

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-03201

Appellate Case No. 2014-001296

RECEIVED
AUG 25 2016
SC Court of Appeals

National Bank of South Carolina, Respondent,

v.

Thaddeus F. Segars; KCS Investments, LLC; Singleton
Place Homeowners Association Inc.; and SunTrust
Mortgage Inc., Defendants,

Of Whom Thaddeus F. Segars is the, Appellant.

RESPONDENT NATIONAL BANK OF SOUTH CAROLINA'S RETURN TO
APPELLANT'S PETITION FOR REHEARING

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Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules ("SCACR") and this Court's August 3, 2016 letter request, Respondent National Bank of South Carolina ("NBSC") files this Return to Appellant Thaddeus Segars' ("Segars") Petition for Rehearing (the "Petition") in this matter involving Op. No. 2016-UP-325 (S.C. Ct. App. filed June 22, 2016) (Shearouse Adv. Sh. No. 25 at 5) (the "Opinion"). As explained more fully below, the Petition should be denied. Segars' Petition fails to identify any points of fact or law in the Opinion that the Court overlooked or misapprehended as required by SCACR Rule 221(a) and South Carolina case law and instead simply rehashes two arguments previously presented to this Court, both of which were properly rejected in the Opinion. This Court correctly affirmed the decision below, and, thus, Segars' Petition should be denied.

PROCEDURAL AND FACTUAL BACKGROUND

As this Court will recall, this appeal arises out of a case brought by NBSC against Segars based on his default on a loan that he entered into with NBSC on June 9, 2004. (Consumer Loan Note/Security Agreement (the "Loan"); R.p. 757.)¹ Segars entered into the Loan for the purpose of purchasing a lot in a ten lot subdivision known as Singleton Beach Place Extension (the "Property"), which is located on Hilton Head Island, South Carolina. (Deposition of Thaddeus F. Segars dated August 4, 2010 ("Segars Dep. I") at 11:20-24;26:9-11; 27:4-9; R.pp. 101:20-24; 116:9-11; 117:4-9.)

After Segars defaulted on the Loan, NBSC filed and served a Lis Pendens, Summons and Complaint on Segars on July 6, 2009 and an Amended Summons and

¹ For ease of reference, NBSC will maintain the document abbreviations and record citations used in NBSC's Final Brief.

Complaint on August 14, 2009. (NBSC's Summons and Compl. and Lis Pendens dated July 6, 2009; R.pp. 28-53; and NBSC's Am. Summons and Compl. dated Aug. 14, 2009; R.pp. 54-74.) The Complaint and Amended Complaint sought foreclosure of the mortgage on the Property. *Id.* On or about September 24, 2009, Segars served an Answer and Counterclaims, in which he alleged, *inter alia*, a counterclaim of negligent misrepresentation against NBSC and alleged that he had "suffered damages."² ((Segars' Ans. and Countercl.; R.pp.75-82.)

In his counterclaims, Segars alleged that the appraiser hired by NBSC to perform an appraisal for the bank erred in his valuation of the Property in that, based upon the applicable baseline³ and other set back requirements and restrictions, the true value of the Property was a fraction of the estimate given by the appraiser and the price Segars had agreed to pay for the Property. (*Id.* at ¶15; R.p. 77.) Segars further alleged that transmitting the results of the Appraisal to him, either expressly or by implication, amounted to a negligent misrepresentation by NBSC made to induce him to accept the Loan and borrow money from NBSC. (*Id.* at ¶¶16-18; R.pp. 77-78.)

² Segars also filed counterclaims alleging breach of contract accompanied by a fraudulent act and breach of fiduciary duty. *See* Answer and Counterclaims at R.pp. 78-81. However, he later abandoned those claims during the motion for summary judgment hearing, and, thus, those counterclaims are not at issue in this appeal. ((Hr'g Tr. dated March 14, 2013 ("MSJ Hr'g Tr."); R.pp. 82:13-16; 111:18-22; 129:10-15; R.pp. 538:13-16; 567:18-22; 585:10-15); ((Hr'g Tr. dated May 14, 2014 ("MTR Hr'g Tr.") at 14:8-13; R.p. 604:9-13 (confirming same at hearing on Segars' motion for reconsideration). *See also* Opinion at p. 2.

