

The South Carolina Court of Appeals

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Libby Corporation, Respondent,

v.

Haiyan Lin, Appellant.

Appellate Case No. 2015-000350

The Honorable The Honorable James O. Spence

Lexington County

Trial Court Case No. 2013CP3203548

Appellant's Initial Brief

Haiyan Lin
Appellant, Pro Se
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Table of Authorities and Cases

SCRPC Rule 5

SCRPC Rule 6

SCRPC Rule 53

SCRPC Rule 60

SCRPC Rule 407

SC Code Ann 14-11-60

28 U.S.C.A Rule 60 §1655

14 Amendment of US Constitution

Geo. P. Reitjes Co. Inc. V. Riley Stocker Corp (1995)

SBuck / Open Jurist V. United State, 281 F3d 1336

Lyster V. Berberich 65 Azd 632 3NT Super 78-(1949)

Dedes V. Strickland 307 S.C. 155, 414 S.E.2d 134 (1992)

Statement of Issues On Appeal

- I. Whether the Notice of Debit Letter Complied with the Right to Cure Clause of Mortgage Contract..?
- II. Did Respondent's Attorney Purposely ~~manipulated~~ manipulated the Court Process in obtaining the Order of Reference?
- III. Whether the Judge Spencer Err by allowing the Case Moving Forward without properly addressing the Issues in Dispute?
- IV. Whether the Respondent's Attorney Perjury Upon Court and committed Professional Misconducts in Representing the Case?
- V. Whether the Appellant's Due Process Right Has Been Violated?

Statement of Case

The case involves a foreclosure action against the appellant by the respondent. The following is a chronology of facts of the case.

-
- Jan. 5, 2007, closing on the property at 140 Pond Dr.
 - \$1,500.00/m paid from 2/2007 ~ 6/2009, other than \$8,206.1
 - \$1,206/m paid from 7/2009 ~ 11/2011.
 - \$1,206/m paid from 1/2012 ~ 10/2012
 - from 10/2012 ~ 1/2013 working on the road
 - from 2/06/2013 ~ 5/27/2013 was put in jail & his money earned during 10/2013 ~ 1/2013
 - from 6/2013 ~ 8/2013 working with Mr. Witherspoon toward resolution to catch up the payments
 - 8/20/2013 the Notice of Debt was sent
 - 9/14/2013 the Notice of Collect Debt was sent
 - 10/8/2013 the defendant received both notices, 8/20 & 9/14
 - 10/11/2013 the plaintiff filed the summon & complaint
 - 10/18/2013 the defendant sent the response to plaintiff
 - 11/14/2013 the plaintiff sent statement of Account without serving the summon & the complaint filed.
 - 11/27/2013 the plaintiff filed Affidavit of Non-Service
 - 12/15/13 Petition for order of service by publication

- 12/6/13, Order for service by Publication was issued.
- 2/5/14 Affidavit of Publication was filed
- 3/14/14 Affidavit of No-Military Service was filed
- 3/14/14 Affidavit of Default was filed.
- 3/21/14 Petition For Order of Reference was filed.
- 4/4/14 Order of Reference was filed (proposed)
- 4/7/14 The order of Reference was signed by the Clerk
- 5/5/14 Notice of Hearing was sent by Ashley L. Gaskins.
- 5/20/14 At 3:00pm First foreclosure hearing was hold.
- 5/20/14 She shown up at the hearing, and was served by order.
- 6/19/14 The defendant sent out the answer.
- 6/25/14 The plaintiff filed the Reply to the Answer.
- 7/24/14 The plaintiff served the Notice of Hearing by mail.
- 8/11/14 The defendant obtained a copy of case file.
- 8/12/14 The defendant made the Motion to Strik.
- 8/12/14 The second foreclosure hearing was hold at 9:30AM.
- 8/12/14 The Affidavit of Attorney Fees and Cost was given.
- 8/20/14 The Notice for Hearing of Attorney fee was sent.
- 9/11/14 The transcript of the Hearing on Aug. 12 was made.
- 10/23/14 Motion hearing was hold and continued for court Report
- 10/23/14 At motion hearing the defendant requested Re hearing
- 10/29/14 The plaintiff filed the post trial Memo.
- 10/30/14 The defendant filed the post trial Memo.
- 11/12/14 The hearing on Affidavit of Attorney's fee
- 11/21/14 The Defendant's Post Hearing Memo was filed.
- 12/02/14 Plaintiff's Reply to Defendant's Post Hearing Memo
- 1/24/15 Master In Equity's Order was filed.
- 2/24/15 Notice of Appeal was filed.

Arguments

1. The Notice of Debit Letter Does not comply with the requirements of the Right to Cure Clause of the Mortgage Contract
2. The Respondent's Attorney Did Purposely Manipulated the Court Process In Obtaining the Order of Reference.
3. The Judge Spencer Err By Allowing The Case Moving Forward without Properly addressing the issues In Dispute.
 - 3.1. The Respondent did not comply the 30 day to Cure Clause;
 - 3.2. The Respondent's attorney has been manipulative and deceptive in obtaining the Order of Reference. The SCRPC have been violated during the process;
 - 3.3. The Order of Reference shall be null and invalid after overruling the default;

3.4 Deny the Appellant's right of mediation by ignore the fact of the owner's willingness in reaching a resolution;

3.5. Deprive the Appellant's due process right of discovery and disposition of disputed issues of the case;

3.6. Fail to uphold the highest professional standard by accepting the Respondent's attorney's misconducts; (SCACR 40'D); It is itself in violation of Judicial Code of Conducts.

4. The Respondent's Attorney Did Perjury upon Court and committed Professional Misconducts in Representing the case. The proofs of that can be found in the transcripts of hearings on 5/20/14, 8/12/14, and 11/12/14.

5. The Appellant's Due Process Right to Proper defend herself in the Circuit Court has been violated.

Conclusion

For the reasons stated herein, the order for Foreclosure and Sale violates SC Rules of Civil Procedures and 14th Amendments of US Constitution. It shall be overturned by this Court, in order to protect the appellant's rights of due process and equal protection under the Law, and to restore the integrity of our judicial system.

Jan. 22, 2016

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The Honorable The Honorable James O. Spence

Lexington County

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Proof of Service

I certify that I have served a copy of Appellant's Initial Brief on Attorney for respondent on Jan. 22, 2016 by US mail to Joseph A. Vasquez, P. O. Box 4024, W. Columbia SC 29171
Jan. 22, 2016

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