STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Master in Equity Court

James O. Spence, Master-in-Equity

Case No. 2015-00350

Libby Corporation, Respondent,

v.

Haiyan Lin, Appellant.

RECEIVED
AUG 18 2016
SC Court of Appeals

INITIAL BRIEF OF THE RESPONDENT

Joseph A. Vasquez
Setzler & Scott, P.A.
Post Office Box 4024
West Columbia, SC 29171-4024
(803) 796-1285
Attorney for the Respondent

Haiyan Lin
Post Office Box 8776
Columbia, SC 29202
(803) 504-3604
Self Represented Litigant

TABLE OF CONTENTS

TABLE OF CONTENTS
(Continued)

TABLE OF AUTHORITIES

CASES

CONSTITUTION

TABLE OF AUTHORITIES
(continued)

STATUTES AND ORDINANCES

RULES

STATEMENT OF THE ISSUES ON APPEAL

I. THE NOTICE OF DEBT AND NOTICE OF COLLECTION OF DEBT DID COMPLY WITH THE RIGHT TO CURE CLAUSE.

II. THE NOTICE OF REFERENCE WAS NOT PROCURED BY FRAUD UPON THE COURT.

A. Respondent's counsel did not make a material misrepresentation of the facts in the hearings of May 20, 2014 and August 12, 2014, with respect to her replying to the Notice of Debt letters.

B. Respondent's counsel followed the appropriate rules and procedures in obtaining the Order of Reference.

III. THE MASTER IN EQUITY DOES NOT LACK JURISDICTION TO HEAR THE CASE.

IV. THE APPELLANT'S DUE PROCESS RIGHTS WERE NOT VIOLATED.

A. The Appellant was afforded procedural due process throughout the litigation of the case.

1. Adequate notice was provided to the Appellant of the case.

2. The Appellant had adequate opportunity for a hearing, to cross examine witnesses, and to present evidence.

B. The judge's refusal to set aside the Order of Reference and denial of the Appellant's Motion for Rehearing was proper.

V. JUDGE SPENCE DID NOT VIOLATE THE JUDICIAL CODE OF CONDUCT.

STATEMENT OF THE CASE

This is a dispute between the Appellant, Haiyan Lin, ("Appellant"), a self represented litigant, and the Respondent, Libby Corporation, ("Respondent"), in a commercial foreclosure action on a parcel of commercial property. The Respondent requests of this Court a decision to affirm the order of the Master in Equity Court of Lexington County. The court, after five separate hearings in this case, granted to the Respondent an Order and Judgement of Foreclosure and Sale ("Order") and directed the Appellant's property be sold at public auction for failure to timely pay the mortgage payments owed to the Respondent.[1]

The Respondent filed a Notice of Pendency of Action, and Summons and Complaint for foreclosure in this matter with the Clerk of Court for Lexington County on October 11, 2013. Personal service of the pleadings was attempted on the Appellant by a process server between October 11, 2013 and November 21, 2013, but to no avail, as evidenced by the Affidavit of Non-Service filed on November 27, 2013.

Upon receipt of the Affidavit of Non-Service from the process server, the Respondent filed a an Affidavit for Publication with the clerk of court on December 5, 2013. The clerk of court issued an Order for Publication on December 6, 2013, authorizing publication in the Lexington Chronicle. Service was published on January 9, 16, and 23, 2014, as evidenced by the Affidavit of Publication filed on February 5, 2014.

As the Appellant did not timely file an answer to these pleadings, the Respondent filed an Affidavit of Default, an Affidavit of Non Military Service on March 14, 2014, and a Petition for Order of Reference to the master in equity on March 21, 2014. The Order of

---

[1] The sale of the property has not taken place pending the outcome of this Appeal.

Reference was issued on April 4, 2014, and the case was referred to the master In equity. The foreclosure hearing was set for May 20, 2014, at 3:00 p.m. The Notice of Hearing was served upon the Appellant on May 5, 2014, at her last known addresses, including a post office box in Columbia, South Carolina, as evidenced by the Certificate of Service by Mail filed on May 8, 2014.

The hearing on May 20, 2014, was commenced and the Appellant was initially not present. During the course of the Respondent's presentation to the court, the Appellant appeared and identified herself as a self represented litigant. The Appellant further stated to the court that she had not been properly served the Notice of Pendency of Action, Summons and Complaint for foreclosure in this case, that all she had received was the Notice of Hearing, and that her due process rights had been violated. After due inquiry by the court into the matter, the Respondent was directed to serve a copy of the Notice of Pendency of Action, Summons and Complaint on the Appellant while all parties were present in the courtroom, and the court instructed the Appellant she had thirty days in which to respond or retain an attorney to respond for her. The case was then continued.

On June 19, 2014, the Appellant filed an Answer to the Summons and Complaint. In her filing, the Appellant raised eight issues, moved to dismiss the Respondent's foreclosure action, and requested an order from the court for mediation. In response, the Respondent filed a Reply on July 25, 2014, denying the Appellant's allegations and further asserting foreclosure actions are exempt for alternative dispute resolution per Rule 3(b)(7) of the Court Annexed Alternative Dispute Resolution (ADR) Rules.

A second hearing in this matter was held on August 12, 2014. All parties were in attendance and, again, the Appellant was self represented. Prior to the hearing on the merits of the Respondent's case, the court went to extraordinary lengths to address each one of the eight issues raised in her Answer. The Respondent then proceeded to present its case, in which the Appellant fully participated by cross examining the Respondent's witnesses, presenting her own case-in-chief in response to the Respondent's allegations, and subjecting herself to cross examination.

At the conclusion of the hearing, the court issued a detailed oral ruling requiring the transcript of the hearing be made available to both parties, and ordering the both parties to file post trial memorandums to answer and address six specific questions which were raised by the Appellant in her Answer or during the hearing. The post trial memorandums were to be served and filed within thirty days of receipt the transcript.

On August 20, 2014, the Appellant filed a Notice of Hearing on the Respondent's Affidavit of Attorney's Fees. The Notice of Hearing Date was issued by the court on August 28, 2014, setting the hearing for October 23, 2014.

The Respondent received its copy of the transcript of hearing on September 11, 2014, filed its Post Trial Memorandum on October 9, 2014, and served a copy of the same on the Appellant. The Appellant did not file a post trial memorandum despite the court's requirement.

On October 23, 2014, the third hearing in this matter was held. This hearing solely was to address the subject of the Respondent's attorneys fees. The Appellant appeared and, again was self represented. Prior to the commencement of the hearing, the Appellant handed

Respondent's counsel a "Motion for Rehearing" asserting that as the court had ruled that she was no longer in default, the Order of Reference should be stricken and "the hearing shall be back in circuit court not in master-in-equity". The Respondent objected to the "Motion for Rehearing" as counsel was handed the motion just minutes before the convening of the hearing, and the sole purpose of the hearing as noticed was to address questions concerning the Respondent's attorneys fees. Respondent's counsel also noted to the court that the Appellant failed to submit her post trial memorandum. The court noted counsel's objections and stated to the Appellant the issue raised in her "Motion for Rehearing" was repeatedly addressed in detail at the hearing on August 12, 2014, and ruled upon at that time. Further, since the court had not yet issued a written order, there was no order from which to appeal or request a rehearing, thus making the "Motion for Rehearing" premature. The court returned the original "Motion for Rehearing" to the Appellant without ruling upon its merits.

