19 that, but it did state that the sale was to
20 take place on Monday, comma, Tuesday, February
21 5th, 2013.

22 There was actually a foreclosure sale on
23 Monday, February 4th. This sale apparently
24 took place on Tuesday, February 5th, so it was
25 somewhat confusing as to when the sale was



1 going to take place.

2 But the gist of the motion is that everything
3 that was served, including that Notice of
4 Mortgagor's Right to Foreclosure, was served on
5 the incorrect address.

6 My address was kept current with the South
7 Carolina Bar with the new attorney information
8 system.

9 I would ask you to take judicial notice of my
10 address in the 2011/2012 Lawyer's Desk Book.
11 I'll turn to that for you. At the top of the
12 page there (indicating).

13 **THE COURT:** This is the new address?

14 **MR. SAMPLE:** That's the address as of 2011 -- well,
15 of -- April of 2010 when I first moved my
16 office from Rock Hill, that's the address that
17 I moved to at the time.

18 **THE COURT:** Okay.

19 **MR. SAMPLE:** So it was -- it was correct in the 2011
20 Lawyer Desk Book. It's -- and I've
21 subsequently moved again and that's been always
22 kept current with the bar, as far as where my
23 address is.

24 Notices from --

25 **THE COURT:** Now, were you at this address when the



1 foreclosure hearing took place?

2 **MR. SAMPLE:** When the foreclosure hearing took
3 place?

4 **THE COURT:** And the sale, I mean.

5 **MR. SAMPLE:** No. When the -- when the foreclosure
6 hearing and sale took place, I was at my
7 current address in Rock Hill, which is 2424
8 India Hook Road, Suite 160, Rock Hill, South
9 Carolina. But that address is also -- you
10 know, the bar was immediately notified and the
11 attorney information system was updated with
12 that address, as well.

13 The Clerk of Court for Common Pleas in York
14 County has been kept apprised of my address.
15 Whenever I have a motion hearing in Common
16 Pleas Court, I receive a letter directing me --
17 a correctly addressed letter directing me to
18 consult the Internet to check on my hearing
19 times, so -- and everything's always been kept
20 current.

21 So my motion is made on the grounds that there
22 was not proper service of anything from 2011
23 forward, at least, in violation of my client's
24 due process rights.

25 **THE COURT:** Okay. All right.



1 MR. SULLIVAN: First off, I will concede to the fact
2 that the publication itself said "Monday,
3 Tuesday, February 4th," was confusing and in
4 error. It wasn't what we provided to the
5 newspaper. It somehow got messed up along the
6 way.

7 THE COURT: Uh-huh (affirmatively responds).

8 MR. SULLIVAN: And I don't dispute, necessarily,
9 where the documents that we served Defense
10 counsel with. It was this address, this P.O.
11 Box 12340 in Rock Hill, South Carolina, and
12 that is where I believe the basis of
13 Mr. Sample's motion is that the Notice of the
14 Mortgagor's Right to Foreclosure Intervention
15 was -- was served at that address.

16 You know, the --

17 THE COURT: At which address?

18 MR. SULLIVAN: At the -- at the P.O. Box 12340.

19 THE COURT: Okay. And he had moved from there at
20 that time according to the --

21 MR. SULLIVAN: He had and -- but we had not been
22 apprised of that information and I -- I
23 understand that the -- that he has -- that it's
24 been updated in the AIS and other systems.

25 You know, pursuant to Rule Five of the South



1 Carolina Rules of Civil Procedure, you know,
2 we're required to serve -- serve counsel for
3 any -- any subsequent papers to the original
4 summons and complaint at the last known
5 address.

6 That is the address that we had on record was
7 this P.O. Box 12340, Rock Hill, South Carolina.
8 And, you know, that is where we sent the Notice
9 of Mortgagor's Right to Foreclosure
10 Intervention and that is where we sent the
11 Notice of Hearing, of the supplemental hearing,
12 that occurred in January of this year.

13 We are -- you know, we have to send out notice
14 ten days prior. But I would also like to note
15 that we sent the same notice to the occupant's
16 address, which is -- he says he is a -- he
17 resides in the property. We sent said notice
18 on December 28th of 2012; that hearing occurred
19 on January 9th, 2013, in which case Defense
20 counsel did not appear.

21 It was -- it is our contention that he did, in
22 fact, have notice even were the address sent
23 to -- or were the -- the notice sent to the
24 improper P.O. Box, it also went to his -- his
25 residence as the occupant.



1 He did not appear. The supplemental order
2 moved forward, was granted by Your Honor, and
3 a month passed after the sale until this motion
4 was filed on March 6th, 2013.

5 It is our belief that Defense counsel should
6 have had notice and should have appeared at
7 that supplemental order and then this type of
8 address -- this type of issue, where the Right
9 to Foreclosure Intervention -- some of the
10 things that have to be done prior to moving
11 forward to -- or to certification of the admin
12 order, as well as moving forward with the
13 hearing, those could have -- could have been
14 addressed at that supplemental hearing; yet,
15 you know, that didn't happen.

16 And so it is our belief that we -- you know, we
17 complied with Rule Five in that we served upon
18 the attorney by delivering a copy to him or by
19 mailing it to him at his last known address and
20 that was the address that we had on record
21 where he was -- when the action began, that was
22 his address and that was the one we had in our
23 system.

24 **THE COURT:** Okay. All right. Mr. Sample?

25 **MR. SAMPLE:** The -- first of all, the Notice of



1 Mortgagor's Right to Foreclosure Intervention,
2 as far as I know, was not served on my wife as
3 the occupant of that -- of the home at the
4 residence. So there was never any actual
5 receipt of that document by myself or by my
6 wife, the Defendant.

7 The -- it's my contention that the language in
8 Rule Five that states that service is to be
9 made at the last known address does not mean
10 that the process or the papers should be served
11 at the last address known by Defense counsel
12 without inquiring as to what the proper address
13 would be.

14 You know, the purpose of the Chief Justice's
15 new attorney information system is to make sure
16 that notices go to the correct address. You
17 know, so I certainly -- my address was updated
18 in that system. It was updated in the Lawyer
19 Desk Book.

20 I would point out that, clearly, based on the
21 admissions of Plaintiff's counsel, there would
22 have been a return of -- of the -- of all the
23 items that were served at the incorrect
24 address. They would have been returned by the
25 post office as unable to deliver, which should



1 have sent up some -- set off some kind of red
2 flag that there needed to be a further inquiry
3 when you have a South Carolina attorney of
4 record in the case, if they received back a
5 notice of hearing or a -- in this case, a
6 Notice of Mortgagor's Right to Foreclosure
7 Intervention, they receive it back in return
8 mail indicating that it was unable to be
9 delivered, that there's some duty to
10 investigate further to determine if that South
11 Carolina lawyer is still licensed, in good
12 standing in the state, and what his address
13 would be so that proper service could be made.
14 You know, I can tell you that the document that
15 was served by mail to the house was not
16 received by me. If it had been, I would have
17 made an appearance at the supplemental hearing.
18 I would have addressed the fact that the Notice
19 of Mortgagor's Right to Foreclosure
20 Intervention had never been received.
21 You know, I can tell you as an officer of the
22 Court that the first time that I learned of the
23 Notice of Mortgagor's Right to Foreclosure
24 Intervention being served was when I went to
25 the Clerk of Court's office to investigate the



1 file after we received correspondence from a
2 realtor informing us that she was hired to sell
3 the house on behalf of the Plaintiff, who had
4 obtained title in the foreclosure sale. We
5 were unaware of the sale. We were unaware of,
6 you know, any of what had gone on as far as
7 court filings at that point in time.

8 So, you know, I would just maintain that "we
9 served him at the last known address, which was
10 the address in the pleadings," is not
11 sufficient, especially when there would have
12 been a return of the documents received by the
13 Plaintiff indicating that the service was
14 unable to be delivered by the post office.

