

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

S. Jackson Kimball, III, Master-In-Equity

Appellate Case No. 2013-002432

Lower Court Case No. 2007-CP-46-04305

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JUL 05 2016

SC Court of Appeals

SunTrust Mortgage, Inc.,Respondent,

v.

Mark Ostendorff,Appellant.

PETITION FOR REHEARING

Mark Ostendorff
135 Cedar Creek Circle
Central, SC 29630
(864)640-3340
Pro Se, Appellant

Brian S. Tatum
PO Box 220517
Charlotte, NC 28220
(704)307-4305
Attorney for Respondent

Appellant Ostendorff requests this Court for a Rehearing on Its decision to Affirm the lower Court's Order of Foreclosure. Appellant Ostendorff's request is based on:

Johnson v. South Carolina Nat'l Bank, 292 S.C. 51, 354 SE 2d 896 (1987)....the court is bound by the jury's determination of the factual issues...

C & S Real Estate Servs., Inc. v. Massengale, 290 S.C. 299, 350 S.E. 2d 191 (1986)...4) if the complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim...

- 1) That the compulsory counterclaim was an issue of fact, not one of law.
- 2) That Appellant demanded a jury trial on that compulsory counterclaim.
- 3) That any findings of that jury trial would be bearing on any decision for any ,if at all, on a subsequent foreclosure hearing.

S.C. Code of Laws, Section 18-9-280. Written opinions required; memorandum opinions.

When a judgment or decree is reversed or affirm by the Supreme Court every point made and distinctlyshall be concisely and briefly stated in writing....

- 4) That Appellant's denial for Petition for Writ from the South Carolina Supreme Court on the dismissed counterclaim was not considered as being denied discretionary review by The United States Supreme Court and thus not appealable to The United States Supreme Court.

Tolk v. Weinstein, 265 S.C. 546, 220 S.E. 2d 239 (1975).

- 5) That the trial court's dismissal of appellant's compulsory counterclaim was not supported by the evidence

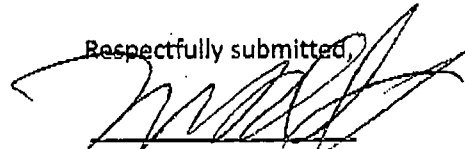
Callen v. Callen, 365 S.C. 618, 620 S.E. 2d 59 (2005). The trial court is under duty to delay the trial for purpose of ascertaining.....including prior knowledge of the name by that party.

- 6) That at the foreclosure hearing, Appellant was denied to cross examine a witness that was unknown to Appellant. The witness's name was not known to Appellant in all of his dealings with SunTrust.
- 7) That Appellant would show the court through cross examination of SunTrust's witness that Appellant was never in breach of his construction loan agreement and that SunTrust caused material interference of Appellant's later inability to make monthly payments.
- 8) That the trial court judge never asked SunTrust's witness why SunTrust stopped Appellant's construction draw requests.
- 9) That the trial court judge never asked SunTrust's witness why SunTrust never sent Appellant any notice of breach , as required in the loan agreement, prior to stopping construction draw requests.

- 10) That at the foreclosure hearing, Appellant was denied to show the court through cross examination that the witness had no knowledge of SunTrust's securitization process, and that SunTrust was not the real party in interest. Appellant has made numerous claims that SunTrust was not the real party in interest any requested from SunTrust the name(s) of the real party in interest.
- 11) That the trial court judge never asked SunTrust's witness to explain in any depth SunTrust's securitization process to ensure that the witness was of any credibility.

Appellant requests this Court to Rehear its decision to Affirm. Appellant requests that this case be remanded back to a lower court to hear the original compulsory counterclaim with a jury as the finders-in-fact.

July 1, 2016

Respectfully submitted,

Mark Ostendorff