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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appellant Case No. 2015-000942

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Charles B. Simmons, Master in Equity Judge

RECEIVED
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SC Court of Appeals

Case No. 2010-CP-23-8330

Joel Clay Bracken, Appellant.

v.

Green Tree Servicing, LLC., Respondent.

APPELLANT'S MOTION FOR DENIAL OF RESPONDENT'S SECOND MOTION FOR ENLARGEMENT OF TIME TO SERVE AN INITIAL BRIEF AND EXPEDITE JUDGMENT UPON APPELLANT'S BRIEF, EXHIBITS AND THE LOCAL RECORDS

Appellant Joel Clay Bracken, respectfully moves this honorable Court to deny Respondent Green Tree Servicing, LLC second motion request for another thirty (30) day extension to serve it's Initial Brief in this appeal. Respondent's counsel, the Finkel Law firm, has already missed (2) two prior brief deadlines pursuant SCACR Rule 208(a)2, initially on July 22, 2015 and another mandated by the clerk of court, by November 12, 2015. Counsel inexplicably dawdled all it's allowable time until (3) three days before it was due to futilely motion for time enlargement on November 9, 2015. This court rightfully never granted an extension, presumably being aware of counsel's previous brief deadline calamities raised via Appellant's November 11, 2015 arguments, citations and attachments. (See *App. 's Mot. for Denial of Enlarg. and Exp. Judgment, Nov. 11, 2015.*)

Nevertheless, granting that extension would have been unavailing from the Court, as counsel did (again) fail to serve her brief by the deadline prayed upon of December 14, 2015. (See *Resp. Mot. For Enlarg. Nov. 9, 2015*) Respondent counsel now dares seeks unprecedented special privilege of this Court, after clearly neglecting several, previous brief deadlines of this appeal.

RESPONDENT'S MOTIONS FOR ENLARGEMENT

Respondent counsel waited far too late to approach this Court for relief on both motions. Upon second motion, counsel Creech, again, frittered until the last few days she prior requested (but not granted) would expire, to presume this Court award exceptional relief. Our Supreme Court in *Wade v. Gore, Et Al*, 154 S.C. 262 (S.C. 1930) fully set forth all parties MUST:

1. Seek an extension early enough, and before the time has expired, to get opposing counsel's consent to the extension; And
2. Seek an extension early enough for the court to rule on it before the time expires.
3. Give opposite party at least four days notice.

(See Attachment A, decision of *Wade v. Gore, Et Al*, 154 S.C. 262 (S.C. 1930))

Respondent's eleventh-hour motions, a mere couple of days before the brief deadlines, is ludicrously late for the overburdened Court to amuse and rule according to *Wade*. Also, counsel failed to provide notice to the Appellant by "at least four days" as required by *Wade* and also *Tribble v. Poore*, 28 S.C. 565, 6 S.E. 577 and *Deal v. Deal*, 85 S.C. 262, 67 S.E. 241. See other similar cases of *Southland Mobile Homes of South Carolina, Inc. v. Assoc.*, 270 S.C. 525, 244 S.E.2d 211 (1978)(failure to timely serve proposed case and exceptions); *Sellars v. Nicholson*, 243 S.C. 340, 133 S.E.2d 837 (1963)(failure to timely docket appeal). This Court's records show Respondent failed twice to file it's brief timely, possibly a third, if it's first motion for enlargement was allowed. Further, counsel has twice now fatally belated to seek extensions early enough for the court to rule before said times expired and twice failed to provide notice to the Appellant by at least four days beforehand pursuant precedence of *Wade*. And as much, Respondent's motion must be denied.

Counsel Creech initially misconstrues her previous November 9, 2015 motion for enlargement was granted. It was not and cannot be granted pursuant with *Wade*. The first paragraph of the second motion purports:

“Upon information and belief, the Initial Brief and Designation of Matter are due to be served upon Appellant Joel Clay Bracken on or before Monday, December 14, 2015.”

This Court never ruled any such “*information and belief*” that could justify counsel Creech’s assumption it was sanctioned. If counsel would have indeed served it’s brief by December 14, 2015 (which she did not), this Court has discretion whether to accept or strike the brief, reverse as an additional ground or also adjudicate the appeal solely on merits of Appellant’s brief pursuant SCACR Rule 208(a)(4). See *Parker v. Brown*, S.C. 2008-UP-324 (S.C.App. 2008) See also footnotes in *Lewis v. L.B. Dynasty, Inc.*, 732 S.E.2d 662, 400 S.C. 129 (S.C.App. 2012); *Richardson v. Richardson*, 2013-UP-298 (S.C.App. 2013); *Robinson v. Hassiotis*, 364 S.C. 92, 93 n.2, 610 S.E.2d 858, 859 n.2 (Ct. App. 2005).