15 **THE COURT:** He just handed me that letter. I
16 thought I'd show it to you.

17 **MR. SULLIVAN:** And I don't dispute that -- and I
18 don't have the information in front of me to
19 know whether or not we received any type of
20 return mail in that the P.O. Box was incorrect.
21 I don't -- I don't know. I can't say and I'm
22 not going to sit here and tell you all that
23 that is or isn't the case, because I truly do
24 not know.

25 But I'll just say that -- to reiterate, it is



1 that, you know, this was -- this Notice of
2 Hearing, Supplemental Hearing, did go to the
3 address that Defense counsel and the Defendant
4 reside at. I understand that -- that you say
5 you would have appeared had you known about it.
6 The Mortgagor's Right to Intervention -- I
7 understand what you're saying as far as you
8 updated your records with the AIS. But I also
9 think that creates quite a burden on -- on the
10 Plaintiff if each time they send a document to
11 a defendant or to some counsel that they have
12 to go and -- and check that against what the
13 AIS says versus what their system -- I mean,
14 there's so many documents that are sent out --

15 **THE COURT:** That was -- I mean, that was one
16 question I wanted to ask both of you, I guess,
17 is --

18 **MR. SULLIVAN:** Yes, sir.

19 **THE COURT:** -- is, number one, as I recall, there
20 was an order that was issued when the AIS
21 system was implemented. Have either one of you
22 looked at it to see if it speaks to --

23 **MR. SAMPLE:** Yeah, it occurred to me this morning --

24 **MR. SULLIVAN:** I haven't. I have not. I apologize.

25 **MR. SAMPLE:** -- to quickly try to look at the AIS



1 information and I didn't find the initial order
2 but I did find a November 13th, 2012 letter
3 from the Chief Justice regarding the attorney
4 information system.

5 **THE COURT:** Now, before -- before the AIS system was
6 implemented, was -- was there not some burden
7 on a defendant's attorney or a plaintiff's
8 attorney to notify the other side if they
9 changed address or did they just simply notify
10 the clerk?

11 I mean, I -- it seemed like to me -- I mean, I
12 understand what he's saying.

13 **MR. SAMPLE:** I don't -- I don't have the --

14 **THE COURT:** It's a burden for them to have to check
15 the AIS every time they send a letter --

16 **MR. SAMPLE:** I understand that --

17 **THE COURT:** -- to an attorney.

18 **MR. SAMPLE:** I agree with that. I understand that,
19 too. But I don't -- I don't have a good answer
20 to that question, but, you know, again, I would
21 fall back on the fact that, you know, if
22 service was made at the wrong address, there
23 would have been a receipt of a return that
24 stated "unable to deliver as addressed," which,
25 to me, would spark some kind of inquiry with



1 a -- like I said, with a registered licensed
2 South Carolina attorney on the other side as
3 to, "Okay, this was returned. Where is he?"
4 You know, instead of having to -- instead of
5 entirely relying on saying that they had the
6 burden to keep themselves apprised and to check
7 the attorney information system, I would just
8 submit that -- that upon receiving the return
9 of the correspondence that they should,
10 perhaps, have some duty to check into it at
11 that point and figure out why service was not
12 properly effected.

13 **THE COURT:** Okay. Let me just glance through this
14 real quick.

15 **MR. SULLIVAN:** Okay.

16 **MR. SAMPLE:** I don't know that there's anything in
17 there that's extremely helpful, but it was all
18 I could find.

19 **THE COURT:** (Reading.) Yeah, I don't know that
20 that's helpful.

21 **MR. SAMPLE:** I don't think it is.

22 **THE COURT:** Well, I -- have you got anything else
23 you wanted to put on the record or say?

24 **MR. SULLIVAN:** Just -- and this kind of maybe speaks
25 more to the merits here and I just -- you know,



1 whatever -- were this motion granted, I'm not
2 sure what Defense counsel is looking to get
3 out -- to get out of this. You know, I -- you
4 know I don't necessarily want to get into all
5 the debt and all that, but --

6 **THE COURT:** Right.

7 **MR. SULLIVAN:** That's --

8 **MR. SAMPLE:** Well, there's -- my response to that
9 would be, what we'd be looking to get out of it
10 is the intervention process that the Chief
11 Justice set forth in the --

12 **THE COURT:** Well, let's do this. I'm going to take
13 it under advisement, because I would like for
14 one of you to get me the original AIS order in
15 case it -- and, perhaps, just do a little
16 research to see if -- what the law was before
17 the AIS system.

18 **MR. SAMPLE:** Yes, sir.

19 **THE COURT:** I mean, what responsibility is on the
20 lawyer --

21 **MR. SAMPLE:** Yes, sir.

22 **THE COURT:** -- to notify the other lawyer, whether
23 it's a defendant or a plaintiff that moves. I
24 think there's got to be something on that
25 somewhere.



1 MR. SAMPLE: Can I say one more thing for the
2 record?

3 THE COURT: Yes, sir.

4 MR. SAMPLE: I think -- just to speak to -- to the
5 process -- and I know there has been an
6 overwhelming volume of these kinds of cases,
7 but to speak to the process and how -- I guess,
8 maybe as overwhelming to some of the law firms,
9 like Mr. Sullivan's law firm that handles these
10 cases, the notice of today's hearing did come
11 to the residence addressed to the occupant and
12 we received that at the residence.

13 THE COURT: Uh-huh (affirmatively responds).

14 MR. SAMPLE: But it also indicates that it was
15 served upon me, after I filed my motion
16 indicating that my address was incorrect for
17 the past several years in the correspondence
18 from the Scott Law Firm. That notice was
19 addressed to P.O. Box 12340, even after, you
20 know, making a huge point of the address issue
21 in this motion.

22 MR. SULLIVAN: Sure. I understand. I don't
23 disagree with you.

24 THE COURT: At your old address?

25 MR. SAMPLE: Yes, sir.



1 MR. SULLIVAN: And I -- I certainly understand that
2 it cuts both ways. I mean, I think that
3 there's a -- there's an obligation probably on
4 both sides. Each party, every time there's
5 moving of an attorney or addressor, rather,
6 that you should update and it should, you know,
7 verify that your system is correct. I don't
8 dispute that and I understand where you're
9 coming from.

10 THE COURT: Yeah.

11 MR. SULLIVAN: It's -- like you said, with the
12 volume, with the amount of documents that we
13 send out on a daily basis, for us each time to
14 be obligated to check that against whether or
15 not that's the correct and current address for
16 the defendant or its counsel, it just creates
17 such a burden on us.

18 Compliance is already such that it takes up the
19 majority of what we do as a practice. And so
20 for us to be obligated to do that each time is
21 difficult and, certainly, I'll be glad to
22 review the law regarding what AIS -- prior to
23 AIS what the law said regarding what the duty
24 is.

25 THE COURT: I'd just like to know that --



1 MR. SULLIVAN: Okay.

2 THE COURT: -- before I make a final ruling on the
3 thing.

4 MR. SULLIVAN: I understand.

5 THE COURT: Okay. Well, let's just go off the
6 record.

7 (The proceedings concluded at 10:21 a.m.)
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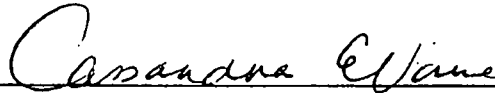


CERTIFICATE

This is to certify that the within hearing consisting of nineteen (19) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on September 17, 2013.



