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MAY 06 2016

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III
Master in Equity

Case No. 2013-CP-07-3093
Appellate Case No. 2015-001869

The Bank of New York Mellon FKA The Bank of
New York, as Trustee for the Certificateholders of
CWALT, Inc., Alternative Loan Trust 2006-OA16,
Mortgage Pass-Through Certificates, Series 2006 OA16.....Respondent,

v.

Hiltrud Steimel a/k/a Hiltraud Steimel,
individually; Hiltrud Steimel a/k/a Hiltraud
Steimel as Trustee of the Steimel Family Trust
a/k/a Steimel Family Irrevocable Trust;
Andrew K. Bell as successor trustee of the Steimel
Family Trust a/k/a Steimel Family Irrevocable Trust;
Dianne K. Bell as successor trustee of the Steimel
Family Trust a/k/a Steimel Family Irrevocable Trust;
Any unknown trustees of the Steimel Family Trust
a/k/a Steimel Family Irrevocable Trust;
Beaufort County Clerk of Court; Sun City Hilton
Head Community Association, Inc.....Defendants,

Of whom Hiltrud Steimel is theAppellant.

RESPONDENT'S SECOND MOTION TO DISMISS APPEAL

Respondent, The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006 OA16 (“Bank of New York”) hereby moves to dismiss the appeal of Appellant Hiltrud Steimel (“Steimel”) on the grounds that the order from which she appeals is not appealable.

FACTS

Bank of New York filed its foreclosure action on December 11, 2013. No Answer or other responsive pleading to the Complaint was filed and served by Steimel. As a result, on October 3, 2014, Bank of New York filed a Certificate of Default, holding Steimel in default in the action. There was no Motion to be Relieved of Default filed pursuant to Rule 55(c) of the *South Carolina Rules of Civil Procedure*. Following the reference of the case to the Honorable Marvin H. Dukes, III, Master in Equity for Beaufort County, Bank of New York sent notice to all parties to the action, including Steimel, regarding the final foreclosure hearing, as required by Rule 71(a) of the *South Carolina Rules of Civil Procedure*. Steimel appeared at the hearing and attempted to make arguments regarding standing and discovery. However, as she had been held in default, the judge declined to address her arguments, other than to present her with the original Note for inspection. Steimel did not seek to be relieved of default at the final judgment hearing.

The Order and Judgment of Foreclosure and Sale was entered on August 10, 2015. Steimel did not properly seek to vacate the judgment pursuant to Rule 60(b) of the *South Carolina Rules of Civil Procedure*¹. Instead, she filed her Notice of Appeal on August 24, 2015.

¹ A Motion to Vacate Judgment and Sale was improperly filed on behalf of Steimel by Ronald Allen Wright, an individual purporting to act as Attorney in Fact for Steimel, but who is not a licensed South Carolina attorney. Further, this Motion was filed on October 14, 2015, 51 days after she filed her Notice of Appeal, and Steimel did not obtain leave from this Court to file the Motion.

ARGUMENT

Steimel's appeal must be dismissed as the order from which she appeals is not appealable. The order entered in the underlying matter was a default Judgment of Foreclosure and Sale, and Steimel did not properly make a motion to set aside her default or to vacate the judgment.

Steimel cannot directly appeal from the default judgment because her "sole remedy is to move to set aside the judgment under Rule 60(b), SCRPC." *Winesett v. Winesett*, 287 S.C. 332, 334, 338 S.E.2d 340, 341 (1985). A party in default "has no status in court which will enable him to appeal from the judgement rendered." *Id.* at 333, 338 S.E.2d at 341 (citing *Washington v. Hesse*, 56 S.C. 28, 29, 33 S.E. 787, 787 (1899)). Further, a party attempting to appeal a default judgment is precluded from raising any issues on appeal because they were not raised to the trial court below. *Id.* (citing *American Hardware Supply Co., Inc. v. Whitmire*, 278 S.C. 607, 300 S.E.2d 289 (1983); *Murphy v. Hagan*, 275 S.C. 334, 271 S.E.2d 311 (1980)). Finally, a party in default will be unable to provide the court with "a record sufficient to permit an adequate review." *Id.* at 333-34, 338 S.E.2d at 341 (citing *Hamilton v. Greyhound Lines East*, 281 S.C. 442, 316 S.E.2d 368 (1984); *Germain v. Nichol*, 278 S.C. 508, 299 S.E.2d 335 (1983)).

For the above-mentioned reasons, a default judgment cannot be appealed. *Winesett*, 287 S.C. at 334, 338 S.E.2d at 341.

CONCLUSION

Pursuant to the foregoing, Bank of New York respectfully moves for an Order dismissing this appeal.

Respectfully submitted,



Erica G. Lybrand (SC Bar # 79052)
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ATTORNEYS FOR RESPONDENT

May 5, 2016

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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a/k/a Steimel Family Irrevocable Trust;
Beaufort County Clerk of Court; Sun City Hilton
Head Community Association, Inc.....Defendants,

Of whom Hiltrud Steimel is theAppellant.

PROOF OF SERVICE

I certify that I have served the **Respondent's Second Motion to Dismiss** on Hiltrud Steimel by depositing a copy of it in the United States Mail, postage prepaid, on May 5, 2016, addressed to Appellant Hiltrud Steimel at 563 Argent Way, Bluffton, SC 29909.

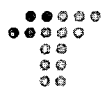
A handwritten signature in black ink, appearing to read "EGL", is written over a horizontal line.

Erica G. Lybrand (SC Bar # 79052)

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ROGERS TOWNSEND
ATTORNEYS AT LAW

May 5, 2016

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals Clerk of Court
1015 Sumter Street
Columbia, SC 29201

RE: *The Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16; v. Hiltrud Steimel a/k/a Hiltraud Steimel, individually; Hiltrud Steimel a/k/a Hiltraud Steimel as Trustee of the Steimel Family Trust a/k/a Steimel Family Irrevocable Trust; Andrew K. Bell as successor trustee of the Steimel Family Trust a/k/a Steimel Family Irrevocable Trust; Dianne K. Bell as successor trustee of the Steimel Family Trust a/k/a Steimel Family Irrevocable Trust; Any unknown trustees of the Steimel Family Trust a/k/a Steimel Family Irrevocable Trust; Beaufort County Clerk of Court; Sun City Hilton Head Community Association, Inc.;*
Appellate Case No. 2015-001869
RTT File # 513044.00036

Dear Ms. Kitchings:

Enclosed are an original and one copy of Respondent's Second Motion to Dismiss and Proof of Service in the above referenced matter. Also enclosed is a check in the amount of \$25.00 representing the motion filing fee. Please file the original document, and return the clocked copy to me in the envelope provided for the Court's convenience.

With kind regards, I remain

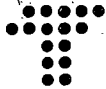
Cordially yours,

Karissa Richardson
Paralegal for Erica G. Lybrand

Enclosures

cc:

Hiltrud Steimel
563 Argent Way
Bluffton, SC 29909



EL / KJ
ROGERS TOWNSEND
ATTORNEYS AT LAW
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