

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable Richard L. Booth, Sumter County Master-in-Equity

Case No. 2015-000349

Respondent Bank, N.A.,

Respondent,

v.

Delores Appellant and Respondent Financial Bank (SD), Defendants,
Of Whom Delores Appellant is the Appellant.

MOTION TO CORRECT MINOR ERRORS IN REPLY BRIEF OF APPELLANT

Delores Appellant
10 Skytop Gardens, Apt. 23
Parlin, New Jersey 08859
Appellant
(732) 485-8145

Matthew Todd Carroll, Attorney at Law
Womble Carlyle Sandridge & Rice, LLP
1727 Hampton Street
Columbia, South Carolina 29201
Attorney for Respondent
(803) 454-7730

November 30, 2015

November 30, 2015

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

Dear Ms. Kitchings,

Appellant, in error printed a draft copy of the Reply Brief which was mailed to the Court of Appeals and Respondent on November 24, 2015. Enclosed please find minor corrections to Appellant's Reply Brief as follows:

1. Table of Authorities
Pages 3 and 4 –Correction to all the page number of Cases.
2. Correction to citation
Table of Authorities, Page 3.
Saini v. Cinelli Enters., 289 AD2d 770, 773 (N.Y. App. 2001)
And Page 6, line 6.
3. Correction to citation
Table of Authorities, Page 3
Koch v. National Basketball Assn., 245 AD2d 230, 231 (N.Y. App. Div. 1997)
And Page 6, line 10.
4. Page 6 of Reply Brief
Last sentence; Line 22 (Def. Sup. Memo (Dec. 11, 2014) R. p. ____).
5. Page 16 of Reply Brief
Last sentence; Line 22 (See Order of Summary Judgment (January 9, 2015) at page 5). R. p. ____); (Def. Sup. Memo (Dec. 11, 2014) R. p. ____).

Also, enclosed please find \$25.00 Motion Fee and stamped self-addressed envelope for return of court stamped copy.

Best regards,



Delores Prescott
Appellant

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REPLY STATEMENT OF FACTS

In this present case, the only entity that has anything to gain by applying Judicial Estoppel and Res Judicata is Respondent.

The dismissal of the Appellant's bankruptcy proceeding for failure to make a stipen payment was not the functional equivalent of a discharge, as such dismissal did not constitute an adoption by the Bankruptcy Court of the debtors' characterization of her assets Saini v. Cinelli Enters., 289 AD2d 770, 773 (N. Y. App. Div. 2001).

Accordingly, although it is undisputed that the Appellant did not disclose, in her bankruptcy petition, the existence of the Trial Payment Plan Agreements with Respondent that forms the basis of her claims and defenses in this action, the doctrine of judicial estoppel does not bar this action Koch v National Basketball Assn., 245 A.D.2d 230, 231 (N.Y. App. Div.1997). Because Respondent drafted the Special Forbearance and Trial Payment Plans they must be held responsible.

Section V. of Appellant's June 17, 2013 Motion to Modify Chapter 13 Plan: Property of the Estate, Status and Obligations of the Debtor after confirmation page 7 says, "Upon confirmation of the plan, property of the estate will remain property of the estate but possession of the property of the estate shall remain with the debtor. The Chapter 13 trustee shall have no responsibility regarding the use or maintenance of property of the estate. The debtor is responsible for protecting to non-exempt value of all property of the estate and for protecting the estate from operation of a business by the debtor. Nothing herin is intended to waive or affect adversely any rights of the debtor, the trustee, or party with respect to any cause of action owned by the debtor. (R. p. ____). (Def. Sup. Memo (Dec. 11, 2014) R. p.____).

691, 693-94 (2003). "A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." Id. at 142, 587 S.E.2d at 694.

IV. Abandonment of Property and Unclean Hands

On November 19, 2014, the Court heard arguments regarding Respondent's Motion for Summary Judgment and Motion to Strike. Both Respondent and Appellant were represented by counsel. At close of that hearing, the Court orally ruled that the doctrines of res judicata and collateral estoppel compel that 1) the loan agreement is enforceable, 2) Appellant is in default on that note, and 3) Appellant's counterclaims fail as a matter of law. Additionally, the Court requested further briefing on whether Appellant could collaterally attack the mortgage through an unclean hands affirmative defense and regarding the legal effect of Appellant's alleged abandoning the property during her bankruptcy proceedings.

In the present case, Respondent's Initial Brief at p. 7 line 16 states "the court requested that the parties submit additional briefing as to the legal effect of a debtor abandoning or surrendering property during bankruptcy proceedings...Ms. Prescott filed nothing."

This assertion is simply not true. The Court heard oral argument on Respondent's Motion for Summary Judgment and Motion to Strike Appellant's Amended Answer and Counterclaims November 19, 2014. During that hearing, the Court requested additional briefing from the parties, which was provided. (See Order of Summary Judgment (January 9, 2015) at page 5). R. p. ____); (Def. Sup. Memo (Dec. 11, 2014) R. p. ____).

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CERTIFICATE OF SERVICE

SC Court of Appeals

The undersigned hereby certifies on the 30th day of November 2015, she served a copy of the foregoing CORRECTIONS TO REPLY BRIEF by depositing same in the United States Mail first class, mail, proper postage, affixed, addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es):

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Delores Prescott

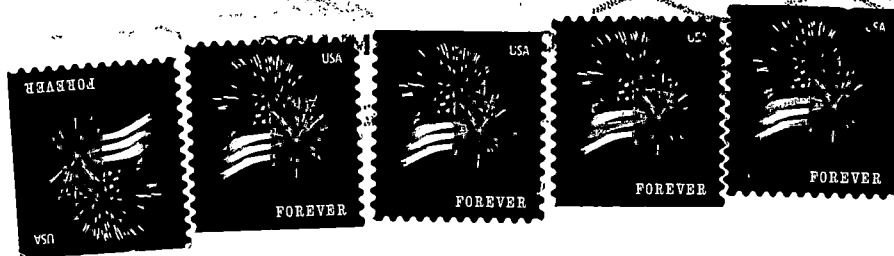
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