

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY CIRCUIT COURT
Joseph M. Strickland, Master-In-Equity

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SC Court of Appeals

Appellate Case No.: 2016-000678

Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-1,
Asset-Backed Certificates, Series 2006-1,

Respondent,

v.

Helen V. Thomas; Darrel A. Thomas; Robert Lee Hutchinson; Nancy Lee Hutchinson;
Briarwood Association; Sonja Michelle Furtick,

Defendants,

Of whom, Helen V. Thomas is the Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER IN EQUITY ERR IN DENYING APPELLANT'S MOTIONS TO DISMISS AND REQUEST FOR RECONSIDERATION?
2. DID THE MASTER IN EQUITY ERR IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT?

STATEMENT OF THE CASE AND FACTS

Respondent, Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-1, Asset-Backed Certificates, Series 2006-1 ("Respondent"), filed the instant action seeking foreclosure of property located in Richland County and owned by Appellant, Helen V. Thomas, and co-defendant, Darrel A. Thomas. The foreclosure is based upon Appellant and Darrel A. Thomas' failure to make payments required by the terms of his mortgage. (Complaint ("Compl.") at 1-4.)

Appellant and Darrel A. Thomas made, executed and delivered a note, dated November 10, 2005, promising to pay to the order of Finance America, LLC the sum of \$150,450.00 with an interest rate of 9.6% per annum (the "Note"). (Note at 1-5.) To secure payment of the Note, Appellant and Darrel A. Thomas made, executed, and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for Finance America, LLC encumbering the real property located in Richland County (the "Mortgage"). (Mortgage at 1-20.) The mortgage was recorded on November 16, 2005 in the Richland County Registry in Book R1121, Page 2955. (*Id.*) On August 9, 2006, Appellant and Darrel A. Thomas entered into a Loan Modification Agreement with Deutsche Bank National Trust Company, as Trustee, the holder of the Note and Mortgage at the time. (Loan Modification Agreement at 1-2.) An assignment of the Mortgage from the original mortgagee to Deutsche Bank National, as Trustee, was recorded in the Richland County Registry on November 14, 2006 in Book R1251 at Page 02692. (First Assignment at 1.) Thereafter, the Mortgage was assigned to Respondent by an assignment

recorded in the Richland County Registry on January 13, 2012 in Book 1734 at Page 955. (Second Assignment at 1-2.) Respondent is the current holder of the Note and Mortgage. (Master in Equity's Order and Judgment of Foreclosure and Sale at 3.)

On January 3, 2012, Respondent filed a Complaint for Mortgage Foreclosure against Appellant and other defendants based for failure to pay the mortgage installments due January 1, 2009 and subsequent installments thereafter. (Compl. at 3.) Appellant was served via substitute service at her place of residence on January 3, 2012. (Affidavit of Service at 1.)

Appellant and Darrel A. Thomas filed an answer on January 19, 2012 in which they asserted that the subject loan was paid in full by a "registered bond" paid through the United States Department of Treasury. (Answer at 1-2.) Attached to Appellant's Answer were documents that Appellant and co-defendant, Darrel Antonio A. Thomas recorded at the Richland County Register of Deed's Office that purported to be legal notices and demands. (Answer Exhibits at 1-31.) Appellant's Answer and accompanying documents are in the nature "sovereign citizen" type filings and appear to be sham pleadings on their face.

On October 2, 2014, Respondent filed a Motion to Strike and for sanctions pursuant to Rule 12(f) of the SCRCF asserting that Appellant's answer was a frivolous filing made up entirely of redundant, immaterial, impertinent, and/or scandalous matters. (Motion to Strike at 1.) The case was referred to the Honorable Joseph M. Strickland, as Master in Equity for Richland County, for disposition by order of reference filed November 4, 2014. (Order of Reference at 1.) A hearing on Respondent's Motion to Strike was scheduled for January 15, 2015.