³ The baseline is established by the Office of Ocean and Coastal Resource Management pursuant to the Coastal Zone Management Act, S.C. Code Ann. § 48-39-280, generally prohibiting construction seaward of the line.

By Order dated December 16, 2010, the Honorable Carmen T. Mullen granted NBSC summary judgment on its claims and referred the foreclosure action to the Master-in-Equity while reserving Segars' counterclaims for further hearing. (Judgment of Foreclosure and Sale dated December 16, 2010 at p. 1; R.p. 21.) This Order also granted NBSC's motion to amend its Reply to Segars' Counterclaims to allege the defense that the claims were barred by the applicable statute of limitation (*id.*), and NBSC filed this amended Reply on February 1, 2011. (NBSC's Am. and Restated Ans. and Reply to Countercl.; R.pp. 83-88.) On March 1, 2011, the Master-in-Equity issued an Order for Deficiency Judgment (the "Deficiency Judgment") to NBSC against Segars in the amount of \$263,159.58. (Deficiency Judgment; R.p. 798-799.) Segars did not appeal the Deficiency Judgment.

NBSC filed its motion for summary judgment on Segars' counterclaims on June 18, 2012, and Segars opposed the motion and filed his own motion for summary judgment on August 16, 2012. (NBSC's Notice of Mot. and Pl.'s Mot. for Summ. J.; R.pp. 628-647; and Segars' Notice of Mot. and Def.'s Mot. for Summ. J.; R.pp. 659-660.) These motions were heard on March 14, 2013. (MSJ Hr'g Tr.; R.pp. 457-590.)

After an unsuccessful mediation, the Court held a status conference via telephone on November 18, 2013 during which the parties agreed to submit supplemental briefs in December 2013.⁴ (*See* MSJ Order at p. 1; R.p.13.) Segars submitted a brief on December 13, 2013. (Email from Finn Law Firm to Honorable

⁴ The Order states that the parties would submit supplemental briefing by December 6, 2012. The year is clearly a typographical error as the letter is dated 2013, and former counsel for NBSC has advised that he believes the date given by the Court during the status conference was December 16, 2013 (and, in fact, both parties submitted their supplemental briefs by that date).

Marvin H. Dukes, III dated December 13, 2013 attaching Supplemental Brief; R.pp. 773-779; and Def.s' Brief in Supp. of their Mot. for Summ. J. and in Opp'n to Pl.'s Mot. for Summ. J. dated March 13, 2013; R.pp. 661-669.) NBSC submitted a supplemental brief on December 12, 2013, which was filed on December 16, 2013. (Pl.'s Supplemental Mem. in Supp. of Mot. for Summ. J.; R.pp. 648-658.) Thereafter, the Honorable Marvin H. Dukes, III sent an email to NBSC's counsel requesting a proposed order granting summary judgment to NBSC. On January 13, 2014, Segars responded to the Court's email requesting a proposed order and attempted to raise new arguments related to compulsory counterclaims and recoupment. (Letter from Thomas J. Finn to Honorable Marvin H. Dukes, III dated January 13, 2014 at 1; R.pp. 782-783.) NBSC responded to this letter and objected to the Court considering the additional untimely briefing submitted by Segars' counsel without permission from the Court. (Letter from Jennie S. Cerrati to Honorable Marvin H. Dukes, III dated January 15, 2014 at 1; R.pp. 784-788.) By separate letter that same day, NBSC submitted the requested proposed Order. (Letter from Jennie S. Cerrati to Honorable Marvin H. Dukes, III regarding proposed Order dated January 15, 2014 at 1; R.pp. 789-791.)