The Appellant next stated to the court she had not received a copy of the Respondent's Post Trial Memorandum which is why she had not filed her Post Trial Memorandum. After due inquiry into the matter, it was discovered Appellant had changed her post office box without the Respondent's knowledge. The court instructed that the Appellant to obtain a copy of the Respondent's Post Trial Memorandum from the clerk of court's office, to file her Post Trial Memorandum not later than 5:00pm, October 30, 2014, and to ensure that it was served on Respondent's counsel. The court then directed Respondent's counsel to prepare and submit to the court a Status Report from the hearing which would include a Notice of Hearing for November 12, 2014. In compliance with the court's directive, the Appellant did file her Post Trial Memorandum on October 30, 2014.

On November 12, 2014, the fourth overall scheduled hearing, and the second hearing on the Appellant's objection to the Respondent's attorney's fees, was convened. The Appellant, again, was self represented. At the conclusion of the Appellant's nearly two hour examination of Respondent's counsel concerning the attorney's fees and other issues, the Appellant moved to file a post hearing memorandum, and the court gave the Appellant until November 21, 2014, to file such post hearing memorandum.

On November 21, 2014, the Appellant served and filed a Post Hearing Memo, in which she alleged five issues to the court: 1) Respondent's counsel made a material misrepresentation of the facts in the hearings of May 20, 2014 and August 12, 2014, with respect to her replying to the Notice of Debt letters; 2) Respondent's counsel intentionally failed to serve the Appellant the Summons and Complaint in order to procure an Order of Publication and causing her to default in order procure the Order of Reference without her knowledge or consent; 3) Respondent's counsel is in violation of Rule 407 of the South Carolina Rules of Professional Conduct; 4) Respondent's counsel had not followed the terms of the mortgage or the South Carolina Rules Civil Procedure; and 5) Respondent's counsel failed to produce itemized work record. On December 2, 2014, Respondent's counsel filed a Reply to the Appellant's Post Hearing Memorandum responding to each of these assertions.

On January 9, 2015 , the fifth and final hearing was held, which was the third hearing on the Appellant's objection to the Respondent's attorney's fees. All parties were present and, again, the Appellant was self represented. Present at this hearing were Respondent counsel's

law partner and both paralegals in the law firm who worked on the case.[2] The Appellant queried the witnesses concerning their time on this case, and queried Respondent's counsel on his additional time since the previous hearing.

At the conclusion of the final hearing in this case, the court issued the Order in favor of the Respondent and authorizing the sale of the Appellant's property for failure to pay the mortgage. The Order was served on the Appellant and counsel for the Respondent by the clerk of court on February 3, 2015, and received shortly thereafter by the parties. The Appellant filed her Notice of Appeal with this Court on or about February 24, 2015, and served the same on opposing counsel on the same date.

---

2 On or about November 5, 2014, seven days prior to the hearing on November 12, 2014, the Appellant filed a "Request for Production of Subpoenas" requesting the court to subpoena Respondent counsel's law partner and two paralegals from his firm for questioning on the issue of the attorneys fees. On November 7, 2014, the Respondent filed a Motion to Quash or Modify the Subpoenas issued to Attorney and Staff of Setzler & Scott, P.A. At the hearing on November 12, 2014, the court denied the Respondent's motion and required him to make the individuals available at a later date to be determined. The court then gave Respondent's counsel the choice of being examined on the issue of his attorneys fees at that time or to wait and be examined with the other members of his firm. Respondent's counsel chose the later alternative and was examined by the Appellant at that time. At the January 9, 2015 hearing Respondent counsel's law partner and two paralegals were made available for questioning by the Appellant as required by the court.

STATEMENT OF THE FACTS

On January 5, 2007, the Appellant, for value received, executed and delivered to the Respondent a Promissory Note ("Note") in the principal sum of $150,000.00, with an interest rate of 9% per annum, to be paid in 119 monthly installments of $1,206.93, commencing February 5, 2007, and continuing on the fifth day of each month thereafter with the 120th and final payment of $134,145.30 being due on or before January 5, 2017. In order to secure the payment of the Note and the debt evidenced thereby according its terms and conditions, the Appellant executed and delivered to the Respondent a Mortgage dated January 5, 2007, whereby she mortgaged to the Respondent, its successors, and assigns, real estate located at 140 Pond Drive, Lexington, South Carolina ("the Subject Property"). The Mortgage was thereafter recorded by the Respondent in the Office of the Register of Deeds for Lexington County, on January 9, 2007, in Book 11673 at Page 324 . The Mortgage held by the Respondent constitutes a valid first lien against the subject property and, at the time of the commencement of the action to foreclose, no other parties claimed any interest in or upon the Subject Property to the Respondent's knowledge. See Order at 15-16; see also Note and Mortgage.

Between February 22, 2007 and June 20, 2011, the Appellant timely made the monthly mortgage payment. Beginning in July, 2011, the Appellant became delinquent in her payments, making late payments in the third quarter and failing to make any payments in the fourth quarter of 2011. In 2012, the Appellant made timely payments for the first quarter and the first two months of the second quarter, but again became delinquent by thirty days for each month beginning in the last month of the second quarter, and all of the third quarter. No

payments were received for the fourth quarter of 2012. No mortgage payments were received from the Appellant in 2013. The last payment of any kind received by the Respondent from the Appellant was on October 4, 2012, in the amount of $1,206.93. See id. at 16; see also Respondent's Post Trial Memorandum at 8 and Exhibit 1

In addition, the Appellant failed to pay the 2009, 2010, 2011, and 2012 real estate property taxes as required under the Mortgage. The Respondent paid the real property taxes on two occasions after being notified by the Lexington County Treasurer that the property had been sold for delinquent taxes and that, as the Mortgagor, they had a right of redemption.[3] See id. at 16-17; see also Mortgage at ¶17; Transcript of Proceedings of August 12, 2014, p. 46, l. 25 - p. 49, l. 12; p. 50, l. 11 - p. 52, l. 12, p. 54, l. 20 - p. 55, l. 5; Respondent's Post Trial Memorandum at 8-9.

Based upon the testimony of James McBride Witherspoon, President of Libby Corporation, it appears the parties had been in various discussions between 2011-2013 regarding the undisputed fact the Appellant was behind in the mortgage payments. These discussions ranged from the Appellant working for the Respondent and using the income to bring the payments current, to the Appellant renting the property and using the income to bring the payments current, to her leaving mortgage payment checks with the Respondent to deposit upon her authorization when there was money in her checking account. None of these discussions resulted in the Appellant making any tangible effort to bring the Mortgage current. When the Respondent had work for her to perform, she was otherwise occupied or could not

---

[3] Since the hearing of August 12, 2014, the Respondent has now paid the 2013 and 2014 real estate property taxes. The 2015 real estate taxes remain unpaid.

come; when the Respondent agreed to allow the Appellant to rent the property - even to the point of assisting the Appellant with cleaning up the property - the Appellant provided no key or access and failed to rent the property, and she instructed the Respondent not to deposit the checks she had left as there was no money in the bank. Mr. Witherspoon made it clear that, while he was willing to work with the Appellant, it had been three years trying to resolve the delinquency. See id. at 18; see also Transcript of Proceedings of August 12, 2014, p. 79, l. 4 - p. 88, l. 23; p. 90, ll. 4-20, p. 94, l. 23 - p. 95, l. 10; Respondent's Post Trial Memorandum at 9-10.

