THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

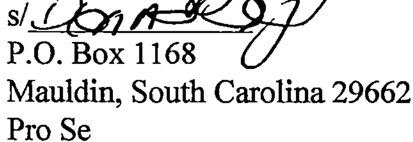
APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Circuit Court Judge

Case No. 2014-000701

Townes at Pelham Owners' Association Inc., Respondent,
v.
Donna Boyd, Bank of America, N.A. by Assignment from Mortgage Electronic Registration Systems, Defendants,
And
Donna Boyd, Third Party Plaintiff
v.
Eric Hendrick, in his Individual and Official Capacity as Owner or President of Cornerstone Realty, Inc and Cornerstone Realty Inc., Third Party Defendants,
Of whom Donna Boyd is the Appellant.

BRIEF OF APPELLANT



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STATEMENT OF ISSUES ON APPEAL

1. DID THE RESPONDENT TIMELY FILE AND SERVE THE LIS PENDENS AS PRESCRIBED BY §15-11-30?

2. DID THE TRIAL COURT ERR WHEN IT FAILED TO GIVE PROPER NOTICE TO THE DEFENDANTS OF THE HEARING HELD ON JANUARY 10, 2014 AND OTHER PRIOR ACTIONS BY THE COURT?

3. DID THE THIRD PARTY DEFENDANT'S ADMISSION THAT A PRIOR DEFAULT JUDGMENT HAD NOT BEEN APPROVED BY A COURT OF LAW NULLIFY THE JUDGMENT ENTERED ON FEBRUARY 28, 2014?

4. DID THE COURT DELAY TO ISSUE A WRITTEN COURT ORDER?

5. DID THE COURT ERR IN FAILING TO FIND THE RESPONDENT RESPONSIBLE FOR THE DEFENDANT'S DRAINAGE ISSUES?

STATEMENT OF THE CASE

On January 07, 2008, Appellant purchased her home. Subsequently, after purchasing her home, she discovered drainage problems on her property. The Appellant discovered through investigation of county records that Ryan Homebuilders was subcontracted by Third Party Defendant Hedrick to build her home and that Hedrick was the actual Builder and Developer of the community. Appellant sent HOA Board of Directors and Hedrick, whom was now acting as the Property Manager for the community a right to cure letter requesting that he remedy the deficiencies. Hedrick refused to remedy the deficiencies. In July 2009, Appellant made attempts to pay HOA dues to the treasurer of the Board of Directors, but she refused to accept.

On November 11, 2009, The Respondent filed a lien on the property of the Appellant alleging that she owed $805.00 in outstanding HOA dues. On December 10, 2009, the Appellant through her attorney sent a cashiers check in the amount of $660.00 to the Board President and requested that the lien be rescinded. The Appellant asserts that Third Party Defendant Hedrick held the check for about a month and then returned it to her attorney. The Appellant's attorney answered alleging Hedrick's claim was void because Hedrick, as the former Builder and Developer had no legal standing in the community to accept HOA dues.

The Appellant asserts that after exposing Hedrick, she was relentlessly harassed by Hedrick and the Townes at Pelham HOA Board of Directors. On December 15, 2010, the magistrate court entered a default judgment against the Appellant in the amount of $6,699.36. On June 05, 2012, the Respondent filed a Lis Pendens. On November 14, 2012, the Appellant was served. On January 10, 2014, the case was tried by Honorable Judge Charles B. Simmons, Jr. On February 10, 2014, an Oral Ruling to foreclose on the Appellant's property was issued. On March 04, 2014, Appellant received the Court Order dated February 28, 2014. The Appellant notified on March 04, 2014, by counsel that she had until April 02, 2014, to appeal. The Appellant's house was scheduled to be sold at auction on April 07, 2014. The Appellant filed and served a notice of appeal with the Court of Appeals on April 02, 2014.

FACTS

Respondent filed Lis Pendens on June 05, 2012. Greenville County Public Index shows that Appellant served on November 14, 2012 and Bank of America served some time thereafter. The relief granted $21, 853.19 in the Court Order dated February 28, 2014, are different in kind or greater than what was prayed for $15,113.93. Default Judgment for $6,699.36 on December 15, 2010, not approved by a court of law. Bank not notified of hearing held on January 10, 2014. Appellant received notice from counsel dated February 10, 2014 of Oral Ruling by Judge. Appellant received notice of Written Court Order by Judge dated March 4, 2014 from counsel. The letter sent by counsel dated February 10, 2014, informing Defendant of Oral Ruling was dated on or about the same date as the Written Court Order signed by Judge on February 11, 2014.

ARGUMENTS

I. BECAUSE THE RESPONDENT FAILED TO FILE AND SERVE THE LIS PENDENS AS PRESCRIBED BY STATUTE, THE RESPONDENT WAS BARRED BY STATUTE FROM BRINGING THIS SUIT.

