

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY
R. Ferrell Cothran, Jr., Circuit Court Judge

RECEIVED

Lower Case No. 2009-CP-31-131

SEP 19 2016

SC Court of Appeals

United States of America, acting through the
Farmers Home Administration, United States
Department of Agriculture..... Plaintiff/Respondent

v.

Maxie Lee Thomas, Jr. a/k/a Maxie Lee
Thomas, deceased, and all other heirs at law
and/or distributes of Maxie Lee Thomas, Jr.
a/k/a Maxie Lee Thomas, deceased, his
heirs, personal representatives, executors,
administrators, successors and assigns, and
any spouses if any he has, and all persons
entitled to claim under or through him or
any of them; all persons unknown claiming
any right, title, estate, interest in or lien upon
the real estate described in the Complaint
herein, any and all persons who may be in
the military service of the United States of
America, being a class designated as John
Doe; and any unknown minors or persons
under a disability being a class designated as
Richard Roe, Laura Ann Toney, and
Brittany Nicole Thomas.....Defendants

Of Whom Laura Ann Toney is..... Appellant

APPELLATE CASE NO. 2015-002380

RETURN TO PETITION FOR INJUNCTION

The Petition for Injunction and Supplemental Petition for Injunction filed by Appellant Laura Ann Toney (“Appellant”) on September 6, 2016, (collectively “Petition”) are, at their core, an attempt to delay the execution of the Judgment of Foreclosure and Order for Sale filed in this matter on August 23, 2016 (“Judgment”). A copy of the Judgment is attached hereto as **Exhibit A**. Distilled even further, Appellant seeks to delay the sale of the real property ordered in the Judgment. However, the Petition should be denied as it is not properly before the South Carolina Court of Appeals, and the Appellant has failed to comply with S.C. Code Ann. §18-9-170 (1976).

Pursuant to Rule 205, SCACR, “[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedes as provided by Rule 241.” Rule 205, SCACR. However, “[n]othing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.” Rule 205, SCACR. To provide clarification, “[t]he service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment or decree or decision.” Rule 241(a), SCACR (emphasis added). “The exceptions to the general rule are found in statutes, court rules, and case law. Where specific conditions must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all, of the exceptions to the general rule is... (4) Judgments directed the sale or delivery of possession of real property as provided in S.C. Code Ann. §18-9-170.” Rule 241(b), SCACR (emphasis added).

Pursuant to S.C. Code Ann. §18-9-170 (1976),

“[i]f the judgment appealed from directs the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if

the judgment be affirmed he will pay the value of the use and occupation of the property from time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment....” S.C. Code Ann. §18-9-170 (1976).

Also,

“[w]hen the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall provide that in case the judgment shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall be pay a reasonable rental value of the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency, which sum shall be duly entered as a payment on the judgment...the undertaking shall further provide for the payment by appellant, if the judgment be affirmed, of any taxes due at the time of the appeal or already paid by the mortgagee, or becoming due during the pendency of the appeal, and also for the payment by appellant of the interest on the debt falling due during the pendency of such appeal” S.C. Code Ann. §18-9-170 (1976).

Accordingly, an appellant must execute a written undertaking or post a bond to stay the sale of real property ordered by a judgment of foreclosure. S.C. Code Ann. §18-9-170 (1976); Carsten v. Wilson, 241 S.C. 516, 129 S.E. 2d 431 (1963); Muckenfuss v. Fishburne, 68 S.C. 41, 46 S.E. 537 (1903).

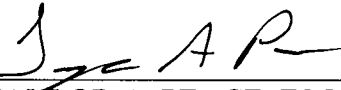
As applied to this matter, Appellant has not filed a notice of appeal that relates to the Judgment as required by Rule 203, SCACR, and the Petition should be dismissed as a result. Rule 203(a), (e)(1), SCACR. The South Carolina Court of Appeals only has jurisdiction as to those matters set forth in the Notice of Appeal Appellant filed on November 12, 2015 (“Notice of Appeal”), said matters only being related to the Order Denying Amended Notice of Ex-Parte Application and Ex-Parte Application to Vacate Order (“Order Denying Ex-Parte Application”). Rule 205, SCACR. A copy of the Notice of Appeal is attached hereto as **Exhibit B**, and a copy of the Order Denying Ex-Parte Application, dated October 22, 2015, is attached hereto as **Exhibit C**.

Accordingly, the South Carolina Court of Appeals does not have jurisdiction over the Judgment or the matters set forth therein, including the stay of the sale of the real property set forth in the Judgment. Rule 205, SCACR. As a result, the stay set forth in Rule 241(a) SCACR is not in place as the Judgment and matters contained therein are not set forth in the Notice of Appeal nor has one been filed related to same. SCACR; Rule 241(a), SCACR. (See **Exhibit B** and **Exhibit C**.)