On August 20, 2013, the Respondent directed its counsel, Setzler & Scott, P.A. of West Columbia, South Carolina, to issue delinquency letters to the Appellant at her last known addresses. Two letters, each titled "Notice of Debt" and signed by E. Danny Scott, were issued, one certified mail and one regular first class mail, to two separate last known addresses of the Appellant. It was later discovered the letters did not comply with the with the legal requirements of the Mortgage. Upon this discovery, two new letters, again each titled "Notice of Debt" and signed by E. Danny Scott were sent on September 4, 2013, one certified mail and one regular first class mail, to the two separate known addresses of the Appellant. These letters, which were identical, stated the Appellant was in default, setting forth the amount then owed ($143,313.75) plus daily interest ($35.33 per diem), stating that she had thirty days to bring the mortgage current or that full amount would be accelerated, that if arrangements were not made to pay the full amount the Respondent would begin foreclosure action, and that the Note and Mortgage allowed for the recovery of all attorneys fees and costs of collection. The certified letters of August 20, 2013 and September 4, 2013, sent to the post

office box, were both signed for by the Appellant on October 3, 2013 and October 8, 2013 respectively. The letters sent to the Appellant's physical address were returned. See id. at 18-19; see also Letter to Appellant of August 20, 2013 (Notice I); Letter to Appellant of August 20, 2013, with Domestic Return Receipt (green card) (Notice II); Letter to Appellant of September 4, 2013 (Notice III); Letter to Appellant of September 4, 2013, with Domestic Return Receipt (green card) (Notice IV); Transcript of Proceedings of August 12, 2014, p. 39, l. 15 - p. 41, l.11, p. 43, l 9 - p. 44, l. 23.

By October 7, 2013, no response to the letters had been received from the Appellant. On October 11, 2013, the Respondent filed the Summons and Complaint for foreclosure on its mortgage with the clerk of court. At the time of the filing, the payments due on the Note and Mortgage were in default as of October 7, 2013, and there was due and owing in the sum of $144,186.40 and late fees all bearing interest at the rate of 9.00% per annum ($35.33 per diem).. Further, the Respondent also prayed for a deficiency judgment against the Appellant, the costs and disbursement of the action, including attorney's fees and costs, as provided by the Note and Mortgage. See id. at 19; see also Mortgage at ¶17; Summons and Complaint.

On October 18, 2013, Appellant sent a letter to Respondent's counsel stating she disputed the debt and asked for verification of the same. This was the first written communication Respondent's counsel had from the Appellant in this case. The letter did not dispute the default, and did not state the parties had any form of an agreement or were negotiating an agreement in an effort to resolve the outstanding amounts owed. On November 14, 2013, Respondent's counsel responded to the Appellant's request and forwarded to her a payment history and the Statement of Account from the Complaint which had been

previously filed. Nothing further was heard from the Appellant until she appeared before the court on May 20, 2014. At no time between October 18, 2013 and May 20, 2014, did the Appellant contact the Respondent or Respondent's counsel to indicate the parties had or were in the process of negotiating an agreement in an effort to resolve the outstanding amounts owed, and that any action to foreclose on the Mortgage would be improper. See id. at 19-20; see also Letter to Respondent's Counsel from Appellant of October 18, 2013; Letter to Appellant of November 14, 2013; Respondent's Post Trial Memorandum at 11.

STANDARD OF REVIEW

"A mortgage foreclosure is an action in equity." U.S. Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). In equity actions referred to and tried by the master in equity, the Court of Appeals has jurisdiction to find facts in accordance with its views of the preponderance of evidence. As such it may reverse a factual finding by the master in equity only when the appellant satisfies the Court that the finding is against the greater weight of the evidence. See Snow v. Smith, 416 S.C. 72, 784 S.E.2d 242 (Ct. App. 2016)(quoting Campbell v. Carr, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004)). However, this broad scope of review does not require the Court to disregard the findings of the master in equity. See U.S. Bank Trust Nat'l Ass'n. Nor is the Court required to ignore the fact that the master in equity, who saw and heard the witnesses, was in a better position to evaluate their credibility. See Snow. Furthermore, the Appellant is not relieved of the burden of convincing the Court the Master in Equity committed error in its findings. See id.

ARGUMENTS

I. THE NOTICE OF DEBT AND NOTICE OF COLLECTION OF DEBT DID COMPLY WITH THE RIGHT TO CURE CLAUSE.

The Appellant asserts in her Initial Brief the Notice of Debt and Notice of Collection of Debt did not comply with the right to cure clause in the Mortgage. See Appellant's Brief at 9-10. The Appellant made this assertion in her Answer and on numerous occasions to the court. See Appellant's Answer at 1; Transcript of Proceedings of August 12, 2014, p. 12, l. 23 - p. 13, l. 1, p. 26, ll. 3-8, p. 42, ll. 3-21, p. 45, 1. 16 - p. 46 , l. 11, p. 123, ll. 10-23. This argument is factually inaccurate.

On August 20, 2013, two letters, entitled "Notice of Debt", were sent to the Appellant by certified mail and regular first class mail, to two separate last known addresses of the Appellant: 4600 Lamar Highway, Lamar, South Carolina 29069, and Post Office Box 1011, Columbia, South Carolina 29202. The letters, which were identical, set forth the amount then owed ($141,195.81), and set forth a period of ten (10) days to dispute the amounts owed. See Order at 27; see also Notice I; Notice II; Transcript of Proceedings p. 39, l. 15 - p. 41, l. 11; Respondent's Post Trial Memorandum at 18. After the letters were sent, it was discovered that the letters did not comply with the with the legal requirements of paragraph 17 of the Mortgage. See id. at 18-19; see also Mortgage ¶17; Transcript of Proceedings of August 12, 2014, p. 45, ll. 2-10. Upon this discovery, two new letters, again entitled "Notice of Debt", were sent to the Appellant on September 4, 2013, by certified mail and regular first class mail, to the two separate known addresses of the Appellant. These letters were also identical. See

id. at 27; see also Notice III; Notice IV; Transcript of Proceedings of August 12, 2014, p. 43, l. 10 - p. 45, l. 1; Respondent's Post Trial Memorandum at 18-19. The terms of the Mortgage required the following to be in the letters:

(a) default;

(b) the action required to cure the default;

(c) a date, not 30 days from the date of the notice is given the Borrower, by which the default must be cured;

(d) that failure to cure on or before the date specified in the notice may result in acceleration of the sums secured by the this Mortgage foreclosure by judicial proceeding and sale of the Property;

(e) If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Mortgage without further demand and may foreclose this Mortgage by judicial proceeding;

(f) Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph, including, but limited to, attorneys fees and costs of title evidence, all of which shall be additional sums secured by this Mortgage.