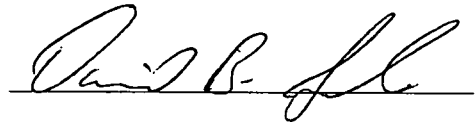
Cassandra E. Vance
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 26, 2018

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 21, 2014



David B. Sample

1506 Ebenezer Road

Rock Hill, South Carolina 29732

Phone: (803) 981-9900

Fax: (803) 981-9909

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Clyde N. Davis, Jr., Special Referee

Case No.: 2009-CP-46-03996

Appellate Case No. 2013-001930

JP Morgan Chase Bank, National Association, Respondent,
v.
Leah B. Sample and JP Morgan Chase Bank, National
Association s/b/m to Providian National Bank, Defendants,
Of Whom Leah B. Sample is the Appellant.

FINAL BRIEF OF APPELLANT

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

Other counsel of record:

Michael J. Anzelmo
B. Rush Smith, III
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 11070
Columbia, SC 29211
Attorneys for Respondent

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STATEMENT OF THE ISSUES ON APPEAL

1. The Circuit Court erred in denying Appellant's Motion to Set Aside Foreclosure Sale and Supplemental Order.

STATEMENT OF THE CASE

Respondent filed a foreclosure action against Appellant 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 Appellant 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 Appellant's property was purchased by the Respondent. Also, a deficiency judgment was entered against the Appellant.

On March 6, 2013, Appellant 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 Appellant'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 Appellant's due process rights. By order filed on July 25, 2013, the Court denied the Appellant's motion to set aside the sale and subsequent order.

The Appellant, Leah B. Sample, now respectfully appeals the Circuit Court order of the Honorable Clyde N. Davis denying her Motion to Set Aside Foreclosure Sale and Supplemental Order.

STANDARD OF REVIEW

The instant case involves a question of law and the application of the law to the particular facts of the case. Questions regarding the law or application of the law to a set of facts are reviewed de novo. J.K. Const., Inc. v. Western Carolina Regional Sewer Auth., 336 S.C. 162, 166-167, 519 S.E.2d 561, 563 (1999).

ARGUMENT

1. The Circuit Court erred in denying Appellant's Motion to Set Aside Foreclosure Sale and Supplemental Order.

The Circuit Court ruled that it was the duty of Appellant'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 Appellant'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 Appellant nor her counsel had received actual notice of the documents. (R. p. 30, lines 17-24). Counsel for Appellant pointed out to the Court that even after filing the Appellant's Motion to Set Aside Foreclosure Sale and Supplemental Order, setting forth in the grounds that Appellant's counsel had a new address, Respondent served a notice of hearing for Appellant's motion upon the Appellant 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 Appellant 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 Appellant 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 Appellant nor her counsel received actual notice. The Appellant asserts that under these circumstances, due process requires that the foreclosure sale and subsequent orders be vacated and the Appellant should be required to be properly served with a Notice of Mortgagors Right to Foreclosure Intervention.

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

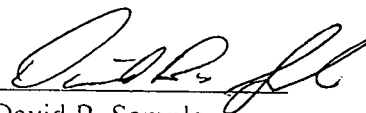
CONCLUSION

For the reasons set forth above, the July 25, 2013 order of the Circuit Court denying the Appellant's Motion to Set Aside Foreclosure Sale and Supplemental Order should be reversed,

and the foreclosure sale and all subsequent orders should be vacated.

Respectfully submitted,

October 8, 2014



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

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Clyde N. Davis, Jr., Special Referee

Case No.: 2009-CP-46-03996

Appellate Case No. 2013-001930

JP Morgan Chase Bank, National Association, Respondent,

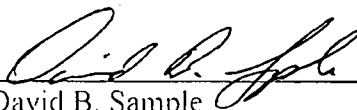
v.

Leah B. Sample, Appellant,

CERTIFICATE OF COUNSEL

I certify that the attached Final Brief of Appellant complies with rule 211(b) of the South Carolina Rules of Appellate Procedure.

October 8, 2014



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

ATTORNEY FOR APPELLANT

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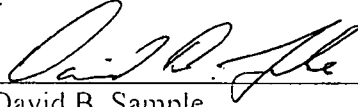
v.

Leah B. Sample, Appellant,

CERTIFICATE OF SERVICE
BY MAIL

I certify that I have served the Final Brief of Appellant 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 8, 2014.

October 8, 2014



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

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
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RECEIVED
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SC Court of Appeals

JPMorgan Chase Bank, National Association, Respondent,
v.
Leah B. Sample and JP Morgan Chase Bank, National
Association s/b/m to Providian National Bank, Defendants
Of Whom Leah B. Sample is Appellant.

Respondent's Brief

Michael J. Anzelmo
B. Rush Smith III
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
803.799.2000

Attorneys for Respondent JPMorgan Chase Bank, National Association

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Clyde N. Davis, Jr., Special Referee

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B. Rush Smith III
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
803.799.2000

Attorneys for Respondent JPMorgan Chase Bank, National Association

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Statement of the Issues

- I. This Court should affirm the order denying the motion to set aside the foreclosure sale because Sample failed to preserve her argument for appellate review.
- II. Even in Sample's argument is properly preserved, this Court should affirm the order denying the motion to set aside the foreclosure sale because there is no requirement that a party to a foreclosure action be given personal notice of a judicial sale.
- III. Even if notice was insufficient in this action, this Court should affirm because Sample failed to prove she suffered any resulting prejudice.
- IV. The special referee properly found that Chase properly served Sample with the Notice of Mortgagor's Right to Foreclosure Intervention.
- V. The special referee properly found that the Attorney Information System did not provide a basis to set aside the foreclosure sale in this action.

Statement of the Case and Facts¹

Chase initiated this foreclosure action against Appellant Leah B. Sample (“Sample”) in September 2009. {Special Referee’s Order and Judgment of Foreclosure and Sale p. 2; R. 4}. Sample was represented at all times in the litigation by counsel who is also her husband. At the outset of the action, Sample’s counsel provided an address of Post Office Box 12340, Rock Hill, South Carolina, as counsel’s address for service. {Transcript p. 3-4; R. 21-22}. Chase served the Notice of Mortgagor’s Right to Foreclosure Intervention, the Notice of Sale, and other notices at the last known address of Sample’s counsel. {Transcript of Hearing dated May 23, 2013, p. 8; R. 26}. Counsel for Sample admitted that this Rock Hill Post Office Box address was the address provided to Chase “when I made my first appearance or notified counsel that I was involved in the case.” {Transcript p. 3-4; R. 21-22}. Sample’s counsel never provided counsel for Chase with any other address for service of notices.

The special referee entered a foreclosure judgment in favor of Chase and directed sale of the property in December 2009. {Special Referee’s Order and Judgment of Foreclosure and Sale; R. 3-12}. Prior to the sale, Chief Justice Toal issued Administrative Order 2011-05-02-11. Chase served the Notice of Mortgagor’s Right to Foreclosure Intervention on counsel for Sample at his last known address. {Notice of Mortgagor’s Right to Foreclosure Intervention, Certificate of Service; R. 17}. The action was stayed to allow completion of that process.

¹ Chase combines the Statement of Case and Statement of Facts in order to reduce repetition and for clarity. The Statement of the Case and Statement of Facts are one and the same for this matter.

Thereafter, the special referee noticed the sale of the property for February 2013. {Notice of Sale; R. 18}. Chase served the notice of sale on Sample's counsel at his last known address and served the notice of sale at Sample's home address. {Transcript p. 8; R. 26}. Sample's counsel admitted to the special referee that Sample still lived in the home where notice of sale was mailed. {Transcript p. 3; R. 21}.² Neither Sample nor her counsel appeared at the sale. {Transcript p. 9; R. 27}.

Sample then file a motion to set aside the foreclosure sale. {Motion to Set Aside; R. 13}. Sample argued she did not receive notice of the foreclosure sale because her counsel changed address since the inception of the action, and Chase's service violated her due process rights. {Motion to Set Aside p. 1; R. 13}. Chase defended against the motion, arguing all notices in the case were sent to the last known address of Sample's counsel pursuant to Rule 5(b)(1) of the South Carolina Rules of Civil Procedure. {Transcript p. 8; R. 26}.