Howbeit, our Supreme Court differentiates discretion will NOT be exercised in favor of:

“attorneys who have “allowed things just to rock along,” expecting this Court to take care of them under any and all circumstances. A party seeking relief...will have to show clearly that the acts, which were necessary for him to do, were omitted “through mistake or inadvertence...”

From *Wade* S.C. 265. (See Attachment A)

Counsel Creech fails to declare or exhibit any mistakes or inadvertence by her or her clients doing, that would qualify for relief from the deadlines pursuant *Wade*. Within her first November 9, 2015 motion, counsel Creech offered only six (6) words for grounds for relief of

“other pressing deadlines of the undersigned.” That’s not enough for this Court. Ms. Creech failed to cite any docketed cases and their specific deadlines, she refers to be more “pressing” for this Court to intelligently consider. The Court will not consider statements of fact that are found only within counsel’s argument. See *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933). Nothing is before the Court to substantiate her grounds or motion. The motion completely fails to cite any authorities or similar cases, that awarded brief extensions because a party’s attorney claim of *“other pressing deadlines.”* There is no such precedent in South Carolina.

Counsel’s grounds for an second motion are an disingenuous attempt to disguise her repeated failures to act. Counsel’s claim to have “requested but not yet received a copy of the transcript...” is utterly false. No request has ever been made for a transcript from Respondent counsel onto Appellant. Counsel fails to evidence when and how it was requested via any communication in her motions. Respondent’s counsel/law firm, have previously obtained the transcripts of the foreclosure hearing held before the Greenville County Master in Equity on April 8, 2015 on (2) two separate occasions:

1. On or around April 14, 2015 Respondent counsel, the Finkel Law Firm, requested and received copies of the April 8, 2015 hearing from the Master in Equity court reporter Ann Campbell. Respondent counsel then filed the above received transcript into the lower court records April 23, 2015 (See Attachment B recording date of first page and Affidavit date of Ann Campbell, Page No. 14 Transcript)
2. Appellant served his Initial Brief, Exhibits, Transcripts and Designation of Matter and the Respondent counsel’s main Columbia, South Carolina offices received them by August 3, 2015. (See Attachment C, USPS Proof of Mailing.)

Therefore, not only was Respondent timely served as evidenced by attached mail receipt, Respondent’s law firm already obtained and filed the hearing transcripts into the lower court records some (6) six months prior this second motion. Counsel’s assertions otherwise are meritless. Counsel Creech goes further to claim on page (2) of her second motion to claim not being in receipt of Appellant’s Designation of Matter till “simultaneously” receiving Appellant’s

Motion to Deny Respondent's Request for Enlargement of Time. Again, this is factually incorrect and farcical. If counsel Creech is having some kind of issues receiving complete court pleadings in her Charleston office from the law firm's main office branch in Columbia, it is of no error from the Appellant. Of note, counsel attempted no counter-arguments, responses, or case law, against Appellant's motion for denial arguments and memorandum. Thus, Appellant's arguments stand undenied and unchallenged before this Court for judgment. "He who does not deny, admits" is a Legal Maxim. When a party's argument is conclusory, the party is deemed to have abandoned the issue. See *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) A respondent abandons additional sustaining grounds by failing to timely raise them. See *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419-20, 526 S.E.2d 716, 723 (2000);

Finally, counsel Creech unconscionably blames her deadline failures and her grounds for enlargement, on the clerk of court not indexing the records of the case to her satisfaction:

"none of the above-referenced Motions appear to have been indexed in the Court record and it is unclear what is considered to be filing dates of the pleading."

And requests a second 30 day enlargement;

"Due to the foregoing, uncertainty as to the deadlines subsequent to the reinstatement of this appeal, and other pressing deadlines of the undersigned..."