See id. at 27-28; Mortgage ¶ 17 at 3-4; see also Transcript of Proceedings of August 12, 2014, p. 38, l.1 - p. 39, l. 4; Transcript of Proceedings of November 12, 2014, p. 39, l. 5 - p. 40 - l. 12.

The letters of September 4, 2013 state as follows:

> This office has been retained by Libby Corporation to collect the outstanding balance of $143,313.75 in the above referenced matter. As of this date, you are in default under the terms of the Note and Mortgage. As a result, Libby Corporation is hereby making formal demand for payment of the aggregate outstanding balance of principal, accrued interest, and fees in the amount of $143,313.75 as of September 4, 2013, plus daily interest accruing at $35.33 (9% per annum) after September 4, 2013. You must bring this amount current within 30 days of the date of this letter, which would be 5:00 pm, Friday, October 4, 2013. Failure to bring this Mortgage current on or before

> October 4, 2013 date will result in the acceleration of the Note and Mortgage for the full amounts due and owing Libby Corporation.
>
> If you do not contact our offices in writing and arrange for payment of the sum demanded or make other arrangements satisfactory to Libby Corporation to repay the indebtedness and obligation on or before 5:00 pm on October 4, 2013, Libby Corporation will institute judicial foreclosure proceedings and move to sell the property. The Note and Mortgage provide that you agree to pay all costs of collection, including attorney's fees.

See id. at 28; see also Notice III and Notice IV; Transcript of Proceedings of August 12, 2014, p. 43, l. 9 - p. 44, l. 23; Respondent's Post Trial Memorandum at 18-19; Transcript of Proceedings of November 12, 2014, p. 42, l. 7 - p. 43, l. 20. The certified letters of August 20, 2013 and September 4, 2013, sent to the post office box, were signed for by the Appellant on October 3, 2013 and October 8, 2013 respectively. See id. at 28; see also Notice I, with Domestic Return Receipt; Notice III, with Domestic Return Receipt.

The Appellant argued to the master in equity that the letter was a "Notice of Debt" letter and not a "Right to Cure" letter. The letters of September 4, 2013 complied with the terms of the Mortgage in issuing the letter and the letter and the letter properly placed the Appellant on notice of default under paragraph 17 of the Mortgage.

II. THE NOTICE OF REFERENCE WAS NOT PROCURED BY FRAUD UPON THE COURT.

The Appellant asserts in her Initial Brief the Notice of Reference was procured by "fraud upon the Court". See Appellant's Brief at 11-14. Again, the Appellant's assertions are inaccurate. The thrust of the Appellant's argument on this point is two fold. First, it is based on the assertion Respondent's counsel intentionally concealed the fact that she had replied to the Notice of Debt letters which were sent to her post office box. Because of the

alleged intentional concealment of this fact, the Appellant felt that it was necessary to "introduce her evidences [sic.] into defendant's exhibits No. 1& No. 2." See Appellant's Brief at 12; see also Appellant's Post Hearing Memo at 1.

Second, the Appellant argues that because she was sent Notice of Debt letters to her post office box, the Respondent allegedly knew where she was, could serve her the Summons and Complaint, and intentionally did not do so to procure the Order of Reference. See Appellant's Brief at 11-12. The Appellant's arguments are incorrect on both accounts.

A. Respondent's counsel did not make a material misrepresentations of the facts in the hearings of May 20, 2014 and August 12, 2014, with respect to her replying to the Notice of Debt letters.

The Appellant first asserts Respondent's counsel intentionally concealed the fact that she had responded to the Notice of Debt letters on October 18, 2013, and did not present them as part of his case-in-chief. See Appellant's Brief at 12. The foundation of the Appellant's argument is built on the statement of Respondent's counsel at the hearing of May 20, 2014, that the Appellant failed to respond to the Notice of Debt letters. See Transcript of Proceedings of May 20, 2014, p. 5, ll. 20 - 23. While Respondent's counsel does not dispute making the statement at the first hearing, the Appellant's argument is, again, factually incorrect. See Transcript of Proceeding of November 12, 2014, p. 9, l. 21 - p. 10, l. 22.

The Appellant's letter of October 18, 2013, was addressed to Respondent's counsel and not the Respondent itself. See Letter to Respondent's Counsel from Appellant of October 18, 2013. Since the Respondent's witnesses could not testify as to the contents of the Appellant's letter, it could not be admitted as evidence in the Appellant's case-in-chief through them. This is basic evidence law and practice. See S. C. R. E. 602 (A witness may

not testify to a matter unless evidence is introduced sufficient to show that the witness has personal knowledge of the matter.). However, the Appellant, as is her right, entered both her letter and Respondent counsel's response in her case-in-chief without objection, thereby making the Appellant subject to cross examination on both documents. See Letter to Respondent's Counsel of October 18, 2013; Letter to Appellant of November 14, 2013; Transcript of Proceeding of August 12, 2014, p. 112, l. 20 - p. 113, l. 17. During the Respondent's cross examination, the Appellant admitted that she had received Notices I and III and that she had responded. See Transcript of August 12, 2014, p. 123, ll. 10-22. In the Respondent's Post Trial Memorandum, the issue of the Notice of Debt letters, the Appellant's letter to Respondent's counsel, and Respondent counsel's reply to the Appellant was throughly discussed and disclosed to the court. See Respondent's Post Trial Memorandum at 10-11. Further, Respondent's counsel was cross examined on this issue by the Appellant. See Transcript of Proceeding of November 12, 2014, p. 24, l. 15 - p. 25, l. 6. During the course of the hearing the court took note that Respondent's counsel disclosed the Appellant's Letter of October 18, 2013 in his Post Trial Memorandum. See id. at p. 14, ll. 8-24. Finally, the court stated to the Appellant all the documents came into evidence. See id. at p. 18, ll. 13-17. There is no intentional concealment of the Appellant's reply to the Notice of Debt letters on the part of the Respondent or Respondent's counsel.

B. Respondent's counsel followed the appropriate rules and procedures in obtaining the Order of Reference.

The Appellant next argues that and that the Respondent was aware of her post office box address. See Transcript of Proceedings of May 20, 2014, p. 17, ll. 6-9. Such being the case, the Appellant states the Respondent should have served her by mailing the Summons

ands Complaint to her post office box. See Transcript of Proceedings of August 12, 2014, p. 116, ll. 10-15. The court addressed this issue and stated to the Appellant that personal service cannot be made upon a party at a post office box and that service by publication can be made when the party cannot be located. See id. at p. 117, l. 7 - p. 118, l. 2.