The Appellant asserts that the lis pendens was not timely served upon her or Bank of America. Under South Carolina Statute § 15-11-30, Service of the lis pendens must be made within sixty (60) days after the date of filing or it will be rendered invalid. As evidenced, in the Court Order, the Summons and Complaint and Lis Pendens were filed on June 5, 2012. (R. p. 116, Complaint, R. p. 107, line 4, Findings of Fact). However, Service was not made upon the Defendant until November 14, 2012. (R. p. 155, Public Index). Interestingly, the Court Order failed to provide the date of Service upon the Defendant. (R. p. 107, line 5, Findings of Fact). The Appellant asserts that the court's failure to provide the date of Service was an intentional omission and that the court knew that it was well outside the statutory provisions.

In *Schwartz v. Grunwald*, the court held that strict compliance with the statutory provisions is required. In *South Carolina National Bank v. Cook*, the Court agreed that the lis pendens was not valid because Appellant failed to file the complaint within the twenty days, thus SCN could not be bound by the judgment. Further the Court asserted that only a properly filed lis pendens binds subsequent transactions or encumbrances to all proceedings evolving from the litigation.

Further, Appellant asserts that the lis pendens is invalid because the relief granted $21,853.19 is different in kind or greater than what was prayed for in the lis pendens $15, 113.93. Also, the Court determined that Plaintiff's calculations resulted in a double recovery because the Plaintiff added the default judgment $6,699.36 granted by the magistrate court on December 15, 2010. (R. p. 39, lines 23-25) Additionally, in the hearing on January 10, 2014, Hedrick admitted that the assessments and fees that were demanded by him, including the Default Judgment in the amount of $6,699.36 secured against the Appellant on December 15, 2010, were not approved by a court of law. (R. p. 37, lines 3-25, p. 38, lines 1-25, p. 39, lines 1-25, p. 40, lines 1-6), (R. p.159,Civil Judgment).

Also, Hedrick admitted that he did his own books using accounting software and that there was no independent review of financial records. (R. p.23, lines 7-19, p. 24, lines 4-25, p. 25, lines 1-25). Please note that prior to the Court Order; Hedrick asserted in monthly statements sent to the Appellant by him that she owed over $38,000 in HOA dues and fees. The Appellant asserts that since the Summons is inaccurate, relief granted is different in kind or greater than what was prayed, default judgment not approved by a court of law, the lis pendens was nullified and any later judgments can not be sustained.

II. BECAUSE THE COURT FAILED TO PROVIDE SUFFICIENT NOTICE TO DEFENDANTS OF THE HEARING HELD ON JANUARY 10, 2014 AND OTHER PRIOR ACTIONS BY THE COURT, THE DEFENDANTS WERE DENIED RIGHT TO DUE PROCESS AND THE TRIAL COURT ERRED WHEN IT ISSUED A WRITTEN ORDER TO FORECLOSE.

The Appellant asserts that she and other Defendants were denied right to due process when the court failed to provide sufficient notice of the hearing held on January 10, 2014 and other prior actions by the court. The Fourteenth Amendment states, "No state shall deprive any person of life, liberty or property without due process of law." The Appellant asserts that she was not informed by counsel that she would be providing testimony on January 10, 2014. Further, Appellant asserts that she was told by counsel few days prior to the hearing that he had spoken with the Judge and that the Judge made it clear that he would not consider her third party complaint against the Plaintiff and that her property would be foreclosed upon. (R. p. 166, Letter from Counsel).

The Appellant asserts that the January 10, 2014, hearing was a ploy by the court and attorneys to get her to settle because on December 30, 2013, when the Appellant met with counsel to get an update as to what was going on with her case, she was asked by counsel if she had received the settlement offer from Plaintiff Attorney. The Appellant stated that she had not; he then slid the letter across the table to her. As the Appellant glanced at the letter, counsel stated that the Plaintiff might be willing to settle for less than $5000.00, in an attempt to induce her to settle. Further the Appellant asserts that at no time did counsel prepare her for trial. Appellant asserts that counsel stated that he prepared to litigate the day before the hearing when it was obvious that the Appellant would not settle. (R. pp. 160-161, Settlement Offer).

Further, Appellant asserts that when she inquired as to whether the Bank had been given notice of the hearing on January 10, 2014, counsel stated very angrily that the Bank had been served and that they were not interested in attending the hearing. However, the Court asserted that Bank of America filed an answer on December 6, 2012, but did not attend the hearing, giving the false notion that Bank of America had been given notice of the January 10, 2014, hearing. (R. p. 107, lines 5-6, Findings of Fact,). The court's assertions are suspect because on January 10, 2014, Bank of America had sold the loan on August 02, 2013. The Appellant asserts that the Plaintiff did not conduct a title search prior to the issuance of the Court Order because had the Plaintiff done so it would have known that the superior lien holder had changed.

