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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM DARLINGTON COUNTY  
Special Referee

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MAR 29 2016

Martin S. Driggers, Jr., Special Referee for Darlington County **SC Court of Appeals**

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Case Number: 2012-CP-16-1021

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Vanderbilt Mortgage and Finance, Inc.,.....Respondent,

vs.

Ashton C. Bull, Linda Bull, Park Avenue Homes, South Carolina  
Department of Motor Vehicles,.....Appellants.

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**APPELLANT'S INITIAL BRIEF**

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**TABLE OF AUTHORITIES**

**CASES**

Brockbank vs. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (S.C. 2000)

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Carolina Attractions, Inc. vs. Courtney, 287 S.C. 140, 337 S.E.2d 140 (S.C. 1985)

MI Co. vs. McLean, 325 S.C. 616, 482 S.E.2d 597 (S.C. App. 1997).....

F. Gregorie & Son vs. Hamlin, 273 S.C. 412, 257 S.E.2d 699 (S.C. 1979)...

Jackson vs. Bi-Lo Stores, Inc., 313 S.C. 272, 437 S.E.2d 168 (S.C. App. 1993).

Johnson vs. South Carolina Nat. Bank, 292 S.C. 51, 354 S.E.2d 895 (S.C. 1987)

**STATUTES**

- S.C. Code Section 31-17-320
- S.C. Code Section 31-17-370
- S.C. Code Section 31-17-380
- S.C. Code Section 31-17-390
- S.C. Code Section 31-17-400
- S.C. Code Section 31-17-410
- S.C. Code Section 56-19-210
- S.C. Code Section 56-19-265

**OTHER AUTHORITIES**

N/A

**STATEMENT OF ISSUES ON APPEAL**

1. Did the Special Referee err in granting the Respondents motion for Summary Judgment?
2. Does an equitable lien exist on the Appellant's mobile home?
3. Is it lawful to place a lien on a mobile home that does not have a certificate of title?
4. Was it proper for the Special Referee to rule on the validity of the mortgage prior to a trial on the Counterclaims?

**STATEMENT OF THE CASE**

This is a foreclosure action filed by the Respondent in Darlington County, South Carolina. The subject property consists of a mobile home upon which no Certificate of Title exists. The Respondent seeks reformation of the mortgage or an equitable mortgage on the mobile home.

The Respondent filed a Complaint, an Amended Complaint and a Second Amended Complaint because they could not properly identify the home that they sold to the Appellant.

The Appellant, Ashton Bull, signed documentation to purchase a mobile home. The mobile home outlined in the mortgage and other relevant documentation was never delivered to the Defendant. A mobile home was delivered that was not listed on any of the closing documents. The Defendant has been making mortgage payments on a home that was not listed in any of the paperwork signed by the Defendant.

The attorney that represented the Defendant at the closing was disbarred and upon information and belief, the Plaintiff does not have the original closing documents in its possession. At their depositions, the Defendants questioned the authenticity of the documents presented.

The mobile home was placed on the property of Linda Bull unlawfully. It was never registered prior to being placed. The Defendants cannot exercise full rights to the property or get the mortgage refinanced because the home was not lawfully placed as required by sections 31-17-390 and 31-17-400 of the South Carolina Code of Laws.

The Linda Bull alleged in their deposition that the Respondent and/or its agents committed fraud by placing a sticker in the window of the mobile home, leading the Defendants to believe that the home was property placed on the property.

The Respondent admits in their responses to the Defendant's Interrogatories that they have not perfected their lien as required by statute.

The Respondent filed a Motion for Summary Judgment. A hearing was held before the Honorable Martin S. Driggers, Jr. on April 2, 2015. After the hearing the Special Referee asked the parties to submit proposed Orders outlining their positions that they argued. Each party submitted a proposed Order. The Special Referee signed the Respondent's Order Granting Summary Judgment on May 6, 2015. The Order was filed on May 11, 2015. The Appellant filed a Motion to Alter, Amend or Reconsider on June 8, 2015. The Motion to Alter,

Amend or Reconsider was denied by Order dated August 20, 2015 and filed on August 26, 2015. The Appellants appealed the Order that granted partial Summary Judgment and the Order denying their Motion to Reconsider.