The Record shows the Respondent filed a Notice of Pendency of Action, Summons and Complaint for foreclosure in this matter with the clerk of court on October 11, 2013. See Order at 1; see also Lis Pendens, Summons and Complaint. Personal service of the pleadings was attempted by Henry B. "Buddy" Morgan of Henry B. Morgan Consulting, LLC on the Appellant between October 11, 2013 and November 21, 2013, but to no avail, as evidenced by the Affidavit of Non-Service filed on November 27, 2013. Mr. Morgan stated in his Affidavit of Non-Service that he attempted service on the Appellant at her last published address at 4600 Lamar Highway, Lamar South Carolina, that no residence or active business was located there, and that it was an abandoned cafe' and other small buildings with abandoned vehicles and heavy duty equipment on the site. Other possible addresses were developed by Mr. Morgan and investigated but they were either vacant lots or abandoned houses. Mr. Morgan called the Appellant twice. On November 7, 2013, the Appellant said she was out of town and would call him when she returned. When no contact was made by the Appellant, Mr. Morgan called two weeks later on November 21, 2013, and the Appellant informed him that she was "homeless". See id. at 1-2; see also Affidavit of Non-Service by Henry B. Morgan.

After it was determined the Appellant could not be located after diligent search and it appeared to the Respondent that any last known residential addresses of the Appellant were no longer valid, the Respondent was left with no recourse but to serve the Appellant by publication in compliance with the statutes. See S.C. Code Ann. § 15-9-710 (3) and S.C. Code Ann. § 15-9-740 (Thompson-West 2005). Upon receipt of the Affidavit of Non-Service, the Respondent filed an Affidavit for Publication with the clerk of court on December 5, 2013. The clerk of court issued an Order for Publication on December 6, 2013, authorizing publication in the Lexington Chronicle. Service was published on January 9, 16, and 23, 2014, as evidenced by the Affidavit of Publication filed with the court on February 5, 2014. See id. at 2; see also Affidavit for Publication; Order for Publication; Affidavit of Service by Publication.

As the Appellant did not timely file an answer, the Respondent filed an Affidavit of Default and an Affidavit of Non Military Service on March 14, 2014. See Order at 2; see also Affidavit of Default; Affidavit of Non Military Service. With respect to the reference to the master in equity, the Respondent filed a Motion for Order of Reference with clerk of court pursuant to Rule 53 of the South Carolina Rules of Civil Procedure n March 21, 2013. The Order of Reference was issued on April 4, 2014, and this matter was referred to the Lexington County Master in Equity. See id. at 2; see also Respondent's Motion for Order for Reference and Order of Reference. The Order of Reference states that the Master in Equity was:

> *. . . to take testimony arising under the pleadings, to make his findings of fact and conclusions of law, with authority to enter a final judgment, in the case of appeal thereto be to the South Carolina Supreme Court.*

See Order of Reference.[4]

During the course of the hearing on August 12, 2014, the Appellant objected to the referral to the court due to that fact she had been served by publication, had not answered the Complaint within thirty days and been found in default, and the Motion for Reference and Order for Reference had been made without her knowledge or consent. The court denied the Appellant's objection to the referral and explained that Rule 53 and 71 of the South Carolina Rules of Civil Procedure allow for foreclosure matters to be referred to the master in equity, and the Appellant was aware the case had been referred to the master in equity when she appeared at a prior hearing on May 20, 2014. The Appellant continued to assert that the Order of Reference should be void due to the fact that she was served by publication and had been found in default. The court stated to the Appellant that the issue of service had been resolved at the May 20, 2014, hearing when, after claiming violation of due process, she was served the Summons and Complaint in the courtroom, she had filed her Answer, and her Answer failed to raise any objection to the reference. Later in the hearing the Appellant, again, continued to argue this issue. The court reaffirmed its denial of her motion stating to the Appellant the referral was not a surprise as she was aware of it at the May 20, 2014 hearing, that she had been served the Summons and Complaint and had filed an Answer, there was nothing raised in the Complaint which would be triable by a jury, and the circuit court rules and numerous cases all say that foreclosure matters are to be heard by masters in equity. See Transcript or Proceeding of August 12, 2014, at p. 26, ll. 14-19, p. 27, l. 10 - p. 31, l. 18.

---

[4] While the Order of Reference clearly states that any appeal would be to the South Carolina Supreme Court, the Appellant is challenging the validity of the Reference itself and, thus, the ability for the Master in Equity to have heard this matter based upon the questioned Reference. As such, based upon the Appellant's filings, we are in this forum.

In Wachovia Bank of South Carolina, N.A. v. Player, 341 S.C. 424, 535 S.E.2d 128 (2000), the Supreme Court of Couth Carolina was presented a case with very similar facts regarding the reference to and authority of the master in equity when there was a question of service of process by publication. In this case, Wachovia Bank filed a foreclosure action against Jay Player and Institution Food House, Inc., who had failed to answer and defaulted. The case was referred to the master in equity with finality and authority to directly appeal to the Supreme Court. The master in equity issued a foreclosure order, which Player moved to set aside based upon Rule 60(b)(4) of the South Carolina Rules of Civil Procedure on the grounds the court lacked personal jurisdiction over him because service had been improper. Specifically, he stated that the substituted service by publication was improper as the process server did not exercise due diligence in attempting to locate him. The master in equity denied the motion and Player appealed. The Court Appeals ruled that the court lacked subject matter jurisdiction to consider the Rule 60(b)(4) motion and reversed the decision of the master in equity. The Supreme Court granted Wachovia Bank's Writ of Certiorari, reversed the holding of the Court of Appeals, addressed the merits of Player's appeal, and affirmed the master in equity's order.

With respect the issue of the jurisdiction of the master in equity when there was a question concerning the propriety of service by publication, the Supreme Court held that an order for service by publication may be issued pursuant to South Carolina Code § 15-9-710 when an affidavit, satisfactory to the to the issuing officer, is made to stating that the defendant, a resident of the state, cannot, after exercise of due diligence, be found and that a cause of action exists against him. See S.C. Code Ann. § 15-9-710 (3) (Thompson-West

2005). When the issuing officer is satisfied by the affidavit, his decision to issue to order service by publication is final absent fraud or collusion. See Wachovia, at 130; at 428-429. As the Player failed to prove any fraud or collusion in Wachovia's obtaining an order for service by publication and serving him by publication, his Rule 60(4)(b) motion was properly denied by the master in equity. See id., at 130; at 428.

In the matter before this Court, in first appearing at the hearing on May 20, 2014, and being served the Summons and Complaint; then filing her Answer and not objecting to the reference to the master in equity; then appearing at the hearing on August 12, 2014, and fully participating in the hearing, the Appellant has clearly made an appearance and subjected herself to the jurisdiction of the court. Voluntary appearance by a defendant is equivalent to personal service. See S.C. R. Civ. P 4(d); see also Ex parte Cannon, 385 S.C. 643, 656 685 S.E.2d 814, 822 (Ct. App. 2009;) Stearns Bank National Association v. Glenwood Falls, L.P., 373 S.C. 331, 338, 644 S.E.2d 793, 796 (Ct. App. 2007).

In short, the thrust of the Appellant's whole argument is that she was improperly served the Summons and Complaint as it was served by publication and not by personal service or by mail and, as such, the reference to the court was obtained by fraud and is void and the court has no jurisdiction. Further, the Appellant essentially argued that the Respondent's failure to serve her at her post office box and obtaining an Order for Publication constituted "conspiracy" presumably to obtain the Order of Reference. There is no merit in any of the arguments. The court specifically found the Respondent properly followed the rules and procedures in obtaining of the Order of Publication and Order of Reference. See Transcript of Proceedings of August 12, 2014, p. 28, ll. 8-11; p. 117, l. 3 - p. 119, l. 18. As

in Wachovia Bank v. Player, the court was not stripped of its jurisdiction to hear this case merely because the Order of Reference was filed after default of the Appellant, who the subsequently raised the issue concerning her service by publication. Further, the Appellant voluntarily appeared on May 20, 2014, and was served the Summons and Complaint at the hearing, by direction of the court, in order cure any deficiency or questions concerning service of process. The Appellant filed her Answer and fully participated in the merits hearing on August 12, 2014. As such, she has submitted herself to the jurisdiction of the court.

