

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Charles B. Simmons Jr., Master in Equity

Case No. 2016-00-0152

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SEP 12 2016
SC Court of Appeals

Jean P. Elliott, aka Betty Jean Elliott,
Individually and as Personal Representative
Of the Estate of Ervin W. Elliott

Respondent

V.

Alberto Alvarez,

Appellant

MOTION TO DISMISS PURSUANT TO RULE 269

David R. Clarke - SC Bar 7143
3609 Stoney Ridge Trail
Midlothian, VA 23112
804-878-6060
ATTORNEY FOR THE RESPONDENT

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Appellant

The Respondent would show the Court that the Appellant has failed to present any issues to be adjudicated by this Court, and that his Appeal has been filed only for the basis of delay, in violation of SCCAR 269.

That the Appellant, through his testimony and Court arguments has admitted to the following facts, as supported by the Affidavit of Respondent Counsel, Transcripts of the Hearings and Pleadings.

- 1) That the Appellant signed the Note and Mortgage prepared by the Appellant's attorney, Andy White, reflecting the debt of the Appellant to the Respondent, and securing the property in question as collateral for the debt.
- 2) That the Appellant sold the mortgaged property without either the Respondent's permission or paying the balance owed to the Respondent on the Note and Mortgage.
- 3) That the Appellant sold the mortgaged property to a third party from whom he collected monthly installment payments, although the Appellant deliberately stopped paying on August 25, 2014.

- 4) That at the time the foreclosure action was filed, the Appellant was eight months in arrears., since, by his own admission, the Appellant deliberately stopped paying the Respondent on August 25, 2014.
- 5) That the Appellant represented to the Court that he continued to receive payment from his innocent purchasers from August 2014 until the November 4, 2015 hearing. Appellant offered no accounting to the Court, but admitted he did not pay the Respondent.
- 6) That the Appellant represented to the Court in the November 4, 2015 Hearing that his English proficiency was adequate to proceed with the hearing, and the Appellant did in fact proceed "pro se", representing himself and actively participating in the hearing.
- 7) That two licensed interpreters appeared at the December 15, 2015 hearing, and the Court received assurances from the third party defendants (who were in Default), that they understood the proceedings.
- 8) The Appellant continued to represent himself "pro se", and through the interpreters, participated in the December 15, 2015 hearing, and did not complain to the court about the first hearing.
- 9) That the Appellant, acting "pro se", has, subsequent to the hearings, filed several motions and approximately fifty pages of arguments, all in English, demonstrating his ability to comprehend, assimilate and express himself in English.
- 10) Appellant further represented to the Appellate Court that he had made over 25 home purchases and sales, again demonstrating his competency to do business in English.
- 11) That the facts of the case presented in the Hearings, pleadings and arguments of the Appellant show unquestionably that;
 - a) The appellant signed the Note indicating his debt to the Respondent.
 - b) The Appellant signed the recorded Mortgage securing the Note with the lien against the foreclosed property.
 - c) That the Mortgage required the Appellant to either pay the Note and Mortgage in Full or obtain the Respondent's permission when he sold the mortgaged property.
 - d) That the Appellant in fact sold the mortgaged property without either paying off the mortgage or obtaining the Respondent's permission to sell.
 - e) That the Appellant deliberately quit paying the Note and Mortgage payments to the Respondent on August 25, 2014.
 - f) That the Appellant admitted that he understood English and in fact has demonstrated his comprehension and expression in English.
 - g) That the Appellant had the services of licensed interpreters at the December 15, 2015 hearing, and made no complaint to the Court about the previous hearing. That at the December 15, 2015 hearing, with the services of two licensed interpreters, sufficient evidence was presented to sustain the foreclosure.

WHEREFORE YOUR RESPONDENT PRAYS:

- 1) For the Appeal to be Dismissed as a Frivolous Appeal under SCCAR 269.
- 2) For Sanctions to be imposed against the Appellant.
- 3) For an award of attorney's fees and court costs,

A handwritten signature in cursive script, appearing to read "David R. Clarke", is written over a horizontal line.

David R. Clarke - S.C. Bar# 7143
Attorney for the Respondent
3609 Stoney Ridge Trail
Midlothian, VA 23112
804-878-6060

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Respondent

V.

Alberto Alvarez, J. Guadalupe Ledesma-Martinez,
And Estela Gutierrez-Garcia, of whom Alberto
Alvarez is the Appellant

Appellant

PROOF OF SERVICE

I certify that I served the Motion to Dismiss on Alberto Alvarez by depositing
A copy of it in the United States Mail, postage prepaid, on September 8, 2016, addressed to
Appellant of record pro se, Alberto Alvarez, 17 Latham Drive, Greenville, SC 29617.

September 8, 2016



David R. Clarke
3609 Stoney Ridge Trail
Midlothian, VA 23112
804-878-6060

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SC Court of Appeals

September 8, 2016

The Honorable Jenny Abbott Kitchings
Clerk of South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Motion to Dismiss, Elliott vs. Alvarez, et al.: Case Number 2016-00-0152

Dear Ms. Kitchings

Enclosed please find an original and six copies of my Motion to Dismiss the above captioned case. I am also enclosing a money order to the Clerk of Court for \$25.00 filing fee. I am sending one copy to Mr. Alvarez by US Mail, postage prepaid, as indicated by my affidavit of service.

If you have any questions, please call me.

Thank you for your cooperation and help.

Sincerely,



David R. Clarke
Bar number - 7143



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DAVID C WALKER
3609 STONEY RIDGE TRAIL
M. DIOATHUM VA 23112

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SC Court of Appeals Honorable Jenny Abbott Kitchings
Clerk of S.C. Court of Appeals
PO Box 11629
Columbia, S.C. 29211