### **ARGUMENT**

#### **I. DID THE SPECIAL REFEREE ERR IN GRANTING THE RESPONDENTS MOTION FOR SUMMARY JUDGMENT?**

Summary Judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank vs. Best Capital Corp.*, 341 S.C. 372, 534 S.E. 2d 688 (S.C. 2000). In support of their Motion for Summary Judgment, the Respondent argues that there is equitable lien. In their pleadings the parties request reformation of the mortgage. A contract may be reformed on the ground of mistake when the **mistake is mutual** and consists in the omission or insertion of some material element affecting the subject matter or the terms and stipulations of the contract, inconsistent with those of the parol agreement which necessarily preceded it. [Emphasis added] *Independence National Bank vs. Buncombe Professional Park, L.L.C.*, 402 S.C. 515, 741 S.E.2d 572.

In this case there is no mutual mistake. The Appellants purchased a specific home. The bank sent the wrong home, with different dimensions, a different VIN number and a different number of rooms. No mistakes were made by the Appellants.

In their request for Summary Judgment the Respondent also points to *Carolina Attractions, Inc. vs. Courtney*, 287 S.C. 140, 145, 337 S.E.2d 140 (1985) in support of their arguments. That case states that "there must be a debt, a duty or obligation owing from one person to another, **a res to which the obligation attaches**, which can be described with reasonable certainty, and an intent, express or implied that the property serve as security for the payment or obligation." [Emphasis added]. In this case there is no "res to which the obligation attaches." The Appellant has admitted in discovery that the lien on the mobile home has not been perfected as required by S.C. Code Section 56-19-265. There is nothing legally attached to the mortgage. The home described in the mortgage does not exist.

The Respondent quotes *Regions Bank vs. Wingard Properties*, I in support of its argument for Summary Judgment. Ironically, in that case the Special Referee ruled that Plaintiff failed to establish an equitable lien. Horry County was the Plaintiff and the Court of Appeals ruled that the County had to bear the consequences of its conduct.

The Court quotes *MI Co. vs. McLean*, 325 S.C. 616, 624, 482 S.E.2d 597, 601(S.C. App. 1997), stating when "one of *two innocent parties* suffers a loss, it must fall on the party who, by incautious and misplaced confidence, has occasioned it or placed it in the power of a third party to perpetrate the fraud by which the loss happened." [Emphasis added]. The Plaintiff in this case is not an innocent party. The Respondent violated statutes to place the home on the property (see S.C. Code Sections 31-17-320, 31-17-370, 31-17-380, 31-17-390, 31-17-400 and 31-17-410). Since the Respondent is not an innocent party, there is a genuine issue of fact. The Defendants have requested a jury trial on the factual issues. The Special Referred erred in granting Summary Judgment.

## **II. DOES AN EQUITABLE LIEN EXIST ON THE APPELLANT'S MOBILE HOME?**

The Respondent argues that there was an equitable mortgage on the mobile home. The existence of an equitable mortgage must be shown by clear and convincing evidence. *F. Gregorie & Son vs. Hamlin*, 257 S.E.2d 699, 273 S.C. 412 (S.C. 1979). The Respondents have failed to show that an equitable mortgage exists. They Respondent submitted no Affidavit of anyone present at the closing to state the intentions of the parties at the time of the transaction.

In addition, an illegal contract is void. "The authorities from the earliest time to the present unanimously hold that no Court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, Courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract." *Jackson vs. Bi-Lo Stores, Inc.*, 313 S.C. 272, 437 S.E.2d 168 (S.C. App. 1993). Since there is no Certificate of Title or valid Certificate of Origin bearing the Sellers name, the parties could not contract to mortgage the property pursuant to South Carolina Code Section 56-19-210.

The Appellant contends that since no Certificate of Title exists, no equitable mortgage can exist.

