

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William C. Tindal, Special Referee

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JUL 05 2016

SC Court of Appeals

Case No.: 12-CP-29-0892

Scott L. Butler and Jacqueline Butler,

Appellants,

New York Community Bank,

Respondent.

APPELLANTS REPLY TO RESPONDENTS' RETURN TO APPELLANTS' PETITION FOR
SUPERSEDEAS

Comes now Appellants, SCOTT L. BUTLER and JACQUELINE BUTLER, through their undersigned counsel and pursuant to Rule 240, SCRAP, and all other applicable law, respectfully submits this reply and would state as follows:

In reply to Respondent's argument that the Order of Foreclosure and Judgment is valid because the lower court possessed subject matter jurisdiction, it is the Appellants' position that a South Carolina Mortgage, filed in the state of South Carolina, does not create a valid lien on property that is not located in the State of South Carolina. As such, Respondent's South Carolina mortgage creates no valid security interest or lien on that portion of Appellants

property that is located in the state of North Carolina. South Carolina courts have no subject matter jurisdiction to enter an Order of Foreclosure on property located in North Carolina based on a Mortgage it has filed in South Carolina. As noted by the Respondent in their reply, subject matter jurisdiction may be raised at any time. Issues of standing and lack of subject matter jurisdiction cannot be waived, even by consent, and can be taken notice of by the court on its own motion *Fielden v. Fielden*, 274 S.C. 219, 269 S.E.2d 43 (1980), *Harden v. S.C. Highway Dept.*, 266 S.C. 119, 124, 221 S.E. 2d 851, 853 (1976), *State v. Gorie*, 256 S.C. 539, 183 S.E.2d 334 (1971), *Hunter v. Boyd*, 203 S.C. 518, 28 S.E.2d 412 (1943). The fact that the recorded surveys in both Mecklenburg County, North Carolina and Lancaster County, South Carolina show that over one-half of Appellants property lies outside of the State of South Carolina goes to the very question of whether the lower court has subject matter jurisdiction to issue an Order of Foreclosure on property that is not located in South Carolina and it is therefore an issue that can be raised at any time.

Respondent states that the entire adjudged debt amount under the note and secured by the mortgage attaches to whatever amount of the property is in South Carolina. While that may be true, provided Respondent is able to establish a valid note and security interest on the property located in South Carolina, that does not provide Respondent the right to foreclosure on that portion of the property that is located in North Carolina. A note holder who is also a mortgagee has two options in South Carolina to enforce the terms of its promissory note- it may elect to sue on the note and obtain a judgement, or it may seek to foreclose on the property secured by the mortgage. In this instance, Respondent has filed an action of Foreclosure on the mortgage. There has been no judgment or any other ruling entered by the State of North Carolina and no order or judgment of any court which would have provided the South Carolina Court of

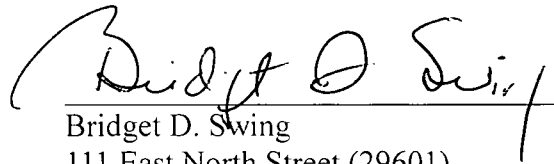
Common Pleas with jurisdiction to foreclose upon that portion of the Property which is situated in the State of North Carolina. Defendant also never sought or obtained any order of court to permit it to seek to foreclose on North Carolina property. Further, Appellant is aware of no law or precedent, and Respondent states none, which provides that an Order of Foreclosure issued by the State of South Carolina can be domesticated in an entirely different State in order to foreclose on property located outside of North Carolina. In addition, and as noted in Appellants Motion for Supersedeas, Appellants have filed a Complaint for Declaratory Relief and Other Relief with the Superior Court of North Carolina seeking that Court's determination as to whether a court in South Carolina has jurisdiction over Plaintiff's residential real property situated in the State of North Carolina.

