



THE STATE OF SOUTH CAROLINA
In the Supreme Court

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JUN 30 2016

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas
J. Martin Harvey, Special Referee

S.C. SUPREME COURT

Circuit Court Civil Action No. 2015-CP-06-00070
Appellate Case No. 2016-001214

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JUN 30 2016

Quicken Loans, Inc.,

Appellant, **SC Court of Appeals**

v.

Wayne D. Wilson; Calvin O. Wilson, III; Any other Heirs-in-Law or devisees of Ezekiel (Ellen) T. Wilson, deceased, their heirs, personal representatives, administrators, successors and assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interests in the real estate described herein; also any persons who may be in a class designated as John Doe; any unknown minors or persons under a disability being a class designated as Richard Roe; Park Sterling Bank,

COPY

Respondents.

**MOTION TO CERTIFY AND TRANSFER CASE
FROM THE COURT OF APPEALS
FOR REVIEW BY THE SUPREME COURT
AND SUPPORTING BASES**

Rule 204(b), SCACR

Pursuant to Rule 204(b), SCACR, Respondent Wayne D. Wilson as Personal Representative of the Estate of Ezekiel T. (Ellen) Wilson moves for an Order of the Supreme Court transferring this consumer protection case from the Court of Appeals to

permit the appeal to be heard and decided in the first instance by the Supreme Court. Appellant Quicken Loans, Inc. filed its Notice of Appeal with the Court of Appeals on June 7, 2015.

This appeal arises out of a foreclosure action filed in Barnwell County, South Carolina as *Quicken Loans, Inc. v. Ezekiel T. Wilson et al.*, Civil Action 2015-CP-06-070. Simultaneous with the filing of this Motion, Respondent (as Petitioner) is also filing a Petition for Original Jurisdiction to authorize the bringing of a declaratory judgment action within the original jurisdiction pursuant to Rule 245, SCACR. The Complaint attached to the Petition raises substantial and crucial questions regarding the practice of law – questions that are exclusively within the jurisdiction of the South Carolina Supreme Court. S.C. Constitution Article V, § 4, S.C. Code §§ 40-5-10, 40-5-220.

In the proceedings before the Special Referee certain matters were raised and addressed. The Order setting forth those findings and rulings is the subject of the appeal pending in the Court of Appeals and the object of this Rule 204(b) Motion. Other matters were raised below but not addressed by the Special Referee because they were questions regarding the practice of law – questions that are exclusively within the jurisdiction of the South Carolina Supreme Court.

The two concurrent requests to this Court – the Petition for Original Jurisdiction and this Motion to Certify and Transfer – are intended to bring a single case before this Court so that all issues may be addressed at the same time.

Also pending before this Court in the original jurisdiction is *Vance L. Boone, Thelma Boone, Travis G. Messex, Teresa S. Messex, Brian Johnson, and Kelli Johnson, on behalf of themselves and all others similarly situated, Plaintiffs, v. Quicken Loans Inc.*

and Title Source, Inc., Defendants, docketed as Appellate Case No. 2013-002288. Respondent Wayne D. Wilson as Personal Representative of the Estate of Ezekiel T. (Ellen) Wilson is a member of the putative class in *Boone*, which also presents questions regarding the practice of law and seeks a declaratory judgment. The UPL issues in the *Wilson* Petition for Original Jurisdiction are essentially the same as those raised in *Boone* and counsel for the parties are essentially the same.

DISCUSSION

Rule 204 of the South Carolina Appellate Court Rules permits this Court, "in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion," to "certify [a] case for review by the Supreme Court before it has been determined by the Court of Appeals." SCACR 204(b). "Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance." *Id.* The purpose of the certification procedure is to bring issues of moment before this Court in an expeditious fashion. See, e.g., *Willis v. Wu*, 362 S.C. 146, 607 S.E.2d 63 (2004) (wrongful life); *Steinke v. South Carolina Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999) (certified case involving the question whether the Department of Labor, Licensing and Regulation can be sued for the wrongful death of riders on amusement park rides). This case warrants certification under Rule 204(b).

