

RECEIVED

MAY 27 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS  
HON. ELLIS DREW MASTER IN EQUITY

---

Appellate Case No. 2015-002658

SUNTRUST BANK... RESPONDENT

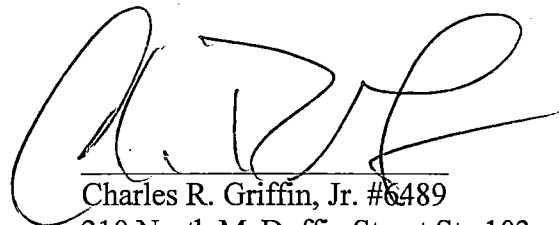
VS

JEFFREY A. GRAY, SARAH L. GRAY, BANK OF ANDERSON, NA,  
BRANCH BANKING AND TRUST COMPANY, THE SUMMIT OWNERS  
ASSOCIATION AND WWEST UNION DEVELOPMENT LLC  
of whom JEFFERY A. GRAY is APPELLANT ...

---

INITIAL BRIEF OF APPELLANT

---



Charles R. Griffin, Jr. #6489  
210 North McDuffie Street Ste 103  
Anderson, SC  
29621  
864-231-8870  
888-682-7317 (fax)  
Attorney for Appellant

May 25, 2016

**TABLE OF CONTENTS**

Table of Authorities ..... 03

Statement of Issues on Appeal ..... 04

Statement of the Case .....05

Arguments

    Trial Court erred in in failing to dismiss the Plaintiff's complaint pursuant to Rule  
    12(b)(8).....05-6

Conclusion.....6

**TABLE OF AUTHORITIES**

**STATUTES**

*Rule 12(b)(8) SCRPC*

**CASES**

*Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (S.C. App., 2010)*

**STATEMENT OF ISSUES ON APPEAL**

1. Trial Court erred in failing to dismiss the Plaintiff's complaint pursuant to Rule 12(b)(8)?

## STATEMENT OF THE CASE

This Action was commenced by the filing and service of the Plaintiff's Foreclosure Complaint.

Appellant filed and served an Answer asserting that Plaintiff's complaint must be dismissed pursuant to Rule 12(b)(8) since there is currently another action pending among the parties involving the same or similar subject matter, in Branch Banking and Trust vs. Jeff Gray and Sarah L. Gray CP Case # 2011CP3701250 and Appellate Case No.: 2013-002037. Answer ¶ 16. Further Plaintiff did not file any cross-claim against the Defendant in that action, but later brought the instant action for foreclosure against the Defendant. Answer ¶ 20; Answer ¶ 22.

The Plaintiff in Branch Banking and Trust vs. Jeff Gray and Sarah L. Gray CP Case # 2011CP3701250 and Appellate Case No.: 2013-002037 is seeking foreclosure of same property that Plaintiff is seeking foreclosure in the instant case. Complaint ¶ 5 and Exhibit A to Appellant's Motion to Reconsider ¶ 12.

After a hearing the Hon. Ellis Drew issued an Order of Foreclosure in this case.

Appellant filed and served a Motion to Reconsider which was denied by Order of the Hon. Ellis Drew.

Appellant subsequently filed and served this Appeal.

## ARGUMENT

**The trial court erred by failing to find that Plaintiff's claims are barred under Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.**

Rule 12(b)(8) SCRCF provides that an action should be dismissed if "another action is pending between the same parties for the same claim." *Rule 12(b)(8) SCRCF*

Under Rule 12(b)(8), dismissal is appropriate when another action is pending between the same parties for the same claim. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 701 S.E.2d 39 (S.C. App., 2010).

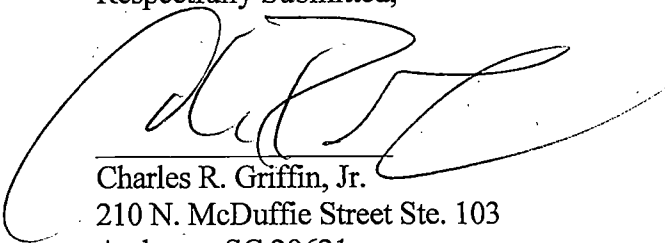
In the present case, it is not disputed that there is currently another action pending among the same parties involving the same or substantial same claim in *Branch Banking and Trust vs. Jeff Gray and Sarah L. Gray CP Case # 2011CP3701250* which case is currently under appeal that case was commenced prior to the instant action. Answer ¶ 16. It is undisputed that Respondent's lien is junior to the lien in *Branch Banking and Trust vs. Jeff Gray and Sarah L. Gray CP Case # 2011CP3701250*. Foreclosure Order ¶ 9.

#### CONCLUSION

Clearly, this action should have been dismissed pursuant to Rule 12(b)(8) SCRPC.

For the reasons stated above, the Appellant asks that the Order of the Court appealed from be reversed.

Respectfully Submitted,



Charles R. Griffin, Jr.  
210 N. McDuffie Street Ste. 103  
Anderson SC 29621  
Attorney for Appellant  
864-231-8870  
Fax 888-682-7317

May 25, 2016