(See *Resp. Second Motion for Enlarg.*, Page No. 3)

There is no "uncertainty as to the deadlines" subsequent to the reinstatement of this appeal as the counsel attempts to recreate. On October 13, 2015, this Court granted reinstatement of the appeal, after evidence was presented that the Clerk erroneously dismissed the appeal regarding Appellant's filing fee payment. (See Clerk Order, July 29, 2015 and Reinstatement Order Oct. 13, 2015) Within latter said Court Order, served upon all parties, was formal notice

“respondent’s initial brief must be filed within thirty (30) days of the date of this letter.” The meaning of “must be filed” was dead clear and unambiguous. Respondent was conditionally given another fair second chance (although it need not have) by the Clerk, upon said reinstatement, to comply by November 12, 2015. Counsel knew this and failed, procrastinating to the last few days to motion for more time by her own choice, not by any illness or extraordinary circumstances beyond her voluntary control. Only extraordinary circumstances such as illness or other circumstances beyond the control of the movant will warrant the granting of an extension. (See Order regarding Extensions in Cases Seeking a Petition for a Writ of Certiorari to Review a Decision of the S.C. Court of Appeals, No. 2014-07-16-01 (S.C. July 16, 2014)). Ultimately, counsel’s enlargement motions are admissions, the present appeal and initial brief deadlines are insignificant to her in comparison to her other deadlines and schedule.

APPELLANT’S MOTION FOR EXPEDITED JUDGMENT

Appeals by the high courts must be expedited to conclusion by all necessary substantial justice.

“It is the purpose of the Court to do all we can to administer justice as speedily as possible. Litigation should be ended as early as practicable, with the view to substantial justice between litigants.”

(See Attachment A, decision of *Wade v. Gore, Et Al*, 154 S.C. 262 (S.C. 1930))

Further;

“[t]o facilitate expediency, there will be a presumption against granting motions for extensions of time to file petitions, returns, briefs, records, and other documents...” “A motion for an extension of time will only be granted in the most extraordinary of circumstances and for the most compelling reasons in the interest of justice.”

(See Order *Expediting Appeals from Termination of Parental Rights Proceedings, Adoption Proceedings, and/or Dep't of Soc. Servs. Actions Involving Custody of a Minor Child*, No. 2011-10-20-01 (S.C. Oct. 20, 2011)).

In South Carolina, when a respondent fails to timely file a brief, this Court finds it suitably efficient, proper and just, to address the issues as presented by the appellant. See *Durham v. United Cos. Fin. Corp.*, 326 S.C. 403, 404, 483 S.E.2d 786 (Ct. App. 1997) rev'd on other grounds, 331 S.C. 600, 503 S.E.2d 465 (1998). Other jurisdictions have reversed the lower court's judgment so long as the "brief of the [appellants] appears to reasonably sustain the assignments of error." See *Hedden v. Vaughan*, 220 P. 337 (Okl.1923); *Capitol Dodge, Inc. v. Haley*, 154 Ind.App. 1, 288 N.E.2d 766, 768 (1972)

Rule 208(a)(4), empowers this Court upon the failure of a respondent to timely file a brief, to "take such action as it deems proper." South Carolina's Supreme Court recognized the failure of a respondent to file a brief triggers cause for reversal and that failure is considered an additional ground for remand.

"Respondent...did not file a brief with this Court. Her failure to do so allows this Court to take such action upon the appeal as it deems proper. This failure alone would justify reversal; however, we simply consider it as an additional ground."

From *Turner v. Santee Cement Carriers, Inc.*, 277 S.C. 91, 96, 282 S.E.2d 858, 860 (1981).

This Appellate Court repeatedly embraces this doctrine;

"South Carolina courts have recognized the failure of a respondent to file a brief could justify a reversal."

From *Parker v. Brown*, S.C. 2008-UP-324 (S.C.App. 2008); See also footnotes in *Lewis v. L.B. Dynasty, Inc.*, 732 S.E.2d 662, 400 S.C. 129 (S.C.App. 2012); *Richardson v. Richardson*, 2013-UP-298 (S.C.App. 2013); *Robinson v. Hassiotis*, 364 S.C. 92, 93 n.2, 610 S.E.2d 858, 859 n.2

(Ct. App. 2005); See also *Wierszewski v. Tokarick*, 308 S.C. 441, 444 n.2, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992) (stating where respondent failed to file a brief, “it [was] proper to reverse on the points presented rather than to search the record for reasons to affirm”).