On January 2, 2015, Appellant filed further sovereign-citizen-type pleadings in the form of a Notice of Removal and "Notice of Entry of Third Party Intervention" seeking to remove the

case to the jurisdiction of United States District Court for the District of South Carolina. (Notice of Removal at 1; Notice of Third Party Intervention at 1.) On January 16, 2015, the Honorable Shiva V. Hodges, United States Magistrate Court Judge, issued a report and recommendation whereby she recommended that the case be remanded to state court based upon a lack of jurisdiction. (Report and Recommendation at 1-5.) On February 3, 2015, the Honorable Cameron McGowan Currie adopted the report and recommendation and remanded the case to state court. (Opinion and Order at 1-2.)

On March 9, 2015, Appellant submitted additional sovereign-citizen-based documents related to discovery in the form of a Motion for Request of Production and Declaration. (Motion for Request of Production at 1-2; Defendant's Declaration at 1.) On April 3, 2015, Appellant submitted further sovereign citizen filings, which included a document entitled Request for Admissions. (Request for Admissions at 1-2; Plaintiff's Failure to Respond to Requests for Production at 1-2; Affidavit of Fact Regarding Requests of Production at 1.) Respondent construed Appellant's filings related to discovery liberally and timely issued responses. (Plaintiff's Responses to Requests for Admissions, at 1-4; Plaintiff's Responses to Requests for Production at 1-6.) On April 15, 2015, Respondent filed a Motion for Summary Judgment and Memorandum in Support of its Motion as to all issues related to the foreclosure action. (Plaintiff's Motion for Summary Judgment, at 1; Memorandum in Support at 1-5.) Appellant responded with more sovereign-citizen-type documents that included an Objection to Respondent's Motion for Summary Judgment and a Motion to Dismiss. (Appellant's Objection to Motion for Summary Judgment at 1-2; Appellant's Motion to Dismiss at 1-3.)

The Master in Equity denied Appellant's Motion to Dismiss the foreclosure action on April 28, 2015. (Order Denying Motion to Dismiss, at 1.) On May 1, 2015, Appellant made

further filings including a document titled "Judicial Notice" that was of the same nature as her previous submissions. (Appellant's Judicial Notice at 1-9.) On September 8, 2015, Appellant filed a second Motion to Dismiss. (Appellant's Second Motion to Dismiss at 1-2.) Appellant's Second Motion to Dismiss was denied by the Master in Equity on September 23, 2015. (Master's Order Denying Appellant's Second Motion to Dismiss at 1.) Appellant filed a Motion to Reconsider Motion to Dismiss on September 29, 2015. (Appellant's Motion to Reconsider at 1-2).

A hearing regarding all pending motions, which included Respondent's Motion for Summary Judgment and Appellant's Motion to Reconsider the denial of her Second Motion to Dismiss, was held on February 23, 2016. (Notice of Hearing at 1.) At the hearing, Appellant called a witness, Ronald Allen Wright, to testify on her behalf. (Transcript of February 23, 2016 Hearing at 36-68.) Ronald Wright's testimony set forth similar sovereign citizen theories like those found in the majority of Appellant's filings.

A brief discussion of facts regarding Appellant's witness at the hearing, Ronald Wright, is merited in this filing. Mr. Wright is an individual that has become known to counsel for Respondent for his involvement in several foreclosure actions in counties throughout South Carolina. A non-exclusive list of other cases that Ronald Wright has been involved in includes:

1. Wells Fargo Bank v. Latisa Cunningham, et al., Dorchester County, SC Civil Action No. 2013-CP-18-00519, Appellate Case No. 2015-001211 and 2016-000704.
2. Bank of America, N.A. v. James W. Wright, et al., Orangeburg County, SC Civil Action No. 2012-CP-38-00962, Appellate Case No. 2015-001596.
3. Deutsche Bank National Association, as Trustee v. Louise Legare-Gardner, et al., Jasper County, SC Civil Action No. 2015-CP-27-00524.
4. Deutsche Bank National Association, as Trustee v. Eugene Elmore, et al., Berkeley County, SC Civil Action No. 2011-CP-08-02434.