Ultimately, the special referee denied the motion to set aside the foreclosure sale. {Order Denying Motion to Set Aside; R. 1-2}. The special referee found (1) that Chase properly served counsel for Sample at his last known address and (2) that counsel for Sample failed to provide any other address to Chase for service. {Order Denying Motion to Set Aside p. 1-2; R. 1-2}. The special referee did not rule on any due process argument advanced by Sample. {Order Denying Motion to Set Aside p. 1-2; R. 1-2}. Sample did not file any motion to reconsider or other applicable post-trial motion. Instead, Sample filed a notice of appeal. {Notice of Appeal}.

² Counsel further admitted that Sample and counsel received the notice of the hearing on the motion to set aside at the home address addressed to Sample. {Transcript p. 17; R. 35}.

Scope of Review

Our courts have repeatedly held that it “is undoubtedly the policy of the law to maintain judicial sales.” Wingard v. Hennessee, 206 S.C. 159, 170, 33 S.E.2d 390, 395 (1945). “The purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final.” Spillers v. Clay, 233 S.C. 99, 104, 103 S.E.2d 759, 761-62 (1958). Thus, it is well-settled that “the determination of whether a judicial sale should be set aside is a matter left to the sound discretion of the trial court.” Wells Fargo Bank, NA v. Turner, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008); Investors Sav. Bank v. Phelps, 303 S.C. 15, 17, 397 S.E.2d 780, 781 (Ct. App. 1990).

Argument

- I. **This Court should affirm the order denying the motion to set aside the foreclosure sale because Sample failed to preserve her argument for appellate review.**

Sample claims to this Court that the special referee “failed to properly apply the law of due process” in denying her motion to set aside the foreclosure sale. See Appellant’s Br. p. 5-6. This argument lacks merit. The special referee did not rule on this constitutional argument in the order denying Sample’s motion to set aside the foreclosure sale. Therefore, Sample’s due process argument is not preserved for appellate review. This Court should affirm the special referee’s order denying the motion to set aside the foreclosure sale.

“Preserving issues for appellate review is a fundamental component of appellate practice.” Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532-33, 564 S.E.2d 322, 323 (2001). “The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court

erred.” I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments. Id.; Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995) (holding that an appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court).

The first step in preserving an issue for appellate review is to present the ground with specificity to the trial court. Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). The trial court must also rule upon the issue for it to be preserved for review. Id.; see also Holy Loch Distributors, Inc. v. Hitchcock, 340 S.C. 20, 531 S.E.2d 282 (2000). If the trial court fails to rule on an issue, then it is incumbent on the party to seek a ruling by filing the appropriate post-trial motion in order to preserve the issue for appellate review. I’On, 338 S.C. at 422, 526 S.E.2d at 724; see also Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). Therefore, when a party raises the issue, the trial court fails to rule on the issue, and the party fails to raise the court’s failure to rule by way of the appropriate post-trial motion, then the issue is not preserved for appellate review. Great Games, Inc. v. S.C. Dep’t. of Rev., 339 S.C. 79, 85, 529 S.E.2d 6, 9 (2000).

Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. I’On, 338 S.C. at 422, 526 S.E.2d at 724. “The requirement also serves as a keen incentive for a party to prepare a case thoroughly.” Id. Importantly, “[i]t

prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.” Id.

Moreover, our courts have clearly and repeatedly held that constitutional arguments are no exception to the rules of issue preservation and are deemed waived if not raised to the trial court. A constitutional issue must be raised to and ruled upon by the trial court to be preserved for appeal. See Grant v. S.C. Coastal Council, 319 S.C. 348, 356, 461 S.E.2d 388, 392 (1995) (finding appellant’s argument that the hearing below was conducted in such a way as to deprive him of his constitutional due process rights was never mentioned prior to his appeal, and consequently, was not preserved for review); Fraternal Order of Police v. S.C. Dept. of Revenue, 352 S.C. 420, 435, 574 S.E.2d 717, 724 (2002) (holding that the failure to plead or obtain a ruling from the trial court on a constitutional argument renders the issue unpreserved); Bickerstaff v. Prevost, 380 S.C. 521, 525-26, 670 S.E.2d 660, 662 (Ct. App. 2009) (holding that constitutional arguments are no exception to the rules of issues preservation and are deemed waived if not raised to the trial court).

Sample failed to comply with these well-established rules of error preservation in two ways. First, Sample did not raise this due process argument with the required specificity to the special referee. In the motion to set aside the foreclosure sale, Sample merely made the cursory and unsupported statement that “[f]ailure to properly serve [Sample] with notice of hearings . . . violates her rights under the Due Process Clause” {Motion to Set Aside p. 1; R. 13}. Sample did not provide any further argument, facts, or authority in support of that bald assertion. {Id.; R. 13}. Such an

unsupported claim failed to raise the issue with the specificity required to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. See, e.g., Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733; State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 913 (2004) (stating that an issue must be “raised to the trial court with sufficient specificity” to be preserved for appellate review). Thus, the issue is not preserved for appellate review.

Second, even if Sample properly raised the issue, the due process argument is still not preserved for appellate review. The special referee did not rule on this argument in the order denying the motion to set aside. {Order Denying Motion to Set Aside p. 1-2; R. 1-2}. Sample did not file any motion to reconsider, or other appropriate post-trial motion, that raised the special referee’s failure to rule on the due process argument. Thus, Sample failed to preserve the argument for appellate review. See I’On, 338 S.C. at 722, 526 S.E.2d at 724; Great Games, 339 S.C. at 85, 529 S.E.2d at 9. Accordingly, this Court should affirm the order denying the motion to set aside the foreclosure sale on this basis alone.

II. This Court should affirm the order denying the motion to set aside the foreclosure sale because there is no requirement that a party to a foreclosure action be given personal notice of a judicial sale.

In her brief, Sample claims that the foreclosure sale should have been set aside because she was never personally served with the notice of foreclosure sale. See Appellant’s Br. p. 4; 5-6. This argument is a red herring and is manifestly without merit. South Carolina law contains no requirement that a party to a foreclosure action be given personal notice of a judicial sale. See Cumbie v. Newberry, 251 S.C. 33, 37,

159 S.E.2d 915, 917 (1968); Peoples Fed. Sav. & Loan Assn. v. Graham, 291 S.C. 178, 182, 352 S.E.2d 511, 514 (Ct. App. 1987).

In Graham, this Court addressed this same issue in the context of a foreclosure sale. After the plaintiff purchased the property at a foreclosure sale, Graham and two lien holders moved to have the foreclosure sale set aside based on the fact that they were not served with notice of the foreclosure sale. Id. at 180, 352 S.E.2d at 512. The trial court denied the motion, reasoning the lack of service “is not the sort of unfairness which will void the sale . . . the lack of personal service [is] insufficient grounds upon which to vacate the judicial sale.” Id. at 181, 352 S.E.2d at 513. This Court affirmed, holding “there is no requirement of law that parties to a suit for foreclosure be given personal notice of a judicial sale.” Id. at 182, 352 S.E.2d at 514.

Sample’s argument also fails for an additional reason. Chase sent the notice of sale to Sample’s attorney at his last known address and to Sample (and to her attorney, who is her husband) at her home address. Chase presented evidence that the notice was mailed to Sample at her residence. {Transcript p. 8; R. 26}. Thus, the burden of proof shifted to Sample to rebut the presumption of receipt. Once evidence of mailing is shown, the burden of proof shifts to the party claiming that he did not receive a mailing to offer evidence to rebut a presumption of receipt. See Bakala v. Bakala, 352 S.C. 612, 625, 576 S.E.2d 156, 163 (2003) (“Evidence of mailing establishes a rebuttable presumption of receipt.”); Foster v. Ford Motor Credit Co., 302 S.C. 450, 452, 395 S.E.2d 440, 441 (1990) (“Evidence that a letter is properly addressed and mailed raises a presumption it was received by the addressee”). Simply stating she did not receive the notice cannot overcome this presumption. Notably, Sample’s

counsel admitted to the special referee that (1) Sample still lived in the home where notice was mailed {Transcript p. 3; R. 21}, and (2) Sample and counsel received the notice of the hearing on the motion to set aside addressed to Sample at the home address {Transcript p. 17; R. 35}. Therefore, it is incongruous for Sample to contend she did not receive the notice of sale sent to her home address.