Also, the stay is not applicable as the Judgment falls squarely within the exceptions set forth in Rule 241(b)(4), SCACR, and Appellant has not strictly complied with the terms set forth in S.C. Code Ann. §18-9-170. This is seen in the fact that the Judgment directs the sale of real property subject of this action. (See **Exhibit A**.) Accordingly, Appellant has to post a bond or execute an undertaking wherein she agrees to pay Respondent the value of the reasonable rental value of the real property ordered to be sold from the time she executes the bond and/or undertaking to the date of the sale of the property along with any taxes that may become due and interest on the debt owed. S.C. Code Ann. §18-9-170 (1976). Appellant has failed to submit such a bond or undertaking and cannot be considered to have strictly complied with S.C. Code §18-7-190 (1976) as a result. Rule 241(b), SCACR. Accordingly, the sale of the real property ordered by the Judgment should not be stayed.

For the reasons set forth above, the Petition should be dismissed.

**TYLER, JACKSON, PEACE
& SILVER, LLC**

By: 

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY
R. Ferrell Cothran, Jr., Circuit Court Judge

Lower Case No. 2009-CP-31-131

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United States of America, acting through the
Farmers Home Administration, United States
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v.

Maxie Lee Thomas, Jr. a/k/a Maxie Lee
Thomas, deceased, and all other heirs at law
and/or distributees of Maxie Lee Thomas, Jr.
a/k/a Maxie Lee Thomas, deceased, his
heirs, personal representatives, executors,
administrators, successors and assigns, and
any spouses if any he has, and all persons
entitled to claim under or through him or
any of them; all persons unknown claiming
any right, title, estate, interest in or lien upon
the real estate described in the Complaint
herein, any and all persons who may be in
the military service of the United States of
America, being a class designated as John
Doe; and any unknown minors or persons
under a disability being a class designated as
Richard Roe, Laura Ann Toney, and
Brittany Nicole Thomas.....Defendants

Of Whom Laura Ann Toney is..... Appellant

APPELLATE CASE NO. 2015-002380

PROOF OF SERVICE

I certify that I have served the **Return to Petition for Injunction** upon Appellant, by depositing a copy of the same in the United States Mail, postage prepaid, on September 15, 2016, upon Appellant Laura Ann Toney, addressed to P.O. Box 722, Bishopville, South Carolina 29010.

September 15, 2016

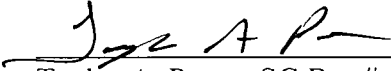

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Administration, United States Department
of Agriculture*

EXHIBIT A

SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
C/A NO.: 2009-CP-31-131

United States of America, acting through the
Farmers Home Administration, United
States Department of Agriculture,

Plaintiff,

vs.

Maxie Lee Thomas, Jr. a/k/a Maxie Lee
Thomas, deceased, and all other heirs at law
and/or distributees of Maxie Lee Thomas, Jr.
a/k/a Maxie Lee Thomas, deceased, his
heirs, personal representatives, executors,
administrators, successors and assigns, and
any spouses if any he has, and all persons
entitled to claim under or through him or any
of them; all persons unknown claiming any
right, title, estate, interest in or lien upon the
real estate described in the Complaint
herein; also any persons who may be in the
military service of the United States of
America, being a class designated as John
Doe; and any unknown minors or persons
under a disability being a class designated as
Richard Roe, Laura Ann Toney, and
Brittany Nicole Thomas,

Defendants,

**JUDGMENT OF FORECLOSURE
AND ORDER FOR SALE**
(Deficiency Demanded as to Defendant
Maxie Lee Thomas a/k/a Maxie Lee
Thomas, Jr. only)
(Non-Eligible for Loan Modification Under
the Home Affordable Modification
Program)

THIS MATTER came before the undersigned for a final foreclosure hearing on April 13, 2016 pursuant to the Order for Bifurcate filed in this matter on January 10, 2010 and the Notice of Hearing filed and served on March 16, 2016. Present at the hearing was Taylor A. Peace, Esq., counsel for Plaintiff United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, and Kimberley L. Ahtonen, witness for Plaintiff. After due and proper notice, none of the above named Defendants, including Defendant Laura Ann Toney (“Toney”) appeared, nor did anyone appear on their behalf.

Pursuant to the Order to Bifurcate, Rule 53(b), SCRCP, the documentary evidence presented, the testimony presented, applicable case and statutory law, and such argument of

counsel as was appropriate, the undersigned makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. For value received, Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr. (“Thomas”) made, executed and delivered to Plaintiff a Promissory Note (“Note”) dated August 10, 1984, promising thereby to pay to Plaintiff the sum of \$40,000.00, upon the terms and conditions set forth therein.