Thereafter, the Court granted NBSC's motion for summary judgment on the basis that Segars failed to assert his claims within the three year statute of limitations, and this Order was entered on February 11, 2014. (MSJ Order at 1-6; R.pp. 13-18.) The Court appears to have properly excluded the untimely raised claims as it does not reference the new arguments in the MSJ Order. *Id.* Segars then filed a motion for reconsideration on February 27, 2014. (Segars' Notice of Mot. and Mot. to Recons.; R.pp. 718-719.) The Motion mentioned no specific grounds as to why the Court should

reconsider its ruling. *Id.* Following a hearing, the Court denied Segars' motion. (Form 4 Judgment in a Civil Case Order denying Mot. to Recons. dated May 15, 2014; R.pp. 19-20.) Segars then filed a timely appeal of the MSJ Order on or about June 12, 2014.

After full briefing by the parties, this Court issued its Opinion affirming the MSJ Order on or about June 22, 2016. This Court correctly held that based on the evidence in the record, Segars had notice that the OCRM baseline had not been moved by March 16, 2005 at the latest. Accordingly, this Court held that the statute of limitations for his counterclaim for negligent misrepresentation expired on March 16, 2008. Opinion at p. 3. This Court also correctly held that Segars was not entitled to a tolling of the statute of limitations for his counterclaim for negligent misrepresentation because his claim expired before NBSC filed its foreclosure action on July 6, 2009 and before Segars filed his counterclaims on September 28, 2009. *Id.*

Segars then timely filed the instant Petition for Rehearing. Pursuant to SCACR Rule 240(e), NBSC did not file a formal return but submitted a letter advising that it would file one upon request by the Court. Thereafter, this Court requested that NBSC do so by August 15, 2016. NBSC then requested and received a ten-day extension of this deadline such that the Return would be due on or before August 25, 2016.

ARGUMENT

As will be discussed below, Segars' Petition for Rehearing should be denied. Rule 221(a) of the South Carolina Rules of Appellate Procedure requires that a party submitting a Petition for Rehearing "state with particularity the points supposed to have been overlooked or misapprehended by the court." *See also Kennedy v. South Carolina*

Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (stating that "[i]n order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument."). The purpose of a petition for rehearing is not "to have the case tried in the appellate court a second time." See *Kennedy v. South Carolina Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). Both arguments raised in Segars' Petition were squarely addressed and rejected by this Court in its Opinion, and, moreover, neither argument has any merit. Accordingly, Segars' Petition should be denied.

I. THIS COURT DID NOT OVERLOOK OR MISAPPREHEND ANY OF SEGARS' ARGUMENTS.

Segars raises two claims in his Petition. First, he claims that his cause of action for negligent misrepresentation against NBSC only arose when he obtained a copy of the appraisal in April of 2009 and learned which plat the appraiser had relied upon. Petition at p. 2. Second, Segars argues that his negligent misrepresentation counterclaim arose out of NBSC's foreclosure action and was timely filed in response to that action, and therefore, the statute of limitations should be tolled. *Id.* at p. 4. Both of these arguments were squarely addressed and rejected by this Court in its Opinion. In fact, the introductory paragraph of the Opinion describes the issues on appeal as follows:

Segars argues the master erred in granting summary judgment to NBSC (1) when Segars filed compulsory counterclaims within the time allowed to file a responsive pleading and (2) on the basis that the statute of limitations had expired when Segars had no way of discovering NBSC's negligence until Segars obtained a copy of the appraisal.

Opinion at p. 2. This is exactly the same description of the issues that Segars himself provides in his Petition. Petition at pp. 2-4. Segars also fails to identify any sub-points related to these issues that have been "overlooked or misapprehended by the court" and instead seeks to retry these issues, which have already been reviewed and addressed by this Court. Accordingly, this Court should deny Segars' Petition.

II. EVEN IF SEGARS HAD PROPERLY IDENTIFIED POINTS THAT HAD BEEN OVERLOOKED OR MISAPPREHENDED BY THIS COURT, THE TWO ISSUES RAISED IN SEGARS' PETITION ARE WITHOUT MERIT.