III. THE MASTER IN EQUITY DOES NOT LACK JURISDICTION TO HEAR THE CASE.

The Appellant next asserts that since the Order of Reference to the mater in equity was procured by an alleged "fraud upon the Court", the court lacked subject matter jurisdiction to hear this case. See Appellant's Brief at 17-19. The Appellant argues that when the court overturned the "default judgment" it "automatically" overturned the Order of Reference and, therefore, was stripped of its jurisdiction to hear the case. See id. at 16.

As previously set forth, the Order of Reference was not improperly procured. See supra at 19-22. The Appellant, however, erroneously states that a "default judgment' had been entered against her in this matter. To be clear, the court did not at any time issue a default judgement against the Appellant. The Respondent filed an Affidavit of Default as the Appellant had not timely answered the Summons and Complaint. See Order at 2; see also Affidavit of Default. At the first hearing on May 20, 2014, the Appellant appeared and claimed that her due process rights had been violated as she had not been served the Summons and Complaint. The court went to extraordinary lengths to explain what the case was about; the role of the master in equity court and its relationship to the circuit court in the South

Carolina court system; and, most importantly, addressed the Appellant's concern about due process, being properly served, and being in default by directing Respondent's counsel to personally serve her in the courtroom, giving her the standard thirty days to respond to the Summons and Complaint, and continuing the hearing. See Transcript of Hearing of May 20, 2014, p. 8, l. 17 - p. 19, l. 21.

The equity court is considered a division of the circuit court, and the master in equity, as judge of the equity court, is entitled to all benefits and subject to all requirements of the South Carolina Bar, and the rules of the Supreme Court in the same respect as circuit court and family court judges. See S.C. Code Ann. § 14-11-15 (Thompson- West, Supp. 2015); see also Katzenburg v. Katzenburg, No. 5255, 2014 WL 3734371 (Ct. App, 2014). A foreclosure action is an action in equity. See Wachovia Nat. Ass'n v. Blackburn, 407 S.C. 329, 441, 755 S.E.2d 437, 439 (2014). Actions to foreclose liens or obtain partition of real property shall be tried by the court and shall ordinarily be referred to a master pursuant to Rule 53. See S.C. R. Civ. P. 71(a).

The Appellant argues the court's dismissal of the Affidavit of Default eviscerates the Order of Reference. Such is clearly not the case. Rule 53 states that reference to the master in equity is not solely based on the defendant being in default. The Rule states that in an action where the parties consent, in a default case, or an action in foreclosure, some or all of the causes of action in a case may be referred to a master or a special referee by order of a circuit judge or the clerk of court, and once referred the master or the special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a singular matter. See S.C. R. Civ. P. 53(b) and (c). Pursuant to this rule, a master has no

power or authority except that which is given to him by the order of reference and is given the power to conduct hearings in the same manner as the circuit court unless the order of reference specifies or limits the master's powers. See Wells Fargo Bank, N.A. v. Smith, No, 2012-UP-690,2009-125666, 2012 WL 10987189 (Ct. App. 2012).

Despite the argument of the Appellant to the contrary the Order of Reference to the master in equity was properly petitioned for by the Respondent and granted by the clerk of court. All the rules and procedures were followed and the mater in equity had jurisdiction to hear this case.

IV. THE APPELLANT'S DUE PROCESS RIGHTS WERE NOT VIOLATED.

The Appellant next asserts that her due process rights were violated. See Appellant's Brief at 18-20. Again, the Appellant, as she has on numerous occasions in the case below and in her brief, takes issue with the "default judgement" and the Master in Equity's refusal "to set aside or vacate the Order of Reference." See id. at 19. Further, the Appellant argues that:

> By denying the Appellant's Motion for Rehearing back to the circuit court, [the Master in Equity] has deprived the Appellant's due process right to be heard in a proper court and with meaningful manners [sic.]. Without participating circuit court proceedings, such as pre-trial motions, discovery, and depositions, the heavily contested issues could not be resolved and disposed of.

See id. at 19. Finally, the Appellant makes the argument regarding the alleged fraud and deception by the Respondent in obtaining the Order of Reference. The case law and the Record show that the Appellant is incorrect in her argument.

A. The Appellant was afforded procedural due process throughout the litigation of the case.

The Fourth and Fifth Amendments to the Constitution of the United States state that no person shall be deprived of their property without due process of law. See U.S Const. amends. IV and XIV § 1; see also S.C. Const. art. I, § 3. What constitutes due process of law requires the examination of four factors: (1) adequate notice (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to cross examine witnesses. See Jones v. S.C. Dep't. of Evntl. Control, 394 S.C. 295, 316, 882 S.E. 2d 282. 294 (Ct. App. 2009) (citing Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E. 2d 565, 567 (2007)). There is no particular form for procedural due process and the requirements are not technical. They are flexible and call for such procedural protections as the particular situation demands. See id. The basic fundamental and overarching requirement of due process is the opportunity to be heard at a meaningful time and a in a meaningful manner. See id. (citing S.C. Dep't of Soc. Servs. v. Beeks, 335 S.C. 243, 246, 481 S.E. 2d 703, 705(1997)). In order to prevail on a claim of denial of due process, there must be a showing of substantial prejudice. See id. (citing Palmetto Alliance Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 435, 319 S.E. 2d 695, 698 (1984)).

In taking each of the factors as set forth in Jones the Record shows that the Appellant was afforded procedural due process in this case.

1. Adequate notice was provided to the Appellant of the case.

As previously set forth the Respondent filed the Summons and Complaint and attempted personal service on the Appellant. When personal service could not be obtained, the Respondent sought and obtained an Order for Publication. Once the publication was

completed and the time for a response from the Appellant had expired, an Affidavit of Default was filed and Order Reference to the mater in equity for was sought and obtained. A hearing was then set for May 20, 2014, and a Notice of Hearing was sent to the Appellant at her last known addresses. See supra at 18-19; see also Order at 1-2; Notice of Hearing of May 20, 2014 with Certificate of Service.

When the Appellant appeared and indicated that she had received the Notice of Hearing but was unaware of what the hearing concerned because she had not been personally served the Summons and Complaint and argued her due process rights had been violated, the court addressed the Appellant's concern about due process by directing Respondent's counsel personally serve her in the courtroom, giving her the standard thirty days to respond to the Summons and Complaint and continuing the case for forty-five days. See supra at 23-24; see also Transcript of Proceedings of May 20, 2014, at p. 10, l. 17 - p. 12, l. 10; p. 19, l. 13 - p. 20, l. 4. On June 19, 2014, the Appellant filed her answer. See Answer of Appellant.

