

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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DEC 29 2015
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Master-in-Equity

Cynthia Graham Howe, Master-in-Equity

Case No. 2010-CP-26-11806

Ventures Trust 2013 I-H-R by MCM Capital Partners, its Trustee,

Respondent,

v.

Nancy Hardwick, Bank of America, N.A.,*

Defendants,

Of Whom Nancy Hardwick is the Appellant.

Statement of Issues On Appeal

The Master-in-Equity for Horry County denied all defenses in the Motion To Reconsider of

*Caropines Community Association has been removed as Defendant by virtue of Record of Hearing dated September 4, 2015, which ordered removal from the title to the property and of which Appellant is not a member and therefore there are no dues.

October 6, 2015, stating that because the Defendant failed to answer the Complaint in 2010 all defenses had been waived.

- 1.) Did the Master-in-Equity err in failing to find that the Plaintiff lacked the standing to sue?
- 2.) Did the Master-in-Equity err in failing to find that pursuant to Rule 12 (b)(8) of the SCRCRCP “another action is pending between the same parties for the same claim”?
- 3.) Did the Master-in-Equity err in not finding that the Plaintiff violated Administrative Orders 2011-05-02-01 and 2009-05-22-01 issued by the Supreme Court of South Carolina?
- 4.) Did the Master-in-Equity err in not finding that the Plaintiff and its legal counsel violated the Fair Debt Collection Practices Act (FDCPA)?
- 5.) Did the Master-in-Equity err in not granting the request, by the Defendant, for a full and complete accounting of the amount claimed to be due under the mortgage loan?

STATEMENTS AND FACTS OF THE CASE

1.) The original Complaint by Bank of America, as Plaintiff, was dated December 20, 2010 and Recorded on December 21, 2010. The Defendant received the Complaint on December 28, 2010 and immediately called Counsel for Bank of America, because the Complaint stated that the servicer was participating in the Home Affordable Modification Program (HMP) and that the Defendant had failed to respond. In fact, the Defendant was actively participating in the program at the time of the Complaint and had an active request being processed at the time of the Complaint.

The Defendant was told by both Counsel for the Plaintiff and the Plaintiff that the Complaint

was in error and the foreclosure was on hold and that an answer to the Complaint was not necessary as a corrected Complaint would be filed, if foreclosure should ever be pursued. The Defendant stayed in constant contact with both the Plaintiff and their counsel.

For more than 4 years the Complaint sat neglected. The Clerk of Court and/or the Master-in-Equity failed to dismiss the Complaint for failure to prosecute and unreasonable neglect. The Appellant filed a lawsuit against Bank of America, which was removed to Federal Court by Bank of America. That case ended when the Judge ruled that abstention was appropriate.

After more than 4 years the loan was sold and the purchaser substituted themselves as Plaintiff.

The Appellant hereby submits that the Plaintiff lacks the standing to sue by merely substituting themselves in an action that should have been dismissed for failure to prosecute and unreasonable neglect. More appropriately, the Respondent should have filed a new Complaint.

2.) Appellant filed a second lawsuit against Bank of America on May 1, 2015 asserting Breach of Contract, Breach of Fiduciary Duty, Fraud, Negligence, Unfair Business Practices and Unfair and Deceptive Acts and Breach of the Covenant of Good Faith and Fair Dealing as related to foreclosure actions. That lawsuit is pending and the Respondent, by virtue of substituting themselves as Plaintiff in a foreclosure action, subjects themselves to the same defenses as asserted by the Appellant.

3.) The Master-in-Equity erred in not finding that the Respondent violated the Supreme Court Orders 2011-05-02-01 and 2009-05-22-01 by falsely stating that the Appellant did not respond to any "HMP" solicitations. As earlier stated, Appellant was active in a Modification request

at the time of the Complaint. In fact, Appellant can prove the actual approval of a Modification, but was fraudulently denied.

In further violation of the Supreme Court's Orders, a Foreclosure Intervention Notice was mailed to 3 incorrect addresses and was never received by the Appellant.

If a Court should hold the Appellant to certain standards because a Complaint was not answered, even when advised not to, then the Respondent should also be held to the same standards and be required to ensure that the Complaint and all statements contained therein, are accurate.

Rather, the Master-in-Equity held the Respondent and its Counsel to a lower standard and further awarded legal fees for substandard actions in a legal proceeding. This is especially troubling in that Counsel for the Respondent, is a foreclosure-mill type practice and specializes in foreclosures.

4.) The Respondent, via its servicer, and its Counsel violated the Fair Debt Collection Procedures Act by not ensuring that all laws are followed. The FDCPA prohibits the use of "unfair or unconscionable means" by a debt collector.

5.) The Respondent has unexplained charges as follows:

An account statement from the servicer, dated July 18, 2015, and a reinstatement letter from Counsel for the Respondent, dated July 30, 2015 shows an unexplained increase in the amount due of \$6,629.90.

Also, the previous servicer (for Bank of America), showed a credit on the account in the amount of \$1,800.00, which has now changed to an addition to the amount due.

These discrepancies were brought to the attention of the Master-in-Equity at the hearing, but

were dismissed as not necessary to explain because the Respondent was not seeking a deficiency judgment. Appellant asserts that is improper to not grant an accounting when discrepancies exist.

For reasons stated above, the Appellant respectfully asks this Honorable Court to reverse the Judgement of the Court of the Master-in-Equity for Horry County, South Carolina.

Dated this 22nd day of December, 2015.

Respectfully submitted,


Nancy Hardwick, *Pro Se* Appellant

Nancy C. Hardwick
34 Pine Valley Lane
Surfside Beach, SC 29575
843-222-5369

December 22, 2015

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SC Court of Appeals

Re: Appellate Case No. 2015-002413

Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

Dear Madam:

Enclosed for filing is the following:

- 1.) Statement of Issue On Appeal

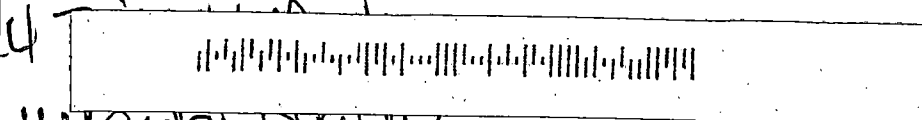
Thank you for your assistance in this matter.

Sincerely,




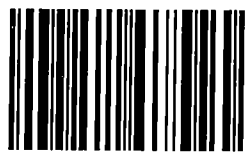
Nancy C. Hardwick

Enclosure: As stated



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