Therefore, any purported lack of service of the notice of sale cannot provide a basis to set aside the foreclosure sale. As a result, the special referee properly rejected this argument. This Court should affirm.

III. Even if notice was insufficient in this action, this Court should affirm because Sample failed to prove she suffered any resulting prejudice.

Even if Sample could establish that she failed to receive the notice of sale, this Court should still affirm the order denying the motion to set aside because Sample failed to demonstrate any resulting prejudice from the purportedly deficient service. Accordingly, this Court must affirm the special referee's order. See Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal").

As a general rule, where a party receives inadequate notice, he or she must demonstrate prejudice resulting from the insufficient notice. Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 15, 577 S.E.2d 190 (2003); Ballenger v. S.C. Dept. of Health & Env'tl. Control, 331 S.C. 247, 500 S.E.2d 183 (Ct. App. 1998). "To demonstrate prejudice in a matter involving allegedly insufficient notice, an appellant must establish if he or she had received appropriate notice, he or she would have done something different, thereby affecting the decision of the trial court and advancing his or her

case.” Chastain v. Hiltabidle, 381 S.C. 508, 518, 673 S.E.2d 826, 831 (Ct. App. 2009) (citing Gardner, 353 S.C. at 14, 577 S.E.2d at 197). “Even where a party receives no notice, he must establish that, had he received notice, he would have taken pertinent action and could have reduced his liability.” Gardner, 353 S.C. at 15, 577 S.E.2d at 197.

In this matter, Sample failed to argue or otherwise introduce any evidence of prejudice. She offered no evidence or argument that she was unable to bid on the property at the foreclosure sale due to any allegedly insufficient notice. Sample put forth nothing that would establish that she would have attended the sale, bid on the property, or otherwise done anything different than that which occurred in this matter. In fact, Sample never even mentioned the prejudice requirement in her motion to set aside the foreclosure sale or in argument to the special referee. In sum, Sample offered no evidence of prejudice to the special referee. As a result, Sample failed to establish an essential element required for her motion to set aside the foreclosure sale based on deficient notice. This Court must affirm.³

IV. The special referee properly found that Chase properly served Sample with the Notice of Mortgagor’s Right to Foreclosure Intervention.

To the extent that Sample argues that the sale should be set aside because the Notice of Mortgagor’s Right to Foreclosure Intervention was not sent to Sample’s

³ Sample cannot simply allege prejudice in her reply brief to refute this lack of evidence. In order to prevail in this appeal, the evidence presented to the special referee must demonstrate the prejudice. Sample cannot do so on this record. Therefore, this Court must affirm the ruling of the special referee.

counsel's address, that argument also fails for two reasons.⁴ First, Chase served the notice on Sample's counsel's last known address pursuant to Rule 5, SCRPC. Second, Chase filed the Notice of Mortgagor's Right to Foreclosure Intervention with court on June 8, 2011. {Notice of Mortgagor's Right to Foreclosure Intervention; R. 16}. Notably, Sample admits in her brief to this Court that the Notice of Mortgagor's Right to Foreclosure Intervention was filed on June 8, 2011. See Appellant's Br. p. 4. Sample's counsel took no action after filing of the notice.

Our rules of civil procedure allow service on a party to be made upon:

[T]he attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

Rule 5(b)(1), SCRPC. Chase served the Notice of Mortgagor's Right to Foreclosure Intervention on the last known address for Sample's counsel. {Notice of Mortgagor's Right to Foreclosure Intervention, Certificate of Service; R. 17; Transcript p. 8; R. 26}.

The South Carolina Supreme Court has "never required exacting compliance with the rules to effect service of process." Roche v. Young Bros., Inc. of Florence,

⁴ Sample's brief is unclear as to the basis she claims the special referee erred. Sample references the Notice of Mortgagor's Right to Foreclosure Intervention and "all subsequent notices" in her brief. See Appellant's Br. p. 4, 5. However, Sample never specifically states which notice is used to support her appellate argument. Chase believes that Sample claims relief based on failure to be served with the notice of sale because that is the type of motion she filed with the special referee. However, out of an abundance of caution, Chase also addresses any argument based on service of the Notice of Mortgagor's Right to Foreclosure Intervention.

318 S.C. 207, 209-10, 456 S.E.2d 897, 899 (1995). “Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” Roche, 318 S.C. at 210, 456 S.E.2d at 899. “To establish that service has been properly effected, the plaintiff need only show compliance with the civil rules on service of process.” McCall v. IKON, 363 S.C. 646, 652, 611 S.E.2d 315, 317 (Ct. App. 2005). “When these rules are followed, there is a presumption of proper service.” Id.

Chase sufficiently complied with the requirements of Rule 5(d)(1), SCRCP. Chase served the notice at counsel’s last known address. Sample’s counsel admitted the address used for service by Chase was the address “when I made my first appearance or notified counsel that I was involved in the case.” {Transcript p. 3-4; R. 21-22}. Sample’s counsel never provided counsel for Chase with any other address for service of notices. {Transcript; R. 19-37}. By sending to counsel’s last known address, a presumption of proper service exists under Rule 5(b)(1), SCRCP. In addition, service was complete upon mailing. Because service was presumed and complete upon mailing, Sample had notice of the Notice of Mortgagor’s Right to Foreclosure Intervention.

Moreover, the record indicates that Sample’s counsel’s several moves prevented service at any address other than the initial address provided by Sample’s counsel. Sample’s counsel never informed Chase of the relocation of his office. In fact, Sample’s counsel acknowledged at the hearing that he had moved offices several times since the inception of this action. The foreclosure action was filed in 2009. At that time, counsel used the post office box address for service. {Transcript p. 3-4; R. 21-

22}. Chase served Sample at that address. {Notice of Mortgagor's Right to Foreclosure Intervention, Certificate of Service; R. 17}. Sample's counsel first move occurred in April 2010. {Transcript p. 4; R. 22}. Counsel relocated to an address in Fort Mill, South Carolina. {Transcript p. 4; R. 22}. Counsel did not inform Chase of this move or any new address associated with that move. Then counsel moved again sometime in 2011 to another address in Rock Hill, South Carolina. {Transcript p. 5-6; R. 23-24}. Counsel again did not inform Chase of this move or any new address associated with that move.

Despite the constant moves, counsel expected Chase to have undertaken an investigation to determine his last known address. {Transcript p. 6; R. 24}. This Court has previously rejected such a claim. In NCNB South Carolina v. Floyd, the lender served the borrower at the address borrower provided at the inception of the transaction with the lender. 303 S.C. 261, 262-64, 399 S.E.2d 794, 795-96 (Ct. App. 1990). The master affirmed the service. Floyd, 303 S.C. at 263, 399 S.E.2d at 794. On appeal, borrower argued that the lender did not properly serve notice of a foreclosure hearing because the service address was not his last known address, and therefore, the foreclosure sale should be set aside. Id. at 263-64, 399 S.E.2d 794, 795-96. This Court rejected that argument, cited Rule 5(b)(1), SCRPC, and held the "address to which notice was mailed was the last address known to NCNB." Id. at 264, 399 S.E.2d at 796. This Court affirmed because borrower failed "to give any specific address at which he could have been located." Id. Notably, this Court reasoned service was proper at the last known address provided by the borrower

because “[t]he record indicates that [borrower] had no specific address but was moving from place to place” during the litigation. Id.