**III. IS IT LAWFUL TO PLACE A LIEN ON A MOBILE HOME THAT DOES NOT HAVE A CERTIFICATE OF TITLE?**

It is unlawful to mortgage a home that is not titled (see S.C. Code section 56-19-210). The Respondent seeks an equitable mortgage on an untitled mobile home. The Respondent asked the Special Referee to grant a mortgage on a mobile home that is not titled by way of Summary Judgment.

Since it is unlawful to mortgage a home that is not titled pursuant to S.C. Code Section 56-19-210, the Defendants believe that granting an equitable mortgage on an untitled mobile home is unlawful. The Special Referee erred in granting Summary Judgment.

**IV. WAS IT PROPER FOR THE SPECIAL REFEREE TO RULE ON THE VALIDITY OF THE MORTGAGE PRIOR TO A TRIAL ON THE COUNTERCLAIMS?**

The Appellants requested a jury trial in their Answer and Counterclaim. In their Motion to Alter, Amend or Reconsider, the Appellants raise the issue of whether the Special Referee should have allowed the Jury Trial issues to go forward before ruling on the Respondent's claims.

This Court has ruled that "(4) If the Complaint is equitable and the counterclaim is legal and compulsory, the Plaintiff or Defendant has a right to a jury trial on the Counterclaim." *Johnson vs. South Carolina Nat. Bank*, 354 S.E.2d 895, 292 S.C. 51 (S.C. 1987). The opinion went on to say that "(c) If the claims are to be tried in a single proceeding and there are factual issues common to both claims, the jury shall first determine the legal issues. The Court may then determine the equitable claims, but the jury's determination of

common factual issues shall be binding on the Court." *Johnson vs. South Carolina Nat. Bank*, 354 S.E.2d 895, 897; 292 S.C. 51, 56.

The Appellants believe based upon applicable precedent, that the legal issues should have been determined by the jury prior to the Special Referee ruling on the Respondents motion.

### CONCLUSION

The Special Referee found that an equitable mortgage exists on the Appellants property. In light of the evidence of record and applicable statutes and case law, this Court should reverse the judgment issued by the Honorable Martin S. Driggers, Jr.

Respectfully submitted,

By: 

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March 24, 2016

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY  
Special Referee

Martin S. Driggers, Jr., Special Referee for Darlington County

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Case No. 2012-CP-16-1021

SC Court of Appeals

Vanderbilt Mortgage and Finance, Inc.,.....Respondent,

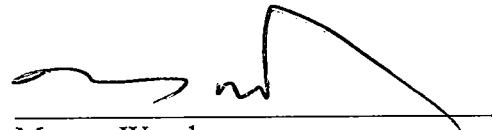
Vs.

Ashton C. Bull, Linda Bull, Park Avenue Homes, South Carolina Department of Motor  
Vehicles,.....Appellant.

**PROOF OF SERVICE**

I certify that I served the Appellant's Initial Brief and Designation on the Respondent's Attorney, Theodore von Keller, by depositing a copy of it in the United States Mail, postage prepaid, on March 28, 2016, addressed to him at Post Office Box 4216, Columbia, South Carolina 29240.

March 28, 2016



Marcus Woodson  
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For the Appellants.

THE WOODSON LAW FIRM, L.L.C.

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March 24, 2016

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SC Court of Appeals

**VIA FAX AND EXPRESS MAIL (803) 734-1839**

Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RE: Case No.: Vanderbilt Mortgage and Finance, Inc vs. Ashton  
C. Bull, and Linda Bull et, al  
Appellate Case No.: 2015-002194

Dear Ms. Kitchings:

I have enclosed the following documents for filing:

1. Appellant's Initial Brief, ( 7 originals),
2. Designation of matter to be Included in the Record on Appeal, and
3. Proof of Service.

The original documents are being placed in the mail today.

Very truly yours,



Marcus Woodson

MW/md

Enclosures

cc: Theodore von Keller

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SC Court of Appeals

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