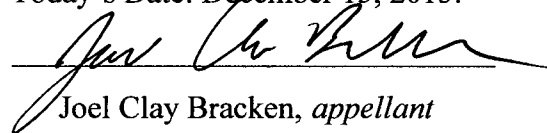
Appellant’s Initial Brief, exhibits, pleadings, transcript attachments and subsequent signed Orders of the lower court, is more than sufficient to provide this court with an understanding of all issues of this appeal. All matters are now before this Court and ripe for justice. At the end of the day, this appeal is from contended errors and/or abuse of discretion of the lower court and clerk. The Respondent counsel can add little or nothing more than this Court’s well trained and versed judiciary would already consider from the lower court and clerk’s rulings. The Appellant’s brief has established reversible error of the lower court and demonstrated a *prima facie* appeal that should prevail on the merits.

CONCLUSION

For these arguments and high court case precedents set forth above herein and attached, Respondent’s first and second motions must be denied and Appellant’s motion to swiftly adjudicate the appeal upon Appellant’s Initial Brief, exhibits, pleadings, transcript attachments and subsequent signed Orders of the lower court, as deemed proper and just.

Respectfully submitted,

Today’s Date: December 15, 2015.



Joel Clay Bracken, *appellant*

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ATTACHMENT

A

Supreme Court of South Carolina.

WADE V. GORE ET AL

154 S.C. 262 (S.C. 1930)

WADE v. GORE *ET AL.*

12823

Supreme Court of South Carolina.

January 31, 1930. *263

Before HENRY, J., Chester. Motion refused.

Action by C.F. Wade against W.G. Gore and others. Plaintiff recovered judgment, and defendants gave notice of their intention to appeal, but appeal was not perfected within the time required by law, and the appeal was dismissed. On defendants' motion to reinstate the appeal.

Mr. J.H. Glenn, for appellant.

Mr. J.M. Hemphill, for respondent.

January 31, 1930. The opinion of the Court was delivered by

MR. JUSTICE BLEASE.

The plaintiff in this cause had a favorable verdict and judgment in the Court of Common Pleas for Chester County. Within the proper time, the defendants gave notice of their intention to appeal. The appeal was not perfected within the time required by law. On motion of the plaintiff, the Circuit Judge, Hon. J.K. Henry, dismissed the appeal. The defendants then moved before this Court that the appeal be reinstated under the provisions of Section 650 of the Code of Civil Procedure, Vol. 1, Code of 1922.

It appears that the counsel for the defendant made no effort to secure the consent of plaintiff's attorneys to an extension of time for perfecting the appeal. It also appears that no steps were taken to secure such extension from the Presiding Judge, who heard the cause on circuit, or from one of the justices of this Court, as provided for in Section 649, *Id.* *264

Upon the hearing of the motion in this Court, we decided that the defendants were not entitled to have their motion granted, since the reasons, upon which the same was based, appeared to us insufficient. It is therefore ordered that the said motion be, and the same is hereby, refused.

At almost every session of this Court motions of this character are made, and in a majority of cases they are refused. Such motions take up much time that could the better be used in disposing of cases awaiting on the docket to be heard, cases prepared diligently for hearing. Because of the prevalence of these motions, we think it well to state, and to have reported, for the information of the bar, the attitude of the Court in regard to reinstatement of appeals.

If a litigant who has lost his case in a lower Court desires to appeal to this Court he must, within the ten days allowed by law, give notice of his intention to appeal. If that notice is not given, there can be no appeal, and no extension for the time of the giving of this notice can be granted by either the lower Court or this Court. See Sections 649 and 650, *Id.*, and *Abney v. Cole*, 30 S.C. 607, 10 S.E., 390.

After the required notice of intention to appeal has been given, it is the duty of appellant's counsel to proceed in the matter of perfecting the appeal. If, for any



reason, counsel for appellant see that the proper steps or proceedings in the preparation and perfection of the appeal cannot be taken within the permitted time, such counsel should seek early enough, and before the time has expired, to procure the consent of the opposing counsel for further time in the matter; and the proper and safer practice, for the protection of all parties, and for the Court as well, is to have such consent, if obtained, evidenced by writing.

If the opposing counsel do not consent to an extension of time, or, if for any good reason counsel for appellant cannot, or should not, ask opposing counsel for the extension, then appellant's counsel should proceed on motion, *265 as provided for in Section 649, *supra*, to secure from the judge who heard the cause, or from one of the justices of this Court, an order allowing the time to be extended. Attorneys should be reminded, perhaps, that the motion for such extension must be made before the expiration of the time limited, and at least four days' notice of such notice must be given to the opposite party. *Tribble v. Poore*, 28 S.C. 565, 6 S.E., 577; *Deal v. Deal*, 85 S.C. 262, 67 S.E., 241.