5. Bank of America, N.A. v. Elois C. Baxter, et al., Richland County, SC Civil Action No. 2016-CP-40-01620.
6. Ocwen Loan Servicing, LLC v. Zena McPherson, et al., Berkeley County, SC Civil Action No.: 2015-CP-08-02158.

Each of the actions listed above include sham and shotgun sovereign citizen pleadings similar, if not identical, to those filed in the instant action.

Following the hearing and testimony of Mr. Wright, the Master in Equity issued an order denying Appellant's Motion to Reconsider, (Order Denying Appellant's Motion to Reconsider at 1), and granted Respondent's Motion for Summary Judgment. (Order Granting Summary Judgment at 1-8.) This appeal followed. On August 16, 2016, Appellate filed a "Mandatory Judicial Notice of the filing of 'WRIT OF ERROR' against this case and the parties..." (Mandatory Judicial Notice at 1.)

STANDARD OF REVIEW

"A mortgage foreclosure is an action in equity." Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). When an action in equity is appealed, the appellate court "may find facts in accordance with its own view of the preponderance of the evidence." Lowcountry Open Land Trust v. Charleston S. Univ., 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2007). Nevertheless, "the appellant is not relieved of his burden of convincing the appellate court [that] the trial judge committed error in his findings." U.S. Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) (quoting Pinkney v. Warren, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001)). The Appellate Court may affirm

the trial court's ruling for any ground appearing in the record. Rule 220(c), SCRAP; see also 1'On, L.C.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

ARGUMENT

1. THE MASTER IN EQUITY PROPERLY DENIED APPELLANT'S MOTIONS TO DISMISS AND REQUEST FOR RECONSIDERATION.

Appellant has filed a series of sham pleadings and sovereign-citizen-type filings throughout this foreclosure beginning with her answer. These pleadings are nonsensical and allege wholly inaccurate law. Specifically, Appellant's motions to dismiss are not supported by any cognizable legal theory.

Even if all of Appellant's assertions were to be liberally construed so as to construct a legally cognizable issue for her, the only issue that could potentially be derived from her various pleadings would be an assertion that Respondent lacked standing to bring the instant foreclosure. This is an issue upon which Appellant cannot prevail. As was presented and **unchallenged** at the hearing on Respondent's Motion for Summary Judgment, (Transcript of February 23, 2016 hearing), Respondent is the holder of the Note and Mortgage and thusly has standing to bring the instant action. The full chain of assignments of the subject Mortgage, including the last assignment to the Respondent, was presented as a part of Respondent's Motion for Summary Judgment. On its face, the Note is a negotiable instrument. S.C. Code Ann. § 36-3-104. Respondent is the holder of the Note as defined in S.C. Code Ann. § 36-1-201(b)(21)(A), formerly S.C. Code Ann. § 36-1-201(20), as they are in possession of the negotiable instrument and it is indorsed to them. As the holder of the Note, Respondent is a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

It is fundamental under South Carolina contract law that parties with no connection to a contract lack standing to challenge the contract. See Windsor Green Owners Ass'n v. Allied Signal, Inc., 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct. App. 2004) (“Generally one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of a contract between the defendant and a third party is not, as such, recoverable by the plaintiff”) (quoting Bob Hammond Constr. Co. v. Banks Constr. Co., 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct. App. 1994)). Only intended beneficiaries, not incidental or consequential beneficiaries, can enforce a contract. Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 445, 494 S.E.2d 827, 833 (Ct. App. 1997). When applying these basic contract principles, South Carolina courts have held that a nonparty to a mortgage assignment lacks standing to challenge the assignment’s validity. See, e.g., In re McFadden, 471 B.R. 136, 161 (Bankr. D.S.C. 2012) (compiling a list of federal cases where third party borrower lacked standing to challenge assignments); Reese v. U.S. Bank Nat’l Ass’n, No. 11-2990, 2012 U.S. Dist. LEXIS 75652, 2012 WL 1952819, at *3 (D.S.C. Apr. 30, 2012) (noting that the borrower was only a party to the mortgage, and that the assignment was a separate contract that the borrower could not challenge because she was not a party to the assignment). Similarly, Appellant is only a party to the Mortgage and, because the Assignment is a separate contract to which Appellant is not a party, she cannot question its validity.