When the Appellant indicated that she had not been afforded her due process rights, the court quickly continued the hearing, was given notice as to the subject matter of the lawsuit and ensured that she was served the pleadings, and afforded her ample time to respond before another hearing was scheduled. The Appellant had notice of the case.

2. The Appellant had adequate opportunity for a hearing, to cross examine witnesses, and to present evidence.

The Appellant was afforded adequate opportunity for a hearing, the right to cross examine witnesses, and to present evidence on various issues not once was but on five separate occasions.

At the second hearing, held on August 12, 2014, the Appellant did not deny that she had been served the Summons and Complaint at the previous hearing, but raised to the court the issue of the service by publication, the Affidavit of Default, and the validity of the Order of Reference. The court addressed each one of these issues in detail and indicated the issues of the Order for Publication and Affidavit of Default were moot as she had been served the pleadings, and that the Order of Reference was valid. The court also addressed various issues as raised by he Appellant in her Answer in a pre-trial setting. See Answer of Appellant; see also Transcript of Proceedings of August 12, 2014, at p. 9, l. 14 - p. 11, l. 20; p. 12, l. 9 - p. 31, l. 21. Once these matters were addressed and in some instances ruled upon, the Respondent began its case-in-chief on the merits of the case and the Appellant fully participated in the case by cross examining the Respondent's witnesses. In addition, the Respondent presented to the Appellant all documents to be marked as exhibits and entered into evidence. See id., p. 32, l. 3 - p. 41, l. 25; p. 43, l. 6 - p. 45, l. 14; p. 46, l. 25 - p. 48, l. 1; p. 48, l. 21 - p. 52, l. 16; p. 54, l. 17 - p. 59 - l. 16; p. 61, ll. 15-26; p. 66, l. 23 - p. 67, l. 3; p. 67, l. 20 - p. 71 - l. 18; p. 73, l. 7 - 75, l. 1; p. 76, l. 22 - p. 82, l. 3; p. 83, l. 20 - p. 85, l. 4; p. 86, l. 4 - p. 88, l. 25; p. 89, l. 1 - p. 91, l. 14; p. 93, l. 13 - p. 94, l.6; p. 94, l. 23 - p. 95, l. 10; 98, l. 11 - p. 99, l. 5. The Appellant presented her case and documents, and submitted to cross examination. See id., at p. 108, l. 21 - p. 116, l. 8; p. 123, l. 8 - p. 126, l.2. Though not specifically cited in the Record, on numerous occasions during the course of the proceedings the court stopped the Appellant to explain the procedural or evidentiary rules, to clarify her questions posed to the Respondent's witnesses, or to understand her arguments or theory of the case. On at least four occasions the court was required to address the Appellant's

continuing argument regarding service and publication, which the court indicated had been cured, upon which it already ruled, and would not be addressed further. See id., p. 9, l. 14 - p. 11, l. 20; p. 12, ll. 9-21; p. 28, l. 12 - p. 31, l. 21; p. 95, l. 16 - p. 96, l. 24; p. 117, l. 3 - p. 120, l. 21. In addition, when the Respondent's attorneys fees were questioned by the Appellant the court stated to her that she could request a separate hearing on this issues. See id., p. 62, l. 17 - p. 66, l. 14. When the court realized that the parties were continually arguing the same issues repeatedly, it stopped the hearing. After hearing all of the testimony from both sides, the court required the parties to submit post trial memorandums on six key issues and the briefs were to be filed and served within thirty days after receipt of the transcript of the hearing. See id. at 126, l. 4 - p. 143, l. 13.

On August 20, 2014, the Appellant requested a hearing on the Respondent's Attorney fees. See Appellant's Notice of Hearing. That hearing, the third hearing this case, was held on October 23, 2014. This hearing, however, was not transcribed as the Appellant failed to provide a court reporter as required bu the court. See Notice of Hearing for October 23, 2014.[5] Despite the lack of a court reporter, a hearing was held in which the Appellant attempted to file a "Motion for Rehearing", which the court denied as being premature. See Order at 7; see also Status Report for Hearing of October of October 23, 2014 at 2. The court then ordered the Appellant's hearing on the attorneys fees be continued to which the Respondent objected. The court overruled the objection. See id.; see also Status Report for Hearing of October of October 23, 2014 at 2-3. The Appellant then stated to the court the she

---

5 The Master in Equity Court for Lexington County does not have a court reporter on staff and requires the moving party in any action to be heard before the court to make a arrangements for a court reporter to be present to transcribe the proceedings.

had not received the Respondent's post trial memorandum. After due inquiry from the court that the Respondent had timely filed and served its post trial memorandum on the Appellant at her last known address, the Appellant informed the court that her address had changed. The Respondent indicated that the Appellant had not been formally informed him of a change in her address. The court, after directing the Appellant to obtain a copy of the Respondent's Post Trial Memorandum, granted the Appellant an additional seven days to file and seve her memorandum. The Respondent objected to this extension and the court overruled the same. See id at 8-10; see also Status Report for Hearing of October of October 23, 2014 at 3-5. The Appellant's hearing was scheduled for November 12, 2014. See Status Report for Hearing of October of October 23, 2014 at 5.

At the hearing on November 12, 2014, the fourth hearing in this matter, the Appellant examined Respondent's counsel for approximately one hour and fifty minutes on the issue of the attorneys fees affidavit. See Transcript of Proceeding of November 12, 2014, p. 8, l. 3 - p. 11, l. 1; p. 13, l. 18 - p. 16, l. 8; p. 16, l. 25 - p. 17, l. 10; p. 18, l. 18 - p. 19 - l. 8; p. 24, l. 6 - p. 26, l. 21; p. 27, l. 4 - p. 29, l. 7; p. 33, l. 22 - p. 40, l. 12; p. 40, l. 24 - p. 45, l. 7; p. 46, l. 22 - p. 47, l. 20. As at the hearing on the merits of August 12, 2014, on numerous occasions the court stopped the Appellant to either explain the procedural or evidentiary rules, the Rules of Professional Responsibility, to clarify her questions posed to the Respondent's counsel, or to understand her line of questioning. In this hearing the Appellant, again, attempted to reargue the issue of service and default, which court reminded her had already been addressed. See id., p. 19, l. 21 - 20, l. 23; p. 29, l. 24 - p. 31, l. 17; p. 57. l. 21 -58, l. 7.

The fifth and final hearing in this matter, held on January 9, 2015, was a continuation

of the Appellant's inquiry of the attorneys fees. At this hearing the Appellant examined Respondent counsel's partner and two paralegals from his firm who worked on the case. In addition, Respondent's counsel was also examined by the Appellant as he submitted an a third amended affidavit of attorneys fees reflecting work to date.[6] Again, as in the previous hearing, the court stopped the Appellant on several occasions to either explain the procedural rules, explain to her in general how a law firm operates regarding division and performance of tasks and billing for them, permitted communications between an attorney and court staff, to clarify her questions posed to the witnesses Respondent's counsel, and to understand her line of questioning. See Transcript of Proceedings of January 9, 2014, p. 7, l. 6. - p. 9, l. 20; p. 11, l. 8 - p. 12, l. 18; p. 13, l. 22 - p. 18, l. 23; p. 25, l. 25; p. 28, l. 13 - p. 31, l. 20; p. 32, l. 11 - p. 34, l. 15; p. 36, l. 8 - p. 37, l. 10; p. 41, l. 1 - 46, l. 18; p. p. 47, l. 18 - p. 50, l. 16; p. 56, ll. 10-18; p. 58, ll. 3-6. It was at the conclusion of this hearing, the court issued its ruling and directions to Respondent's counsel for the preparation of the of the final written order. Even at this point the Appellant objected to how the order was to be prepared, and the court explained how orders are generally prepared and that, once the order was served on her, if she disagreed with his ruling she could appeal. See id., p. 59, l. 17 - p. 69, l. 20.