The two issues raised by Segars in his Petition, i.e. that the statutes of limitations did not start to run until he received the appraisal and that the statute should have been tolled, are without merit, and, thus, the Petition should be denied.⁵

A. This Court Correctly Affirmed the Circuit Court's Determination that by March 16, 2005 at the Latest, Segars Knew He Had Been Adversely Affected by DHEC's Refusal to Relocate the OCRM Baseline, and thus, the Statute of Limitations Expired on March 16, 2008.

In its Opinion, this Court correctly held that once Segars had notice that the OCRM baseline had not been moved, which was by March 16, 2005 at the latest, he had notice that the value of Lot 2 was negatively impacted and there might be a problem with the appraisal, and therefore that the statute of limitations expired on March 16, 2008. Segars argues in his Petition that "[t]he March 16, 2005 date elected by the Master and adopted in its ruling by this court has nothing to do with NBSC's negligent misrepresentation" (*see* Petition at 4) because his knowledge of an issue with

⁵ In his Final Brief, Segars argued additional grounds in support of his contention that the circuit court erred in granting summary judgment to NBSC; however, Segars did not raise those issues in his Petition for Rehearing so they are not at issue here.

the OCRM line could not have put him on notice that NBSC made a negligent misrepresentation. *See* Petition at 3. As explained below and in this Court's Opinion, Segars' argument has no merit and, thus, was properly rejected by this Court.

Segars' counterclaim for negligent misrepresentation against NBSC relates to the Appraisal performed by Linsday, whom NBSC hired to perform an appraisal for the bank. More specifically, Segars alleges that Linsday erred in his valuation of the Property in that, based upon the applicable OCRM baseline and other set back requirements and restrictions, the true value of the Property was a fraction of the estimate Linsday gave because the lot was "unbuildable." (Segars' Ans. and Countercl., R.pp. 75-82.) Segars further alleged that although he did not see the Appraisal before closing, NBSC impliedly transmitted the results to him simply by proceeding with the closing, and he alleged that this amounted to a negligent misrepresentation made to induce him to accept the Loan. (*Id.*; R.pp. 75-82.; Segars Dep. I 75:9-12; 88:10-89:11; R.pp. 165:9-12; 178:10-179:11.)

The circuit court found that Segars knew he had been adversely affected by the failure of the OCRM baseline to move by March 16, 2005 at the latest because that is when his attorney, C.C. ("Cotton") Harness, III, Esquire ("Harness") moved to intervene in a case pending against DHEC in the Administrative Law Court of the State of South Carolina (the "ALC Case") that sought to move the baseline seaward.⁶ In the

⁶ Segars testified that sometime in 2005, he, along with a group of other owners, retained the services of Harness to intervene in a case pending against DHEC in the ALC Case that sought to move the baseline seaward. (Deposition of Thaddeus F. Segars dated January 19, 2011 ("Segars Dep. II") at 20:17-21:17; R.pp. 264:17-265:17.) On March 16, 2005, Harness filed a Motion to Intervene in that case alleging that Segars and other lot owners were adversely affected by DHEC's position refusing to relocate the OCRM baseline. (Mot. to Intervene in case number 04-ALJ07-0304-CC

ALC Case, Segars and others alleged that the failure of DHEC-OCRM to move the baseline negatively impacted the value of the Property. (Motion to Intervene in Case No. 04-ALJ07-0304-CC dated March 16, 2005; R.pp. 625-627.) The circuit court also noted that three other courts had determined that Segars "learned of the location of the OCRM Line in relation to his claimed inability to build on the property" in the 2004-2005 timeframe. (MSJ Order at 3-4; R.pp. 15-16.)⁷ The circuit court then held as follows:

Based on the evidence and deposition testimony in this matter and the previous findings of this Court, it is clear that, by March 16, 2005 at the latest, Segars had actual knowledge that the OCRM Line was not located where he thought at the time of purchase of the Property and that

dated March 16, 2005 at p. 2; R.p. 626 (stating that "[t]he parties have standing and meet the grounds for intervention in that: . . . Each lot owner is adversely affected by the position taken by DHEC/OCRM and the Town of Hilton Head Island. Movement of the line allows for highest and best use of their land and failure to move the line materially affects use, enjoyment and value of these lots."); and Segars Dep. II at 22:11-18; R.p. 266:11-18.)