Floyd is analogous to this matter. Sample’s counsel did not inform Chase of any of the moves or any new service addresses associated with the moves. The record supports a finding that counsel “had no specific address but was moving from place to place” during this litigation. Thus, the proper place, per Floyd, for Chase to serve the notices was the address that Sample’s counsel provided (and admitted to the special referee that he provided) at the outset of the litigation.

Second, Sample has acknowledged that she was aware that Chase filed the Notice of Mortgagor’s Right to Foreclosure Intervention on June 8, 2011. See Appellant’s Br. p. 4. Thus, Sample had notice, and her claims to the contrary fail. See, e.g., Patel v. S. Brokers, Ltd., 277 S.C. 490, 494, 289 S.E.2d 642, 645 (1982) (“This Court has consistently overruled technical objections to service of process where the defendant has not been denied due process.”); LaFrance v. LaFrance, 370 S.C. 622, 636, 636 S.E.2d 3, 10 (Ct. App. 2006) overruled on other grounds by Arnal v. Arnal, 371 S.C. 10, 636 S.E.2d 864 (2006) (stating that “the overriding purpose of service is notice,” and where notice was given, refusal to address a motion because of technically improper service would not do substantial justice). This Court should affirm the order denying the motion to set aside the foreclosure sale.

V. The special referee properly found that the Attorney Information System did not provide a basis to set aside the foreclosure sale in this action.

Assuming Sections 1-4, supra, do not provide sufficient basis to affirm the special referee's order, this Court should still reject Sample's arguments regarding service. Sample contends that the special referee erred because her counsel had "updated his address . . . with the South Carolina Attorney Information System" prior to service of the notices at issue and that Chase should have served him at that address. See Appellant's Br. p. 5-6. This argument lacks merit for two reasons. First, Sample provides no authority for the proposition that the Attorney Information System ("AIS") supplanted the normal rules of service or relieved him of his obligation to inform counsel for Chase of his change in address. Second, AIS was not fully operational at the time of service in this matter. Thus, the information in AIS could not be used to serve Sample through her counsel.

As an initial matter, Sample has abandoned this argument because she does not cite any authority to support her claim. See, e.g., State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority"); Broom v. Jennifer J., 403 S.C. 96, 115, 742 S.E.2d 382, 391 (2013) (finding an issue abandoned where the party's brief cited minimal authority and presented no argument as to how the ruling was an abuse of discretion or constituted prejudice pursuant to applicable authority).

Second, the AIS order affords no relief to Sample. The AIS order set forth an effective date of November 18, 2011. See Supreme Court Administrative Order 2011-

10-17-01. The AIS order plainly and unambiguously allowed South Carolina attorneys until “November 18, 2011” to “log-on, verify, and update their contact information on the AIS.” Id. Thus, any information contained on AIS could not be considered accurate or reliable until the effective date of November 18, 2011. As the order plainly states, attorneys had until that date to alter, change, or update their information.


Chase effectuated service of the Notice of Mortgagor’s Right to Foreclosure Intervention on Sample, through her attorney, on June 7, 2011. {Notice of Mortgagor’s Right to Foreclosure Intervention and Certificate of Service; R. 17}. That was 164 days prior to the effective date of AIS. Chase could not be expected to rely on information in a system that was subject to change for another 164 days. Therefore, the special referee correctly found that it was incumbent on Sample’s attorney to notify counsel for Chase of any change in address and that AIS did not obviate that requirement. This Court should reject Sample’s unsupported argument and affirm the order denying the motion to set aside the foreclosure sale.

Conclusion

Based on the foregoing, this Court should affirm the order denying Sample’s motion for relief from the foreclosure sale.

{Signature Page Follows}

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  _____

Michael J. Anzelmo

SC Bar No. 72933

E-Mail: michael.anzelmo@nelsonmullins.com

B. Rush Smith III

SC Bar No. 012941

E-Mail: rush.smith@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for JPMorgan Chase Bank, National
Association

Columbia, South Carolina

SEPTEMBER 9, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Clyde N. Davis, Jr., Special Referee

Case No. 2009-CP-46-03996

Appellate Case No. 2013-001930

JP Morgan Chase Bank, National Association, Respondent,

v.

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

Of Whom Leah B. Sample is Appellant.

PROOF OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for JP Morgan Chase Bank, National Association, do hereby certify that I have served all parties in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

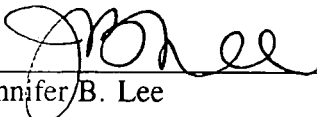
Pleadings:

Respondent's Brief

Party Served:

David B. Sample
2424 India Hook Road
Suite 160
Rock Hill, SC 29732

David B. Sample
Attorney at Law
1506 Ebenezer Road
Rock Hill, SC 29732



Jennifer B. Lee

September 8, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Clyde N. Davis, Jr., Special Referee


Case No. 2009-CP-46-03996
Appellate Case No. 2013-001930

JPMorgan Chase Bank, National Association, Respondent,
v.
Leah B. Sample and JP Morgan Chase Bank, National
Association s/b/m to Providian National Bank, Defendants
Of Whom Leah B. Sample is Appellant.

CERTIFICATE OF COUNSEL

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Michael J. Anzelmo
SC Bar No. 72933
E-Mail: michael.anzelmo@nelsonmullins.com
B. Rush Smith III
SC Bar No. 012941
E-Mail: rush.smith@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
803.799.2000

Attorneys for Respondent

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

JP Morgan Chase Bank, National Association,
Respondent,

v.

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

Of whom Leah B. Sample is the Appellant.

Appellate Case No. 2013-001930

Appeal From York County
Clyde N. Davis, Jr., Special Referee

Unpublished Opinion No. 2015-UP-361
Submitted May 1, 2015 – Filed July 15, 2015

AFFIRMED

David B. Sample, of Rock Hill, for Appellant.

Benjamin Rush Smith, III and Michael J. Anzelmo, both
of Nelson Mullins Riley & Scarborough, LLP, of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 66, 762 S.E.2d 729, 731 (Ct. App. 2014) ("The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court."); *id.* ("An abuse of discretion occurs when the conclusions of the [trial] court are either controlled by an error of law or are based on unsupported factual conclusions." (internal quotation marks omitted)); Rule 5(b)(1), SCRCPP ("Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court."); *NCNB S.C. v. Floyd*, 303 S.C. 261, 264, 399 S.E.2d 794, 795-96 (Ct. App. 1990) (holding service was proper under Rule 5 when a bank mailed its notices to a defendant's last known address and the defendant moved "from place to place" but did not provide the address where he could be located).

AFFIRMED.¹

SHORT, LOCKEMY, and McDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Clyde N. Davis, Jr., Special Referee

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JUL 30 2015

SC Court of Appeals

Case No.: 2009-CP-46-03996

Appellate Case No. 2013-001930

JP Morgan Chase Bank, National Association, Respondent,

v.

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

Of whom Leah B. Sample is the Appellant.

PETITION FOR REHEARING

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

Other counsel of record:

Michael J. Anzelmo
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 11070
Columbia, SC 29211
Attorney for Respondent

MEMORANDUM

STATEMENT OF THE CASE

Respondent filed a foreclosure action against Appellant 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 Appellant 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 Appellant's property was purchased by the Respondent. Also, a deficiency judgment was entered against the Appellant.

On March 6, 2013, Appellant 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 Appellant'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 Appellant's due process rights. By order filed on July 25, 2013, the Court denied the Appellant's motion to set aside the sale and subsequent order. By order filed on July 15, 2015, the Court of Appeals affirmed the Circuit Court.

POINT ALLEGEDLY OVERLOOKED

1. The address listed in the Attorney Information System is the proper address for serving an attorney, and it is undisputed that Appellant's counsel kept his entry in the system up to date.