As is evident, the Appellant had adequate notice of the case and attended each hearing. In addition, she had adequate opportunity to cross examine the Respondent's witnesses and counsel, to present evidence on various issues throughout this case, and was been given wide latitude by the court to present any and all issues that she felt necessary. The Appellant has

---

6 The first affidavit of attorneys fees was presented at the hearing on May 20, 2014. The second was presented at the hearing on August 12, 2014, and counsel was examined on this affidavit by the Appellant on November 12, 2014.

failed to show any substantial prejudice or denial of due process of law.

B. The judge's refusal to set aside thee Order of Reference and denial of the Appellant's Motion for Rehearing was proper.

The Appellant argues that while the court correctly overturned her default, his refusal to set aside the Order of Reference and denial of her Motion for Rehearing was a denial of her due process rights. See Appellant's Brief, at 19-20. The Respondent has already addressed the issue of procedure by which he obtained the Order of Reference. See supra at 17-19. Ultimately, the court ruled that it was not stripped of its jurisdiction to hear this case merely because the Order of Reference was filed after default of the Appellant after service by publication, which was subsequently questioned by the Appellant. Further, the Appellant voluntarily appeared and was served the Complaint at the hearing on May 20, 2014, filed her Answer on June 19, 2014, and participated in the hearing on August 12, 2014, and all subsequent hearings, and has submitted herself to the jurisdiction of the court. See Order at 26.

With respect to the Appellants "Motion for Rehearing" which she presented at the hearing on October 23, 2014, the court was correct in denying the motion at the stage of the proceedings in which the Appellant presented it. First, the motion was based upon the same issue that the Appellant had repeatedly raised in the hearings of May 20, 2014 and August 12, 2014 - that as she was not found to be in default the Order of Reference should be vacated and the case sent to the circuit court. See Appellant's Motion for Rehearing. Second, the Appellant served the Respondent mere minutes before the hearing on October 23, 2014, that the motion was not timely, and the subject of the hearing was for attorney's fees. See Order at 7; Status Report for Hearing of October of October 23, 2014 at 2. The court noted the

Respondent's objection and sustained the same on the grounds that the basis of the motion had been argued and ruled upon at the hearing of August 12, 2014, and that he had not yet issued an Order and, as such, there was no Order from which to appeal or request a rehearing. See id. at 7; see also see also Status Report for Hearing of October of October 23, 2014 at 2; S.C. R. Civ. P. 59(b) and (d) (motions for new trial or to alter or amend judgement shall be made not later than ten days after entry of written judgment.).

V. JUDGE SPENCE DID NOT VIOLATE THE JUDICIAL CODE OF CONDUCT.

Finally, the Appellant accuses the Master in Equity of Lexington County, the Honorable James O. Spence, of violating Cannon 1 of the South Carolina Judicial Code of Conduct by "failing to uphold integrity and independence of the judiciary" by "ignoring the misconducts [sic.] of the respondent's attorney". See Appellant's Brief at 21. In support of this argument she cites to portions of the hearings on August 12, 2014 and November 12, 2014, as well as citing various portions of the South Carolina Rules of Professional Conduct. See id. The Respondent notes this argument is in direct contradiction to the statement the Appellant made to the court at the penultimate hearing whereby she stated "I believe you're a good judge and I appreciate you're a fair judge. . . ." See Transcript of Proceeding of January 9, 2015, at 68. Most importantly, the Appellant did not raise the argument of Judge Spence's alleged misconduct at anytime during the five hearings that were held in this case and raises this issue for the fist time on appeal. As such, the Court cannot address this issue. See Patterson v. Witter, Op. No. 5416, 2016 WL 3349133 (Ct. App. 2016).

Notwithstanding the issue that this argument was not raised below for preservation for appeal, the Appellant's argument, while aimed at the court, is nothing more than a continuation of her argument that the Respondent did not properly serve her at the commencement of the action, and failed to disclose the Appellant's letter of October 18, 2013 at the trial on August 12, 2014. These issues were throughly addressed by Respondent's counsel and the court on numerous occasions below, and have been previously addressed in this brief. See supra at 16-19. In the transcript pages as previously cited by the Respondent, the court clearly understood her arguments and took note of them at both hearings and did not ignore them. Ultimately, the court ruled in favor of the Respondent and ordered the foreclosure of the property, giving a detailed accounting of what should be in the Order and addressing any questions the Appellant had regarding his ruling and preparation of the Order. See Transcript of Proceeding of January 9, 2015, at p. 59, l. 17 - p. 69, l. 16.

CONCLUSION.

For the reasons stated, this Court should affirm the Master in Equity's Order and Judgement of Foreclosure and Sale, filed January 26, 2015.

Respectfully submitted,

Joseph A. Vasquez
Setzler & Scott, P.A.
1708 Augusta Road
Post Office Box 4024
West Columbia, SC 29171-4024

West Columbia, South Carolina
August 18, 2016

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Master in Equity Court

James O. Spence, Master-in-Equity

Case No. 2015-00350

Libby Corporation, Respondent,

v.

Haiyan Lin, Appellant.

PROOF OF SERVICE

I certify that I have served the *Initial Brief of the Respondent* and *Designation of Matter to be Included in Record on Appeal* by depositing one copy of it in the United States mail, postage prepaid, and a second copy of it United States mail certified, return receipt requested, both on August 18, 2016, and both addressed to the self represented litigant Haiyan Lin, Post Office Box 8776, Columbia, SC 29202.

August 18, 2016

SETZLER & SCOTT, P.A.

Joseph A. Vasquez
South Carolina Bar #: 66401
Post Office Box 4024
1708 Augusta Road
West Columbia, South Carolina 29171
(803) 796-1285
Attorney for Respondent

Setzler & Scott, P.A.
Attorneys At Law

Nikki G. Setzler
E. Danny Scott
Joseph A. Vasquez
Michelle M. Dickerson

Hillary J. Lovell

August 18, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
1220 Senate Street
Columbia, SC 291211

RE: Libby Corp., Respondent v. Haiyan Lin, Appellant
Case No.: 2015-00350

Dear Ms. Kitchings:

Per Rules 208(3)and 209 SCACR enclosed for filing is the original of the *Initial Brief of the Respondent, Designation of Matter to be Included in Record on Appeal, and Proof of Service*.

Please feel free to call if you have any questions.

SETZLER & SCOTT, P.A.

Joseph A. Vasquez

/jav
cc: Haiyan Lin (by First Class Mail and Certified Mail)