⁷ More specifically, the circuit court noted the following cases brought by Segars: against his attorney (Civil Action No. 2009-CP-07-00381)(wherein the Court found Segars "'was on constructive notice of the [2003 Plat/Approved Survey] and its contents in October 2004 due to his participation as a party in a plat revocation lawsuit against the town of Hilton Head.'"); against the title company and the sellers (Civil Action No. 2008-CP-07-2791)(wherein the Court found that in late 2005, Segars learned of the Approved Survey/plat and that as a result only a house of 2,000 square feet could be built on lot 2); and against the title company individually (Civil Action No. 2011-CP-07-00931)(wherein the Court found that Segars discovered or should have discovered the facts at issue because they "were matters of public record at that time") (emphasis in original). (MSJ Order at p. 4-5; R.pp. 16-17.) *See also* Order Granting Defs. RSP and Gaughf's Mot. to Dismiss, filed May 20, 2009, Honorable Marvin H. Dukes, III, p. 4; R.p. 4; Order Granting Summ. J. to Defs., filed July 2, 2010, Honorable Carmen T. Mullen, p. 4-5; R.pp. 9-10; and Order Granting Def.'s Mot. to Dismiss, filed May 24, 2012, Honorable Carmen T. Mullen, p. 2; R.p. 12.) All of these lawsuits have been adjudicated and dismissed based on the expiration of the statute of limitations. Segars made no allegation against NBSC or the appraiser in any of the foregoing suits, and he has never made a claim against the appraiser.

the actual location affected his ability to build a residence on the Property. This discovery, pursued with reasonable diligence would have led Segars to conclude that [the] appraisal might be in error, and thus, should have known a claim based on the appraisal might exist. I find that Defendants failed to file the counterclaims on the alleged erroneous appraisal within three years.

(MSJ Order at 5; R.p. 17.) Thus, because Segars failed to assert his claims until more than four years later, the circuit court properly found that his claims were barred by the statute of limitations (*Id.* at 3-4; R.pp. 15-16.), and this Court did not err in affirming the circuit court's ruling.⁸

Although even Segars admits in his Final Brief that he knew that the OCRM baseline had not been moved as of some time in 2005 (*see* Segars' Br. at p. 13), he asserts in his Petition that this knowledge is irrelevant and that he did not know he had a potential claim against NBSC based on the Appraisal until he obtained a copy of the appraiser's file in 2009 and learned that Linsday had relied upon the Approved Survey (i.e. the survey that showed the actual baseline and not the line marked "Future OCRM Baseline," which was the correct and approved survey of record). (*Id.* at p. 13-17.) As this Court previously held after reviewing the briefing and the record, this argument has no merit. As soon as Segars knew that the OCRM baseline had not moved to the location of the "Future OCRM Baseline," he had knowledge that the ability to build on the lot would be affected and that the value of the Property would be negatively

⁸ In addition, an argument could also be made that Segars was on constructive notice as of the date of his loan and the closing on the purchase of the Property (i.e., June 9, 2004) as not only was the Approved Survey recorded and part of the public record, it was referenced on the General Warranty Deed conveying the Property to him. (General Warranty Deed dated May 24, 2004; R.pp. 738-740.) Segars acknowledged receipt of the OCRM-approved plat by acceptance of the deed. (General Warranty Deed at p. 2; R.p. 739; and Segars Dep. I at 50:9-22; R.p. 140:9-22.) *See also* Opinion at 2.