It should not be necessary often for an appellant's counsel to have to proceed under the provisions of Section 650, *supra*. By the terms of that section, this Court may, in our discretion, "permit such act or acts to be done at any time to perfect the appeal." But this discretion will not be exercised in favor of litigants and their attorneys who have "allowed things just to rock along," expecting this Court to take care of them under any and all circumstances. A party seeking relief under that section will have to show clearly that the acts, which were necessary for him to do, were omitted "through mistake or inadvertence," that his appeal "was taken *bona fide*," and he may expect the Court, even if the motion is granted, to impose such terms as we shall think just in the premises to protect the party who is being delayed in the enforcement of his rights. An applicant for reinstatement, under the provisions of Section 650, should show also that he has endeavored to secure extension of time within the proper

time, as hereinbefore indicated, or that for some *especially good reason* he could not secure the same.

It is the purpose of the Court to do all we can to administer justice as speedily as possible. Litigation should be ended as early as practicable, with the view to substantial justice between litigants. Delays in perfecting appeals, without exceptionally good cause therefor, will not be countenanced.

MR. CHIEF JUSTICE WATTS and MESSRS. JUSTICES COTHRAN, STABLER and CARTER, concur.

ATTACHMENT

B

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF COMMON PLEAS
3)

4 Green Tree Servicing, LLC,) Case No.: 10-CP-23-08330
5)

6 Plaintiff,) **TRANSCRIPT OF TESTIMONY**
7 vs.)

8) April 8th, 2015
9) Greenville, South Carolina
10)

11 Joel Clay Bracken and)
12 Bank of America, N.A.,)

13 Defendant(s),)
14)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHIER
2015 APR 23 PM 4 32

BS

15 B E F O R E:

16 The Honorable Charles B. Simmons, Jr.
17 Master in Equity for Greenville County

18 A P P E A R A N C E S:

19 Chris S. Truluck, Esquire
20 Finkel Law Firm
21 Attorney for Plaintiff

22
23
24 **Ann Dickey Campbell, CVR**
25 **Court Reporter**

ENTERED COMPUTER

1 BY THE COURT: All right, which case are we proceeding
2 with first this afternoon?

3 MR. TRULUCK: Your Honor, with your permission, I'd
4 like to call BAC Home Loans versus Joel Clay Bracken.

5 BY THE COURT: All right, and who is here on the
6 Bracken matter?

7 MR. BRACKEN: I am, Your Honor.

8 BY THE COURT: All right, sir, if you would come to
9 this table right up here, please, sir.

10 All right, and for my court reporter, if you would state
11 your full name, please, sir?

12 MR. BRACKEN: Joel Clay Bracken.

13 BY THE COURT: Okay, and Mr. Bracken, do you understand
14 what this is involving here this afternoon?

15 MR. BRACKEN: Yes, I do.

16 BY THE COURT: Okay, and I will note that at some
17 point, I believe it was yesterday, you had filed with the Clerk
18 of Court's Office here in Greenville County, a Motion to Stay
19 the Proceedings based on what appears to be a lawsuit that you
20 have brought against the Plaintiff's law firm and others,
21 alleging violation of the Federal Debt Collection Practices Act.

22 MR. BRACKEN: Correct.

23 BY THE COURT: Okay, and I will be glad to hear from
24 you as far as how that separate Federal Court action should or
25 would or could stay this State Court action for foreclosure.

1 MR. BRACKEN: Okay, Your Honor, thank you.

2 Finkel Law Firm is a debt collector, as you know, pursuant
3 to the Federal Debt Collection Practices Act. The law firm filed
4 this suit on behalf of their client, BAC. I disputed that debt
5 pursuant with the F.D.C.P.A., and they have continued debt
6 collection activity and correspondence with me after I have
7 disputed that debt and have not complied with federal law as far
8 as validating that debt or notifying that it is disputed in its
9 communications with me and with the Court --- the Clerk of
10 Court. Therefore, the continued debt collection in this case is
11 claimed to be invalid federal law and proceeding forward with
12 the unethical until that is resolved.

13 BY THE COURT: All right, do you have any South
14 Carolina case law that supports your position here today?

15 MR. BRACKEN: I have federal case law.

16 BY THE COURT: Do you have any South Carolina Federal
17 Court law or any Fourth Circuit law that supports your position
18 here today?