In response to Respondent's second argument, Appellants have not attacked the validity of the South Carolina Judgment in another state. Rather, the Appellants have brought forth valid, good faith arguments that go to the core question of whether a South Carolina Court has subject matter jurisdiction to authorize the foreclosure of property that is located in another state. The Appellants think that the answer to that question is quite plainly, no. If allowed to move forward with its proposed Rule 60(b) Motion, we believe the evidence will demonstrate that the fact that Lancaster County and not Mecklenburg County have assessed taxes against the property has no legal bearing on the actual boundary line and there are other properties that straddle the North Carolina and South Carolina state lines that are taxed in just one county in an ongoing "informal" joint effort by local and state officials to minimize confusion and disputes as to whether one is a resident of North Carolina or South Carolina. The issues surrounding in which states these property owners pay property taxes, as well as many other issues regarding the state boundary lines are currently being addressed in bills before the North Carolina and South

Carolina Legislatures.¹ Finally, Appellants also believe it important to allow the North Carolina Court to issue its decision in the pending Declaratory Relief Complaint, which does not seek to invalidate the South Carolina Judgment as Respondent claims, but merely seeks an Order from that Court as to whether a court in South Carolina has jurisdiction over Appellant's residential real property situated in North Carolina for purposes of foreclosure or otherwise and whether Defendant may foreclose on Plaintiffs' North Carolina property without instituting an action for foreclosure in North Carolina.

Based on the above, the Appellant would respectfully request that the Temporary Supersedeas Order granted by this court remain in effect to allow the Superior Court of North Carolina the opportunity to rule on Appellant's Declaratory Relief for Judgment.

Respectfully submitted this 1st day of July, 2016



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¹ See http://www.scstatehouse.gov/sess121_2015-2016/bills/667.htm and <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2015&BillID=S575&submitButton=Go>

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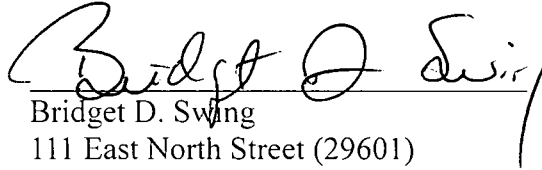
Certificate of Service

The undersigned attorney of record for Appellants Scott L. Butler and Jacqueline Butler hereby certifies that the foregoing APPELLANTS REPLY TO RESPONDENTS' RETURN TO APPELLANTS' PETITION FOR SUPERSEDEAS was personally served upon the following addresses:

Ms. Magalie A. Creech, Finkel Law Firm, PO Box 71727, North Charleston, SC 29415
Ms. Magile A. Creech via email: (mcreech@finkellaw.com)

Mr. Adam S. Tesh, Esq., PO Drawer 7788, Columbia, SC 29202

This the 1st day of July, 2016

A handwritten signature in cursive script that reads "Bridget D. Swing". The signature is written in black ink and is positioned above a horizontal line.

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VIA FAX (803-734-1838) and OVERNIGHT MAIL
The Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia SC, 29201

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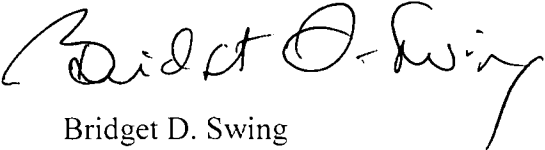
RE: New York Community Bank, Respondents vs. Scott L. Butler and Jacqueline Butler,
Appellants.
Civil Action # 12-CP-29-0892
Appellate Case# 2016-000744

Dear Ms. Kitchings:

Enclosed please find an original and one copy of Appellants Reply to Respondent's Return to Appellants' Petition for Supersedeas and proof of service. Please file the original and return a file stamped copy to me in the enclosed self- addressed envelope.

Please let me know if anything further is required from our office at this time.

Sincerely,



Bridget D. Swing

CC: Ms. Magalie A. Creech, Esq., Finkel Law Firm, PO Box 71727, North Charleston, SC 29415 and via email (mcreech@finkellaw.com)