impacted as is clearly evidenced by his hiring an attorney to intervene in the ALC Case to make these exact allegations. While Segars may not have known exactly what the Appraiser relied on to arrive at his estimate,⁹ a reasonable person would have investigated that upon learning that the value was less than what the Appraisal stated.¹⁰ *See, e.g., Gibson v. Bank of America, N.A.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009) (The limitations period of S.C. Code Ann. § 15-3-530(5) “begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.”) (internal citations omitted); *see also Grillo v. Speedrite Products, Inc.*, 340 S.C. 498, 503, 532 S.E.2d 1, 3 (Ct. App. 2000) (stating that the fact that an injured party may not comprehend the full extent of the damage is immaterial and that the

⁹ Ironically, Segars appears to be implying that he did not think he had a claim if the appraiser relied on the incorrect and unapproved survey, which showed the potential "Future Baseline," but that he believed he had a claim once he learned that the appraiser relied on the correct approved survey of public record. This is simply nonsensical.

¹⁰ Furthermore, the Panel correctly affirmed the circuit court's ruling for additional reasons as set forth in NBSC's Final Brief. *See* Opinion at 2. Segars could not have relied upon the Appraisal as a matter of law because he was contractually committed to purchase the Property regardless of the amount of the Appraisal and because there is no question that the plat depicting the DHEC-OCRM approved baseline, i.e. the Approved Survey, was recorded and thus a matter of public record prior to his closing on the Property. (*See* NBSC's Br. p. 29.) Moreover, not only did Segars agree to a price and enter into the Contract to purchase the Property without seeing the Appraisal, he allowed his financing contingency and due diligence period to expire before applying for the Loan from NBSC. (Contract of Sale—Offer and Acceptance at ¶6; R.p. 731; and Segars Dep. I at 27:10-29:10; R.pp. 117:10-119:10.) Accordingly, Segars could not have relied upon the Appraisal in moving forward with the purchase of the Property and the Loan.

statute of limitations is triggered by knowledge of facts, diligently acquired, sufficient to put a person on notice of the existence of a claim).

In short, Segars was on actual notice (or, at a minimum, constructive notice) that something might not be right with the Appraisal, that some right had been invaded and that some claim against another party might exist by March 16, 2005 at the latest. Accordingly, this Court correctly ruled that the master did not err in granting summary judgment to NBSC on the basis the statute of limitations had expired.

B. This Court Correctly Held that Segars was Not Entitled to a Tolling of the Statute of Limitations for his Negligent Misrepresentation Counterclaim because the Statute Expired before NBSC Filed its Foreclosure Action.

In his Petition for Rehearing, Segars argues that this Court erred by ruling that he was not entitled to a tolling of the statute of limitations. *See* Petition at pp. 3-4. In support of this argument, he claims that this Court erred by failing to find that his counterclaims arose out of the same transaction and occurrence (i.e. the loan) as NBSC's foreclosure action and, thus, that his compulsory counterclaims were brought within the time allowed and in response to NBSC's action.¹¹ *See* Petition at 4.

As explained in NBSC's Final Brief, in cases where the statute of limitations has not already run, the majority view is that the institution of a plaintiff's suit tolls or suspends the running of the statute of limitations governing a compulsory counterclaim. § 1419 Compulsory Counterclaims—Statute of Limitations, 6 Fed. Prac. & Proc. Civ. § 1419 (3d ed.); *see, e.g., Burlington Indus. v. Milliken & Co.*, 690 F.2d 380, 389 (4th

¹¹ Regardless, Segars' argument regarding tolling of the statute of limitations based on his assertion that his claims were compulsory was not timely raised during NBSC's motion for summary judgment or in Segars' subsequent Rule 59(e) motion. As a result, that new theory was not preserved for appellate review. *See* NBSC's Br. at pp. 25-27.