19 MR. BRACKEN: Not today, but I can provide it on
20 request.

21 BY THE COURT: Okay, well, then, I mean, I've looked
22 through the materials. I've looked through the file. I've looked
23 through your Answer that was filed April 30th, 2014, and I just
24 don't believe that your independent federal action for violation
25 of the Debt Collection Act would stay the state court action, so

1 I am going to deny your Motion, and I am going to hear from the
2 Plaintiff's attorney as far as the underlying substantive debt
3 action.

4 You have every right in the world to appeal my decision ---

5 MR. BRACKEN: I object.

6 BY THE COURT: Well, and that's fine. If you will let
7 me finish, I will be glad to ---

8 MR. BRACKEN: Okay, I just want it noted.

9 BY THE COURT: If you will let me do my part ---

10 MR. BRACKEN: Yes, sir.

11 BY THE COURT: --- you can do your part, okay? You will
12 be receiving a Court Order at some point. You have time as set
13 out in the Rules of Procedure to file the appeal with our South
14 Carolina Court of Appeals. I would strongly recommend if you do
15 that, that you have an attorney, because there are any number of
16 technical time frames and time limits and substantive matters
17 that have to be filed in order to properly perfect and preserve
18 your appeal.

19 MR. BRACKEN: There is another specific matter of
20 jurisdiction of the Court.

21 BY THE COURT: Okay.

22 MR. BRACKEN: And as you know, that can be raised at
23 any time.

24 BY THE COURT: Yes, sir.

25 MR. BRACKEN: Even during the hearing. As we were here

1 in 2011, I motioned for a Order to Quash Service of the Summons.
 2 And you heard that case back, I believe it was in June, as you
 3 can see in the court record. And the Plaintiff had stated that
 4 it had served me through publication. And the evidence is
 5 contrary that that publication complied with the Order of
 6 Publication by the Circuit Court, and I have evidence to show
 7 you that.

8 BY THE COURT: All right, now, were those the issues
 9 that were addressed in the Order that was filed with the Clerk
 10 of Court's Office on September 2nd, 2011?

11 MR. BRACKEN: This is a separate issue, a separate
 12 issue that was recently discovered.

13 BY THE COURT: All right, so are you trying to raise,
 14 then, that you were not properly served?

15 MR. BRACKEN: Correct. By publication. If you would
 16 look at the Order of Publication, it states expressly, by Judge
 17 Miller, that "Defendant by publication of the Summons together
 18 with notice once a week for three consecutive weeks in the
 19 Greenville newspaper." The affidavit by The Greenville News
 20 states that it only ran for two weeks on three different
 21 occasions. Therefore, Defendant has not been served by the
 22 Order.

23 BY THE COURT: All right, and please understand, I'm
 24 just trying to ask a question to understand what's going on, but
 25 have you not, since that time, filed any number of pleadings

1 with the Court?

2 MR. BRACKEN: I have filed pleadings, but that doesn't
3 mean --- it doesn't mean that I've waived consent to
4 jurisdiction subject matter.

5 BY THE COURT: All right, well, prior to today, have
6 you raised lack of service at any time?

7 MR. BRACKEN: I raised lack of service on me personally
8 at that Motion to Quash hearing. I did not dispute the
9 publication.

10 BY THE COURT: All right.

11 MR. BRACKEN: Do you see in the record Ms. Mullinax of
12 The Greenville News affidavit where it states that Defendant was
13 only --- the publication was from December 2nd, 2010 through
14 Thursday, December 16th, 2010.

15 BY THE COURT: All right.

16 MR. BRACKEN: That's only two weeks.

17 BY THE COURT: All right, but I also see you filed an
18 Answer, a multi-page Answer, some 18-page Answer on April 30th,
19 2014, correct?

20 MR. BRACKEN: Yes.

21 BY THE COURT: All right, then, I find if there was a
22 service issue, that your filing and making any number of any
23 voluntary appearances is deemed a waiver of any service defect.

24 MR. BRACKEN: There is no waiver, and I have South
25 Carolina to ---

1 BY THE COURT: Okay, thank you, sir ---

2 MR. BRACKEN: --- show you.

3 BY THE COURT: --- I've already ruled. You can take
4 that issue to Columbia as well.

5 MR. BRACKEN: I will. I will do so.

6 BY THE COURT: I have great confidence you will do
7 that, sir.

8 All right, I will be glad to hear from you.

9 MR. TRULUCK: Thank you, Your Honor.

10 For value received, Mr. Bracken, Defendant here, Your
11 Honor, on December 30th, 2002, did execute a note and mortgage in
12 the amount of \$95,500.00 at the interest rate at 6.25% per
13 annum. He has since fallen into default and the principal due as
14 of October 1st, 2009 is \$86,535.59; interest to date is
15 \$30,289.02; escrow adjustments, \$7,963.89; corporate advances,
16 \$550.00; costs of collection, \$1,335.62; attorney's fees awarded
17 but unpaid, \$1,125.00; for a total debt amount of \$127,799.19.