2. Under the terms of the Note, a default is defined as the failure to pay when due any debt evidenced thereby, and, upon an event of default, Plaintiff, at its option may declare all or any part of any such indebtedness due and payable.

3. To better secure the payment of the Note described above, Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr. made, executed and delivered to Plaintiff in writing, a Mortgage dated August 10, 1984, (“Mortgage”) covering real property in Lee County more fully described therein (The Note and Mortgage are sometimes referred to herein as “Loan”).

4. Pursuant to the Mortgage, Thomas agreed to pay or reimburse Plaintiff for expenses reasonably necessary or incidental to the enforcement of the Mortgage, including but not limited the collection of attorney’s fees and court costs associated therewith.

5. The Mortgage additionally provides that upon Thomas’s default under the Note and Mortgage or his death, Plaintiff, with or without notice, may declare the amount unpaid under the Note immediately due and payable, foreclose the Mortgage in accordance with applicable law, collect attorney’s fees and court costs associated therewith, and enforce all other rights and remedies provided by law.

6. The Mortgage was filed on August 10, 1984, and is of record in the office of the ROD for Lee County in Mortgage Book 102 at Page 279.

7. Thomas’s execution of the Mortgage was witnessed by and notarized on August 10, 1984 by Margie G. McCutchen, a notary public for South Carolina, and Edward F. Hucks.

8. The closing of the Loan was supervised by William P. Baskins, III, Esq., an attorney duly licensed in the State of South Carolina. William P. Baskins, III, Esq. died October 12, 2015.

9. On or about October 21, 2005, Thomas died testate while residing in Lee County, South Carolina.

10. At the time of his death, payments due under the Note and Mortgage had not been made.

11. An estate was opened for Thomas, was administered under Case Number 2005-ES-31-139, and Toney was appointed Personal Representative of the Estate pursuant to the Last Will and Testament of Maxie lee Thomas a/k/a Maxie Lee Thomas, Jr (“Will”).

12. Pursuant to the terms of the Last Will and Testament of Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr. dated September 24, 2005, Toney is the sole devisee of the real property which is the subject of this action pursuant to the terms of the unprobated Last Will and Testament, and she is named a Defendant in this action as result of any interest she may have therein.

13. Defendant Brittany Nicole Thomas (“B. Thomas”) is the sole issue and heir of Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr. and is named herein by virtue of any interest she may have in the real property which is the subject of this action.

14. On or about April 3, 2009, Plaintiff delivered to Toney and B. Thomas a Notice of Acceleration and Demand for Payment and Intent to Foreclose.

15. This Lis Pendens was filed in this matter on June 24, 2009.

16. The Summons and Complaint were filed on June 24, 2009.

17. Service was made upon Defendants as shown on the Affidavits of Service filed herein.

18. Pursuant to the Administrative Order of the Honorable Jean Hoefler Toal, Chief Justice of the S.C. Supreme Court, dated May 22, 2009, Plaintiff completed the Verification and Affidavit Regarding HMP Modification and/or Affidavit of Proof Statement of Account which is attached to the Summons and Complaint and was served upon the Defendants therewith. Based upon same, Plaintiff alleges the Note and Mortgage are not subject to modification under the Home Affordable Modification Program (“HMP”).

19. On July 14, 2009 the Defendant Laura Ann Toney filed an Answer and Counterclaim that included a request for a jury trial, a copy of which has been filed of record. The Answer and Counterclaim was subsequently amended on September 9, 2009, November 23, 2009 and January 4, 2010. Pursuant to the Answer and Counterclaim, Toney alleged issues related to an alleged violation of the Fair Debt Collection Act (“First Counterclaim”), violation of due process (“Second Counterclaim”), unauthorized practice of law (“Third Counterclaim”),

burglary and violation of S.C. Code §27-5-110 (“Fourth Counterclaim”), fraud (“Fifth Counterclaim”), improper notarization (“Sixth Counterclaim”), and constructive fraud (“Seventh Counterclaim”).

20. Plaintiff filed its Reply to Amended Answer and Counterclaim on September 29, 2009.

21. The Court appointed a Guardian ad Litem and Attorney to represent any persons who may be in the military service of the United States of America, being a class designated as John Doe; and any unknown minors or persons under a disability being a class designated as Richard Roe, and an answer has been filed on their behalf.