Cir. 1982) (citation omitted)). However, where the statute has expired *before* the plaintiff's suit is initiated, the majority rule is that the statute is *not* tolled. See 6 Fed. Prac. & Proc. Civ. § 1419 (3d ed.) (stating that "tolling [is] immaterial [where] the limitations period [on defendants' compulsory counterclaim] expired before the plaintiff's suit is brought."); Ga. Code Ann. § 9-3-97 (extending the statute of limitations, "so as to allow parties, up to and including the last day upon which the answer or defensive pleadings should have been filed. . . provided that the final date allowed by such limitations for the commencement of such actions *shall not have expired* prior to filing of the main action.") (emphasis added); *Keckley v. Payton*, 157 F. Supp. 820, (N.D. W. Va. 1958) (stating that "the weight of authority holds that unless a set-off or counterclaim takes the form of recoupment, which is not the case in this tort action, the statute of limitations applies as much to a set-off or counterclaim as to an original action. See an annotation in 1 A.L.R.2d 634, for cases so holding from thirty-six states.").¹²

This Court correctly held that Segars had actual knowledge by March 16, 2005 at the latest that the OCRM line was not located where he thought it was at the time of purchase and that the line's location would affect his ability to build a residence on Lot

¹² Some states (although South Carolina is not one of them) have held that there can be an exception to this general rule where the counterclaim is one for recoupment. See NBSC's Final Br. at 23-25. However, Segars asserted claims against NBSC not as affirmative defenses, counterclaims of recoupment or set-off but rather as counterclaims for independent causes of action for negligent misrepresentation, breach of fiduciary duty and breach of contract accompanied by a fraudulent act, all of which sought the affirmative relief of money damages. (Ans. and Countercl. at ¶¶18, 26, 33, and "Wherefore" clause; R.pp. 78, 79, 81.) Therefore, even if South Carolina had adopted this exception, it would not apply in this case. See NBSC's Final Br. at 23-25 (for full discussion). And, in any event, Segars has not raised the issue of a claim of recoupment in his Petition, and therefore, it is not at issue here.

2. Accordingly, this Court properly found that Segars was not entitled to a tolling of the statute of limitations because the limitations period on his negligent misrepresentation counterclaim ran at the very latest in March of 2008, which was over one year prior to the filing of NBSC's foreclosure action in July of 2009.

CONCLUSION

This Court did not overlook or misapprehend any arguments or points made by Segars and correctly affirmed the circuit court's ruling in favor of NBSC, and thus, this Court should deny Segars' Petition for Rehearing. NBSC presents this Return, the briefing before the Court, and the Record as additional support as to why the Petition should be denied.

Respectfully submitted,

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Charleston, South Carolina
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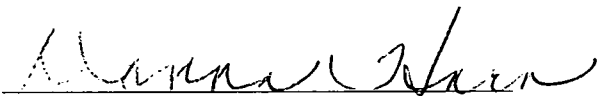
PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: RESPONDENT NATIONAL BANK OF SOUTH CAROLINA'S
RETURN TO APPELLANT'S PETITION FOR REHEARING

Counsel Served: Thomas J. Finn, Esq.
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August 25, 2016


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August 25, 2016

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
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RECEIVED

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SC Court of Appeals

RE: National Bank of South Carolina, Respondent v. Thaddeus F. Segars; KCS Investments, LLC; Singleton Place Homeowners Association Inc., and Suntrust Mortgage Inc., Defendants, Of Whom Thaddeus F. Segars is the Appellant
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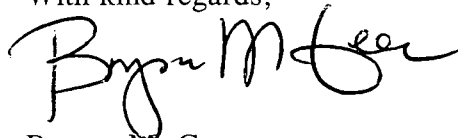
Dear Ms. Kitchings:

Enclosed for filing in the above matter are the original and seven copies of Respondent's Return to Petition for Rehearing. Please return a clocked in copy to us via our courier.

By copy of this letter, we are serving this Return on counsel for Petitioner.

Thank you for your assistance.

With kind regards,



Bryson M. Geer

BMG:dh

Enclosure

cc: Thomas J. Finn, Esquire (w/enclosure)