18 Deficiency in this matter has been waived, Your Honor, and
19 there is also a request to have the caption amended to Green
20 Tree Servicing. There is an assignment attached as well, Your
21 Honor.

22 BY THE COURT: All right, so as relates to the
23 assignment, if you could provide the factual basis for that
24 request, please, sir?

25 MR. TRULUCK: Yes, Your Honor. Your Honor, by

1 assignment dated May 16th, 2013 and recorded August 27th, 2013 in
2 Book 5229 at page 1325, Bank of America, N.A., successor by
3 merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home
4 Loans Servicing LP assigned the subject mortgage to Green Tree
5 Servicing, LLC, making Green Tree Servicing, LLC the real party
6 in interest, Your Honor, and so we do ask for an Order Amending
7 the Caption as to the real party in interest.

8 BY THE COURT: All right, so you're telling me that via
9 that recorded assignment, that Green Tree Servicing is now the
10 owner and holder of the note and mortgage?

11 MR. TRULUCK: Yes, Your Honor.

12 BY THE COURT: Okay.

13 MR. BRACKEN: Objection, Your Honor, they are not a
14 party to this case.

15 BY THE COURT: Yes, sir, I understand. They are
16 requesting to be allowed to come in as a result of the
17 assignment that is attached to their Motion that apparently was
18 filed at the Greenville County Register of Deeds Office on
19 August 27th, 2013.

20 And has Mr. Bracken been supplied with a copy of the
21 Motion?

22 MR. TRULUCK: Your Honor, I, before this hearing, I did
23 provide him with a copy of the proposed Order and a copy of the
24 Affidavit filed. I will have to check to see if he was provided
25 with the proposed Motion, Your Honor. (Pause).

GREENVILLE COUNTY COURTHOUSE

1 MR. BRACKEN: Your Honor, if I could also add this
2 other issues that need to be addressed?

3 BY THE COURT: All right, I will be glad to hear from
4 you.

5 MR. BRACKEN: Okay. Now?

6 BY THE COURT: Yes, sir.

7 MR. BRACKEN: Okay, I sent a QWR, a qualified written
8 request, out to Bank of America and also to Green Tree, and
9 Green Tree purports that the real holder of the mortgage is
10 Fannie Mae, and Fannie Mae is not represented in this case in
11 any capacity.

12 BY THE COURT: All right, what's your next issue?

13 MR. BRACKEN: The assignment by the controversial
14 entity, MERS, Mortgage Electronic Registration Services, MERS is
15 not a licensed entity to perform any transactions in South
16 Carolina with the Secretary of State, especially regarding real
17 estate. They dissolved back in 2004.

18 BY THE COURT: All right, what's your next issue?

19 MR. BRACKEN: Next issue would also be that MERS lacks
20 the capacity to assign any real estate property under its own
21 charter, and I have evidence to prove that. It neither holds
22 title, neither has interest in the property, it's just --- all
23 it is as a nominee is a registration entity that records
24 transactions, period. And I have documentation that's already on
25 file.

1 BY THE COURT: Okay.

2 MR. BRACKEN: From on the previous Motion and also
3 court case hearings that uphold that.

4 BY THE COURT: All right, any other issues that you
5 wish to raise?

6 MR. BRACKEN: I raise the issue that at no time is ---

7 BY THE COURT: Mr. Bracken, I'm sorry, under the Rules,
8 you do need to be standing ---

9 MR. BRACKEN: I'm sorry.

10 BY THE COURT: --- when you're addressing the Court,
11 please, sir.

12 MR. BRACKEN: I'm sorry, Mr. Simmons.

13 BY THE COURT: Thank you.

14 MR. BRACKEN: I do want to raise and point out the
15 issue that at no time have I waived consent to hearings of this
16 Court for subject matter jurisdiction, and if I could hand you
17 pleadings to look at?