In this case as in *Boone*, Quicken Loans, through the use of a pre-populated attorney preference form, steered borrowers to its affiliate company, Title Source, which acted as Settlement Agent in the mortgage loan transaction. These issues are set forth in the Complaint attached to the Petition for Original Jurisdiction. Respondent is informed

and believes that virtually the same issues which are before the Court in *Boone* are also present in this case. Quicken denies UPL occurred. Appellant and Respondent each asserts that this Court, as opposed to the Circuit Court, has the exclusive jurisdiction to make all determinations of UPL. While Respondent believes the ultimate disposition of *Boone* should also resolve the UPL issues presented in the Wilson case, he is filing his Petition for Original Jurisdiction out of an abundance of caution, in the event that *Boone* is not certified as a class action or the Special Referee's recommended finding of UPL in *Boone* is not adopted and construed so as to be binding precedent in this case.

As a further defense to the foreclosure, Respondent asserted that Quicken Loans violated S.C. Code Ann. Section 37-10-102 (commonly referred to as the "Attorney Preference statute") and that the violation was unconscionable under S.C. Code Ann. 37-10-105(C). Petitioner moved for partial summary judgment as to the attorney preference cause of action, and the trial court granted the motion and made a finding of unconscionability under S.C. Code Ann. Section 37-10-105(C). That Order is the subject of the present appeal pending before the South Carolina Court of Appeals, and, as noted above, this Rule 204(b), SCACR Motion transfer of that appeal to this Court.

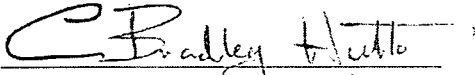
In this case and in *Boone*, there is interplay between Quicken's UPL and its violation of the Attorney Preference statute. In fact, portions of the record in *Boone* were presented to the court below in this case as evidence of the practices and procedures of Quicken Loans. This Court has original jurisdiction of UPL and appellate jurisdiction of the statutory attorney preference violation issues. Since the lower court's Order finding a violation of the Attorney Preference statute is now on appeal, this case presents an opportunity for both issues to be addressed at one time. Further, since the foreclosure

action is now stayed because of the appeal, resolving all issues now promotes judicial economy and hopefully will shorten the time needed to adjudicate the various issues presented.

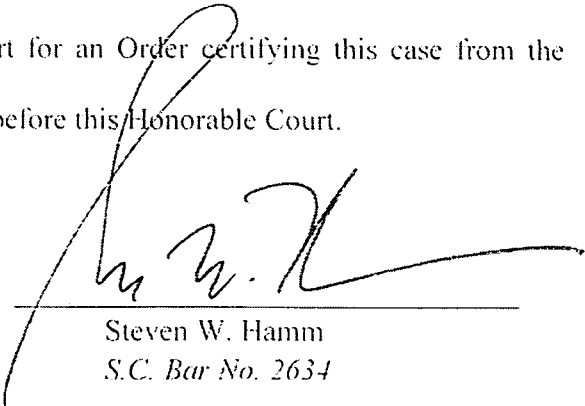
CONCLUSION

Respondent Wayne D. Wilson as Personal Representative of the Estate of Ezekiel T. (Ellen) Wilson hereby moves this Court for an Order certifying this case from the Court of Appeals and setting it for hearing before this Honorable Court.

Respectfully submitted,



C. Bradley Hutto *Jr.*
S.C. Bar No. 6436



Steven W. Hamm
S.C. Bar No. 2634

[All attorneys for Respondent Wayne D. Wilson as Personal Representative of the Estate of Ezekiel T. (Ellen) Wilson are listed on next page]

June 29, 2016
Orangeburg, South Carolina

**Attorneys for Respondent Wayne D. Wilson
as Personal Representative of the Estate of Ezekiel T. (Ellen) Wilson**

RICHARDSON PLOWDEN & ROBINSON, P.A.