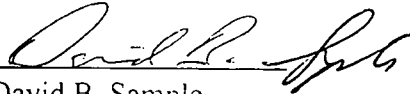
As stated in the Appellant's Final Brief, it is undisputed that the Appellant's attorney's address was at all times listed correctly in the Attorney Information System. By order of the South Carolina Supreme Court, "Each attorney and foreign legal consultant must, at a minimum, have a mailing address, an e-mail address and a phone number listed on the AIS. The mailing and e-mail address shown in the AIS shall be used for all purposes of notifying and serving the attorney or foreign legal consultant." South Carolina Supreme Court Order 2011-10-17-01.

CONCLUSION

For the reasons set forth above, the July 15, 2015 order of the Court of Appeals decision affirming the Circuit Court should be, and the foreclosure sale and all subsequent orders of the Circuit Court should be vacated.

Respectfully submitted,

July 30, 2015


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

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Clyde N. Davis, Jr., Special Referee

Case No.: 2009-CP-46-03996

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JUL 30 2015

SC Court of Appeals

JP Morgan Chase Bank, National Association, Respondent,


v.

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

Of whom Leah B. Sample is the Appellant.

**CERTIFICATE OF SERVICE
BY MAIL**

I certify that I have served the Final Brief of Appellant on Respondent JP Morgan Chase Bank National Association by placing a copy of same in the United States Mail to the attorney for the Respondent, Michael J. Anzelmo, Post Office Box 11070, Columbia, South Carolina 29211 on July 30, 2015.



July 30, 2015

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
AUG 05 2015
SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Clyde N. Davis, Jr., Special Referee

Case No. 2009-CP-46-03996
Appellate Case No. 2013-001930

JPMorgan Chase Bank, National Association, Respondent,
v.
Leah B. Sample and JP Morgan Chase Bank, National
Association s/b/m to Providian National Bank, Defendants
Of Whom Leah B. Sample is Appellant.

Return to Appellant's Petition for Rehearing

Pursuant to this Court's letter dated July 30, 2015, Respondent JPMorgan Chase Bank, National Association ("Chase") files this return to the petition for rehearing of Appellant Leah B. Sample ("Sample") as to the Panel's unanimous, unpublished opinion of JPMorgan Chase Bank, National Association v. Leah B. Sample, Op. No. 2015-UP-361 (S.C. Ct. App. filed July 15, 2015) (Shearouse Adv. Sh. No. 27 at 10) ("the Opinion"). The petition should be denied because Sample fails to raise any issue that the Panel overlooked or misapprehended in rendering the Opinion. To the contrary, the Panel considered and rejected the argument advanced by Sample in the petition.

Relevant Factual Background

This appeal involves the denial of Sample's motion to set aside a foreclosure sale. Sample claimed that Chase failed to properly serve Sample's counsel with notice of the foreclosure sale. The trial court rejected that claim. This Court affirmed. A recap of the factual history in this matter illustrates that affirmance was proper.

Chase initiated this foreclosure action against Sample in September 2009. {Special Referee's Order and Judgment of Foreclosure and Sale p. 2; R. 4}. Sample was represented at all times in the litigation her husband. At the outset of the action, Sample's counsel provided an address of Post Office Box 12340, Rock Hill, South Carolina, as counsel's address for service.¹ {Transcript p. 3-4; R. 21-22}. Sample's counsel provided no other address to Chase's counsel thereafter. As a result, Chase served the foreclosure notices and the Notice of Sale at that last known address of Sample's counsel. {Transcript of Hearing dated May 23, 2013, p. 8; R. 26}.

The special referee entered a foreclosure judgment in favor of Chase and directed sale of the property in December 2009.² {Special Referee's Order and Judgment of Foreclosure and Sale; R. 3-12}. Thereafter, the special referee noticed the sale of the property for February 2013. {Notice of Sale; R. 18}. Chase served the

¹ Counsel for Sample admitted that this Rock Hill Post Office Box address was the address provided to Chase "when I made my first appearance or notified counsel that I was involved in the case." {Transcript p. 3-4; R. 21-22}.

² Prior to the sale, the action was stayed to allow the parties to participate in foreclosure intervention per Chief Justice Toal Administrative Order 2011-05-02-11. Chase served the Notice of Mortgagor's Right to Foreclosure Intervention on counsel for Sample at his last known address. {Notice of Mortgagor's Right to Foreclosure Intervention, Certificate of Service; R. 17}. Notably, Sample received this notice, which was sent to the same address of her counsel as the Notice of Sale.

Notice of Sale on Sample's counsel at his last known address and served the notice of sale at Sample's home address. {Transcript p. 8; R. 26}. Sample's counsel admitted to the special referee that Sample still lived in the home where Notice of Sale was mailed. {Transcript p. 3; R. 21}.³ Neither Sample nor her counsel appeared at the sale. {Transcript p. 9; R. 27}.

After the sale, Sample filed a motion to set aside the foreclosure sale. {Motion to Set Aside; R. 13}. Sample argued she did not receive the Notice of Sale because her counsel changed offices since the inception of the action, and Chase failed to serve the Notice of Sale on the current address as required by the Attorney Information System ("AIS"). {Motion to Set Aside p. 1; R. 13}. The record belied Sample's argument.

The trial record established that Sample's counsel moved office several times during the pendency of the foreclosure action. The record showed that Sample's counsel never informed Chase of the relocation of his office. In fact, Sample's counsel acknowledged at the hearing that he had moved offices several times since the inception of this action.

From the inception of the action to the sale, Sample's counsel used, at a minimum, three different addresses. At the inception of the foreclosure, Sample's counsel used the post office box address for service.⁴ {Transcript p. 3-4; R. 21-22}. Sample's counsel then moved to an address in Fort Mill, South Carolina, in April 2010. {Transcript p. 4; R. 22}. Counsel did not inform Chase of this move or any new

³ Counsel further admitted that Sample and counsel received the notice of the hearing on the motion to set aside at the home address addressed to Sample. {Transcript p. 17; R. 35}.

⁴ Chase served Sample at that address with all notices, including the Notice of Sale.

address associated with that move. Sample's counsel moved again sometime in 2011 to another address in Rock Hill, South Carolina. {Transcript p. 5-6; R. 23-24}. Counsel again did not inform Chase of this move or any new address associated with that move.⁵

The trial court denied the motion to set aside the foreclosure sale. The trial court found (1) that Chase properly served counsel for Sample at his last known address pursuant to Rule 5(b)(1), SCRPC, and (2) that counsel for Sample failed to provide any other address to Chase for service. {Order Denying Motion to Set Aside p. 1-2; R. 1-2}. This Court affirmed in an unpublished opinion.

Argument

In the petition, Sample again alleges the Panel overlooked the fact the foreclosure sale should have been set aside because Sample counsel's address in the Attorney Information System "is the proper address for serving an attorney" and notice of the sale was not sent to that address. See Petition p. 2-3. This argument is manifestly without merit and does not present a basis for rehearing.

1. Sample presented this argument to the Panel in her appellate briefing. See Petition p. 3 ("As stated in Appellant's Final Brief . . ."). Thus, the Panel previously had the opportunity to review, weigh, and reject the argument raised in the petition. The argument should be rejected on this basis alone. See Kennedy v. South Carolina Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (holding it

⁵ Sample's counsel shifting addresses has continued through this appeal. Counsel provided a Rock Hill address on the Notice of Appeal. {Notice of Appeal; R. ____}. After dismissal of the appeal, counsel sought reinstatement and provided a new address in Rock Hill for his office. See Motion to Reinstate.

is not “the purpose of a petition for rehearing to have the case tried in the appellate court a second time”).