18 BY THE COURT: Yes, sir, you can hand to my bailiff
19 whatever you want to hand up.

20 MR. BRACKEN: Please look at both South Carolina
21 Appellate Court opinions.

22 Specifically under Rule 3(a), a civil action is commenced
23 when the Summons and Complaint are filed and the Summons and
24 Complaint are served within the statute of limitations
25 prescribed by law.

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1 Now, if the defense is not served within that statute of
2 limitations, actual service must be accomplished not later than
3 120 days after the filing; therefore, by February 7th, if I
4 wasn't served according to the statute, this case . . .

5 BY THE COURT: Which statute are you referring to,
6 please, sir?

7 MR. BRACKEN: Under South Carolina 15-3-20(b).

8 BY THE COURT: Okay.

9 MR. BRACKEN: And also under the Court Rule 3(a).

10 BY THE COURT: All right, and I am denying all the
11 motions that you have raised here, I think for the first time on
12 the record, but you are protected now for appeal purposes.

13 Any other issues that you wish to raise?

14 MR. BRACKEN: At this moment, I believe I've raised
15 enough to make a good claim or defense based on the pleadings.

16 BY THE COURT: And from my review of the file, it
17 appears that there had been a loss mitigation agreement?

18 MR. TRULUCK: Your Honor, I am not familiar with the
19 intimate details of the loss mitigation agreement. I did receive
20 --- review the documents that were filed by my colleagues. And
21 if I recall, it didn't work out. That's a very broad response, I
22 realize.

23 BY THE COURT: Well, I am looking at the Order to
24 Restore the case that was filed March 10th of this year, and it
25 states, "The mortgagors have breached the terms of the parties'

1 loss mitigation agreement, and the Plaintiff wishes to proceed
2 with its foreclosure."

3 MR. TRULUCK: I am not aware immediately, Your Honor. I
4 will see if I can find it.

5 BY THE COURT: Well, and substantively, I don't know
6 that that makes any difference at this point.

7 All right, so, Mr. Bracken, I am going to give you both of
8 these documents you handed up to me. One is a case from 1990,
9 397 S.E. 2d 786; and another is an unpublished opinion, 2010-UP-
10 511. So I am going to make sure you get those back for your
11 record purposes.

12 So what's going to happen, Mr. Bracken, is that the
13 property is going to be set for a foreclosure sale. The next
14 sale is going to be on June 1st at 11 o'clock in the morning in
15 this same courtroom. So, you know, if you file the appeal, I
16 want to make sure you understand that filing an appeal is not an
17 automatic stay of the mortgage foreclosure action, so you would
18 have to file a Petition for a stay and post an appropriate bond.
19 You can either make that request at the appellate level or here
20 at the trial court level.

21 MR. BRACKEN: Okay.

22 BY THE COURT: All right, thank you so much for coming
23 in, sir.

24 MR. TRULUCK: Thank you, Your Honor.

25 (WHEREUPON, a discussion was held off the record).

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1 BY THE COURT: And let me ask you, on the case with Mr.
2 Bracken, if you would do a short Order just setting out the
3 various rulings made here on the bench this afternoon, and also,
4 of course, the various Motions raised by Mr. Bracken, and you
5 may very well need a Transcript in order to fully prepare that
6 Order.

7 ----- END OF TRANSCRIPT -----

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1 I, the undersigned Ann D. Campbell, Court Reporter, Office
 2 of Master in Equity for Greenville County, South Carolina, do
 3 hereby certify that the foregoing is a true, accurate and
 4 complete transcript of record of all the proceedings had and
 5 evidence introduced in the hearing of the captioned case,
 6 relative to appeal, before The Honorable Charles B. Simmons,
 7 Jr., as Master in Equity for Greenville County, South Carolina,
 8 on the 8TH day of April, 2015.

9 I do further certify that I am neither of kin, counsel, nor
 10 any interest to any parties hereto.

11 April 14th, 2015

12
 13 
 14 Ann Dickey Campbell, CVR

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Appellant Case No. 2015-000942

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Charles B. Simmons, Master in Equity Judge

Case No. 2010-CP-23-8330

Joel Clay Bracken, Appellant.

v.

Green Tree Servicing, LLC., Respondent.

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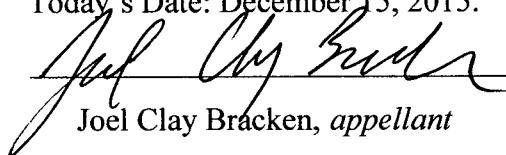
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