Appellant’s filings appear to indicate her belief that the Loan’s servicer, Ocwen Loan Servicing, LLC, should have been the plaintiff in the foreclosure action. A loan’s servicer has an interest in a mortgage loan by virtue of handling the day-to-day activities regarding the mortgage loan. Bank of America, N.A. v. Draper, 405 S.C. 214, 221–22, 746 S.E.2d 478, 482 (Ct. App. 2013). This allows a servicer to assert standing and enforce the mortgage in a foreclosure action.

See Id. Nevertheless, a servicer's standing does not limit the ability the note's holder, secured by a mortgage on real property, from bringing a foreclosure action; both the loan servicer and the note holder have standing. Id. As such, Appellant's assertions regarding Ocwen Loan Servicing, LLC do not provide Appellant a legally cognizable defense to Respondent's foreclosure action because the instant action could have been brought in the name of the holder or servicer of the loan and standing would be proper. Id. at 221-23. As such, the Master in Equity properly denied the Appellant's motions to dismiss and request to reconsider the denial of her motions to dismiss.

2. THE MASTER IN EQUITY PROPERLY GRANTED RESPONDENT'S MOTION FOR SUMMARY JUDGMENT.

In order to prevail on its cause of action for foreclosure, Respondent bears the burden of establishing the existence of the debt and the mortgagor's default on the debt. Bell, 385 S.C. at 374-75, 684 S.E.2d at 205. None of the various pleadings filed by Appellant have challenged that she entered into the underlying mortgage loan or the subsequent loan modification. She has also not challenged her default in failing to make the payments due and owing on the loan since February 1, 2009. The Master in Equity considered all of Appellant's arguments and the evidence regarding Plaintiff's Motion for Summary Judgment and properly found that there were no genuine issues of material fact left to be determined as to Respondent's ability to recover on its cause of action for foreclosure. When no issue of material fact exists, the appropriate action is summary judgment. Spencer v. Miller, 259 S.C. 453, 192 S.E.2d 863 (1972). As such, the Master in Equity properly granted Respondent's Motion for Summary Judgment on its cause of action for foreclosure.

CONCLUSION

For the reasons stated above, this Court should affirm the judgment of the Circuit Court.

Respectfully submitted,

September 8, 2016

A handwritten signature in black ink, appearing to read "Chad Burgess", written over a horizontal line.

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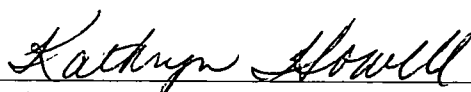
CERTIFICATE OF SERVICE

The undersigned certifies that, on September 8, 2016, Respondent's Initial Brief was served on Appellant by depositing a copy thereof in the United States Mail, first Class, postage prepaid, addressed to:

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September 8, 2016

The South Carolina Court of Appeals
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Re: Deutsche Bank National Trust Company, as Trustee for Soundview Home
Loan Trust 2006-1, Asset-Backed Certificates, Series 2006-1 v. Helen V.
Thomas, *et al.*
Appellate Case: 2016-000678
B&S file #: 13-18819

Dear Sir or Madam:

Enclosed please find an original and one copy of the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal with regard to the above referenced matter. Kindly file the same and return a clocked copy to me in the enclosed self-addressed stamped envelope.

Thank you in advance for your assistance in this matter.

Sincerely,

Kathryn Howell
Paralegal

Enclosures



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