2. Sample’s reliance on the Attorney Information System is misplaced for several reasons. As an initial matter, Sample provides no authority for the proposition that the Attorney Information System supplanted the normal rules of service⁶ or relieved him of his obligation to inform counsel for Chase of his change in address. Thus, Sample has abandoned this argument because she does not cite any authority to support her claim. See, e.g., State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority”); Broom v. Jennifer J., 403 S.C. 96, 115, 742 S.E.2d 382, 391 (2013) (finding an issue abandoned where the party’s brief cited minimal authority and presented no argument as to how the ruling was an abuse of discretion or constituted prejudice pursuant to applicable authority).

Second, the AIS order affords no relief to Sample. Sample argument fails to understand that the AIS was not fully operational at the time of service of the Notice of Sale in this matter. The AIS order, relied upon by Sample in the petition, set forth an effective date of November 18, 2011. See Supreme Court Administrative Order 2011-10-17-01. The AIS order plainly and unambiguously allowed South Carolina attorneys until “November 18, 2011” to “log-on, verify, and update their contact information on the AIS.” Id. Attorneys had until that date to alter, change, or update their information. Thus, any information contained on AIS could not be considered accurate or reliable until the effective date of November 18, 2011.

⁶ As this Court properly held, Chase served Sample via Rule 5(b)(1), SCRCPP, at her counsel’s last address known to Chase.

Chase effectuated service of the Notice of Sale on Sample, through her attorney, on June 7, 2011, via Rule 5(b)(1), SCRPC. That was 164 days prior to the effective date of AIS. Chase could not be expected to rely on information in a system that was subject to change for another 164 days. Therefore, Sample's argument that the AIS provides "the proper address for serving an attorney" lacks merit. Chase was correct to serve Sample's counsel at the last address known to Chase via Rule 5(b)(1), SCRPC.

The trial court correctly found that it was incumbent on Sample's attorney to notify counsel for Chase of any change in address and that AIS did not obviate that requirement. The Panel properly rejected Sample's unsupported argument to the contrary. The petition for rehearing should be denied.

3. Even if Sample could argue that AIS supplanted the normal rules of service under Rule 5(b)(1), SCRPC, Sample's argument still fails to provide a basis for rehearing. First, South Carolina law contains no requirement that a party to a foreclosure action be given personal notice of a judicial sale. See Cumbie v. Newberry, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968); Peoples Fed. Sav. & Loan Assn. v. Graham, 291 S.C. 178, 182, 352 S.E.2d 511, 514 (Ct. App. 1987).

In Graham, this Court addressed this same issue in the context of a foreclosure sale. After the plaintiff purchased the property at a foreclosure sale, Graham and two lien holders moved to have the foreclosure sale set aside based on the fact that they were not served with Notice of Sale. Id. at 180, 352 S.E.2d at 512. The trial court denied the motion, reasoning the lack of service "is not the sort of unfairness which will void the sale . . . the lack of personal service [is] insufficient grounds upon which to vacate the judicial sale." Id. at 181, 352 S.E.2d at 513. This Court affirmed,

holding “there is no requirement of law that parties to a suit for foreclosure be given personal notice of a judicial sale.” Id. at 182, 352 S.E.2d at 514. Thus, Chase had no obligation to serve the Notice of Sale on Sample’s counsel either by Rule 5(b)(1), SCRCF, or by the address in the AIS.

Second, Chase sent Sample the Notice of Sale to an address other than her counsel’s address. In addition to serving Sample’s counsel, Chase sent the notice of sale to Sample (and to her attorney, who is her husband) at her home address. Chase presented evidence that the notice was mailed to Sample at her residence. {Transcript p. 8; R. 26}. Thus, the burden of proof shifted to Sample to rebut the presumption of receipt. Once evidence of mailing is shown, the burden of proof shifts to the party claiming that he did not receive a mailing to offer evidence to rebut a presumption of receipt. See Bakala v. Bakala, 352 S.C. 612, 625, 576 S.E.2d 156, 163 (2003) (“Evidence of mailing establishes a rebuttable presumption of receipt.”); Foster v. Ford Motor Credit Co., 302 S.C. 450, 452, 395 S.E.2d 440, 441 (1990) (“Evidence that a letter is properly addressed and mailed raises a presumption it was received by the addressee”). Simply stating she did not receive the notice failed to overcome this presumption. Notably, Sample’s counsel admitted to the special referee that (1) Sample still lived in the home where notice was mailed {Transcript p. 3; R. 21}, and (2) Sample and counsel received other notices in the case at the home address. {Transcript p. 17; R. 35}. Therefore, Sample received the Notice of Sale at her home address.

4. Even if Sample could establish that she failed to receive the Notice of Sale through service on her counsel or at her home address, Sample’s argument remains

unavailing and fails to provide a basis for rehearing because Sample failed to demonstrate any resulting prejudice from the purportedly deficient service.

Our rules require a party claiming inadequate notice to demonstrate prejudice resulting from the insufficient notice. Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 15, 577 S.E.2d 190 (2003); Ballenger v. S.C. Dept. of Health & Envtl. Control, 331 S.C. 247, 500 S.E.2d 183 (Ct. App. 1998). “To demonstrate prejudice in a matter involving allegedly insufficient notice, an appellant must establish if he or she had received appropriate notice, he or she would have done something different, thereby affecting the decision of the trial court and advancing his or her case.” Chastain v. Hiltabidle, 381 S.C. 508, 518, 673 S.E.2d 826, 831 (Ct. App. 2009) (citing Gardner, 353 S.C. at 14, 577 S.E.2d at 197). “Even where a party receives no notice, he must establish that, had he received notice, he would have taken pertinent action and could have reduced his liability.” Gardner, 353 S.C. at 15, 577 S.E.2d at 197.

In this matter, Sample failed to argue or otherwise introduce any evidence of prejudice to the trial court. Sample offered no evidence or argument that she would have attended the sale, bid on the property, or otherwise done anything different than that which occurred in this matter had she received notice. In fact, Sample never even mentioned the prejudice requirement in her motion to set aside the foreclosure sale or in argument to the special referee. Thus, the trial court properly denied the motion to set aside the foreclosure sale. The Panel correctly affirmed. The petition for rehearing should be denied.

Conclusion

Sample's rehearing argument lacks merit. Any purported lack of service of the Notice of Sale cannot provide a basis to set aside the foreclosure sale, as set forth herein. As a result, the Panel properly affirmed the trial court's order. The petition for rehearing should be denied.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Michael J. Anzelino

SC Bar No. 72933

E-Mail: michael.anzelino@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, South Carolina 29201

803.799.2000

Attorneys for JPMorgan Chase Bank, National
Association

Columbia, South Carolina

August 5, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM YORK COUNTY
Court of Common Pleas

SC Court of Appeals

Clyde N. Davis, Jr., Special Referee

Case No. 2009-CP-46-03996

Appellate Case No. 2013-001930

JP Morgan Chase Bank, National Association, Respondent,

v.

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

Of Whom Leah B. Sample is Appellant.

PROOF OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for JP Morgan Chase Bank, National Association, do hereby certify that I have served all parties in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

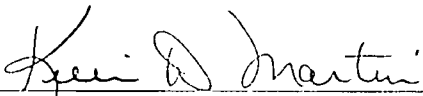
Pleadings:

Return to Appellant's Petition for Rehearing

Party Served:

David B. Sample
2424 India Hook Road
Suite 160
Rock Hill, SC 29732

David B. Sample
Attorney at Law
1506 Ebenezer Road
Rock Hill, SC 29732



Kelli D. Martin

August 5, 2015

The South Carolina Court of Appeals

JP Morgan Chase Bank, National Association,
Respondent,

v.

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

Of Whom Leah B. Sample is the Appellant.

Appellate Case No. 2013-001930

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul G. Short, Jr. J.

James E. ... J.

Stephanie P. McDonald J.

Columbia, South Carolina

FILED

September 17, 2015.

cc: David B. Sample, Esquire
Michael J. Anzelmo, Esquire
Benjamin Rush Smith, III, Esquire