Appellant asserts that since the inception of this legal dispute with the Plaintiff, she kept Bank of America informed of all actions by the Plaintiff and that Bank of America knew absolutely nothing about the pending foreclosure until informed by the Appellant. Further, when the Appellant contacted the attorney for the new lien holder, the attorney admitted no knowledge of the Court Order to foreclose and requested that the Appellant send a copy of the Court Order.

Further, Appellant asserts that the Court delayed to issue a Written Court Order to intimidate and coerce the Appellant to settle because after the so called hearing on January 10, 2014, the Judge stated that he would render his decision in thirty days. The Appellant contends that the Judge could have made a decision on that day because copious evidence had been submitted showing that there were significant drainage issues on the Appellant's property and that both Hedrick and Plaintiff were responsible for those issues. Moreover, Hedrick admitted that he and board members were responsible for repairs on the grounds and common areas. (R. p. 35, lines 1-25). Further, it was blatant that Eric Hedrick and Plaintiff were being dishonest. Case in point, when Hedrick was asked about his official capacity and his involvement in the community, Hedrick basically denied being the former builder and developer. (R. pp. 31-34, pp. 40-41, lines 1-25, p. 42, lines 1-8) And when asked by defense counsel to examine documents, Hedrick feigned to not recognize his own signature. (R. p. 31 line 22, p. 32 lines 1-25, p. 33 lines 1-25, p. 34, lines 1-25).

Further, Appellant asserts that the Court's delay was a ruse to give the impression that the Judge would seriously consider the issues and that his decision would be unbiased. However, the Appellant noted that when she arrived to court several minutes late, the judge was not sitting on the bench. Further, when she sat down next to counsel, the first question asked was whether she wanted to settle. When the Appellant stated that she would not settle, counsel became upset with her. Interestingly, the first question the judge asked when he sat on the bench was whether the parties had reached settlement. Counsel stated no, and then the Court proceeded to litigate the matter. Also note that the Appellant was summoned before the same Judge on June 27, 2011, to provide testimony as to any assets she had to satisfy the December 15, 2010 default judgment.

Appellant was treated with the utmost contempt and disdain by the court and that when she questioned counsel's line of questioning, the Judge threatened to 'throw her in jail'. Further, the Appellant asserts that the delay was a ploy to get her to settle because the letter from counsel dated February 10, 2014, informing her of the Oral Ruling had been issued, was dated on or about the same date as the Court Order signed by the Judge on February 11, 2014. (R. pp. 162-163, Oral Ruling; R. p. 115, Order; R. p. 164, Letter, Respondent Counsel; R. pp. 168-170, Order of Arrest).

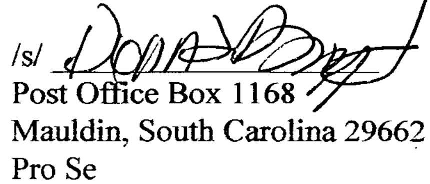
Further, Appellant asserts that the delay was a concerted effort by both counsel and judge to intimidate and elicit the desired response from the Appellant. Moreover, Appellant asserts that both counsel and judge hoped that the threat of imminent foreclosure would induce the Appellant to make settlement. Further, the Appellant asserts that lack of sufficient notice denied her the opportunity to plan a vigorous defense, present pertinent evidence, make challenges, thus denying her the right to confront the plaintiff. Also, Appellant noted that the Written Order was signed by the Judge on February 11, 2014; however, the Written Order was not entered until February 28, 2014. (R. p. 105, p. 115, Order, R. pp. 149-150,Email Respondent Counsel).

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

October 30, 2015

Respectfully submitted,

/s/ 
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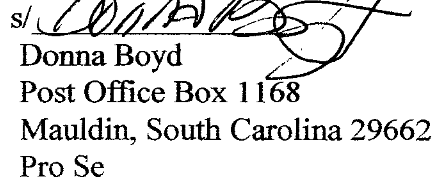
CERTIFICATE OF COUNSEL

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

October 30, 2015



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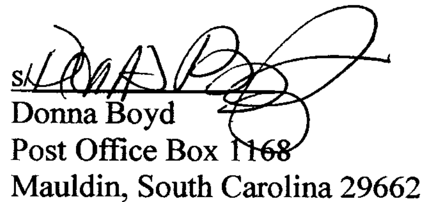
I certify that I have served a true copy of the Final Brief of Appellant and Record on Appeal for the above referenced action by overnight delivery to the South Carolina Court of Appeals at 1015 Sumter Street, Columbia, South Carolina, 29201 and by depositing a copy of it in the United States Mail, postage prepaid, on Saturday, October 31, 2015, addressed to the Respondent, J. Chris Brown, 505 W. Butler Road, Greenville, South Carolina 29607.

October 30, 2015



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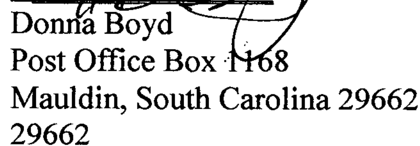
November 2, 2015



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