Steven W. Hamm *S.C. Bar No. 2634*
PO Box 7788
Columbia, SC 29202-7788
T: 803.771.4400
F: 803.779.0016
shamm@richardsonplowden.com

WILLIAMS & WILLIAMS

C. Bradley Hutto *S.C. Bar No. 6436*
PO Box 1084
Orangeburg, SC 29116-1084
T: 803.534.5218
F: 803.536.6544
cbhutto@williamsattys.com

BEDINGFIELD & WILLIAMS

Daniel Webster Williams *S.C. Bar No. 10233*
PO Box 616
Barnwell, SC 29812-0616
T: 803.259.2759
F: 803.259.5922
danwilliams@bellsouth.net

DIBBLE LAW OFFICES

Charles L. Dibble *S.C. Bar No. 1674*
PO Drawer 1240
Columbia, SC 29202-1240
T: 803.254.0307
F: 866.253.0458
cdibble@dibblelawofc.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
_____)

IN THE COURT OF COMMON PLEAS
Civil Action 2015-CP-06-00277

QUICKEN LOANS, INC.,)
Appellant.)
vs.)
)
WILSON ET AL,)
Respondents.)
_____)

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S.C. SUPREME COURT

CERTIFICATE OF SERVICE

The undersigned does hereby certify that service of *Motion to Certify and Transfer Case from the Court of Appeals for Review by the Supreme Court and Supporting Bases* in the above-captioned matter was made the 30th day of June 2016, to Defendants' counsel:

via hand delivery to:

NELSON, MULLINS RILEY & SCARBOROUGH LLP
Attn: Brian M. Barnwell, Esquire
Meridian, 17th Floor
1320 Main Street
Columbia, SC 29201

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SC Court of Appeals

via U.S. Postal Service:

WOODWARD COTHIRAN & HERNDON
Warren R. Herndon, Jr., Esquire
218 E. Main Street, Suite 2
Lexington, SC 29072

Copies are also being forwarded on June 30, 2016 to opposing counsel in PDF format via electronic mail addressed to:

B. Rush Smith III
A: Mattison Bogan
Carmen Harper Thomas
Brian M. Barnwell
Warren R. Herndon, Jr.

rush.smith@nelsonmullins.com
matt.bogan@nelsonmullins.com
carmen.thomas@nelsonmullins.com
brian.barnwell@nelsonmullins.com
lawverherndon@yahoo.com



June 30, 2016

Columbia, South Carolina

DIBBLE LAW OFFICES
POST OFFICE DRAWER 1240
COLUMBIA, SOUTH CAROLINA 29202-1240
TELEPHONE 803.254.0307

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SC Court of Appeals

June 30, 2016

914 GREGG STREET
COLUMBIA, SOUTH CAROLINA 29201-3928

TELECOPIER: 866.253.0458
E-MAIL: CDIBBLE@DIBBLELAWOFC.COM

Deliver by Hand

The Honorable Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

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Re: Quicken Loans, Inc., Appellant
vs.

Wayne D. Wilson et al., Respondents
Appellate Case No. 2016-001214

S.C. SUPREME COURT

Dear Mr. Shearouse:

Pursuant to Rule 204(b), delivered herewith for filing on behalf of Respondent Wayne D. Wilson as Personal Representative of the Estate of Ezekiel T. (Ellen) Wilson are the original and six copies of the following:

1. Motion to Transfer, and
2. Certificate of Service.

Also enclosed is the filing fee of \$25.00 per Rule 240(d).

(In addition to service on opposing counsel, a copy is being filed with the Clerk of the Court of Appeals today.)

Yours truly,


Charles L. Dibble

7744:CLD:me

cc: ✓ Hon. Jenny Abbott Kitchings, Clerk of Court
B. Rush Smith, Esquire
A. Mattison Bogan, Esquire
Carmen Harper Thomas, Esquire
Brian M. Barnwell, Esquire
Warren R. Herndon, Jr., Esquire
Steven W. Hamm, Esquire
C. Bradley Hutto, Esquire
Daniel W. Williams, Esquire