22. Maxie Lee Thomas, Jr. a/k/a Maxie Lee Thomas, deceased, and all other heirs at law and/or distributees of Maxie Lee Thomas, Jr. a/k/a Maxie Lee Thomas, deceased, his heirs, personal representatives, executors, administrators, successors and assigns, and any spouses if any he has, and all persons entitled to claim under or through him or any of them; all persons unknown claiming any right, title, estate, interest in or lien upon the real estate described in the Complaint herein; and Brittany Nicole Thomas have served no Answer or other responsive pleadings upon Plaintiff and are now in default.

23. Thereafter, Plaintiff filed a Motion and Order to Bifurcate which was granted by Order filed January 26, 2010. (“Order to Bifurcate”) wherein the undersigned was given authority to, among other things, rule upon Plaintiff’s claim for foreclosure and Toney’s defenses related thereto.

24. Toney filed an Appeal of the Bifurcation on February 10, 2010, which was dismissed by Order of the Court of Appeals on March 3, 2010.

25. Toney filed a Motion for Rehearing in the Court of Appeals on March 11, 2010, which was denied by the Court of Appeals on May 24, 2010.

26. Toney filed a Petition for Writ of Certiorari with the Court of Appeals on June 23, 2010 which was subsequently denied by the Court of Appeals on October 21, 2010.

27. Thereafter, the Court of Appeals filed its Remittitur on December 12, 2011.

28. Plaintiff filed a Motion to Dismiss the Jury Trial demand on September 19, 2013 and a Motion for Summary Judgment on October 31, 2013.

29. The Court heard oral arguments relating to Plaintiff's Motion for Summary Judgment and Motion to Dismiss the Jury Trial Demand of Defendant Laura Ann Toney on March 21, 2014.

30. The Estate was dismissed on June 20, 2014 by Order of the Honorable Catherine F. Harris, Lee County Probate Judge, for failure to file the necessary documents to close same and accordingly no Deed of Distribution has been issued.

31. The Motion for Summary Judgment and Motion to Dismiss Jury Trial Demand was granted by Order of the Honorable R. Ferrell Cothran, Jr. dated March 26, 2015 ("Order for Summary Judgment").

32. The Order for Summary Judgment granted Plaintiff summary judgment as to Toney's First Counterclaim and Fourth Counterclaim and found that the remaining counterclaims are defenses to Plaintiff's foreclosure claim.

33. Thereafter, Toney filed a Notice of Ex-Parte Application and Ex-Parte Application to Vacate Order on April 7, 2015 and an Amended Notice of Ex-Parte Application and Ex-parte Application to Vacate Order April 23, 2015 (collectively "Application") relating to an alleged procedural irregularity with regard to the delivery of the Order for Summary Judgment to the Court.

34. The Application did not raise any issues with regard to the merits of the Order for Summary Judgment.

35. After proper notice to the parties, Toney failed to appear at the hearing on her Application and the same was denied pursuant to an Order Denying Notice of Ex-Parte Application filed November 4, 2015 ("Order Denying Application").

36. Thereafter, Toney filed an Objection to Proposed Order denying Amended Notice of Ex-Parte Application on November 9, 2015 ("Objection") and Notice of Appeal on November 15, 2015 ("Appeal").

37. The Application, Objection and Appeal do not raise issues with regard to the merits of the Order for Summary Judgment.

38. Toney filed a Motion for Abeyance or Continuance on April 6, 2016 alleging that the South Carolina Court of Appeals has jurisdiction over this matter.

39. On April 12, 2016, Toney delivered to the undersigned a letter and accompanying doctor's note indicating that she was excused from work and school as the result of dizziness. ("Doctor's Letter")

40. Payments due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of the attorney herein for collection.

41. This Mortgage constitutes a first lien on the subject property, the titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action are Maxie Lee Thomas and the heirs at law and/or devisees of Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr.

42. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fee, secured by the Mortgage is as follows:

a.	Principal due as of April 13, 2016	\$36,379.03
b.	Interest from April 10, 1999 through April 13, 2016 at 11.875%	\$64,110.48
c.	Total Subsidy Granted	\$37,878.28
d.	Fees Assessed	\$50,489.54
e.	Attorney's fee	\$30,597.00
f.	Future Attorney's Fees (disposition of pending Appeal)	\$10,000.00
g.	Costs of collection prior to hearing	\$2,585.50
	 Total Debt secured by Note and Mortgage, including interest to date shown	 \$232,039.83
	 Per Diem at	 \$11.87

The amount due (shown above) shall accrue interest at the rate of 11.875% per annum and together with such interest shall constitute the total debt due the Plaintiff, pursuant to S.C. Code §29-3-630.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, I make the finding Conclusions of Law and Order as follows:

1. Pursuant to SCACR 205, "[u]pon the service of a notice of appeal, the appellate court shall have exclusive jurisdiction of the appeal.... Nothing in these Rules shall prohibit the lower court.... from proceeding with matters not affected by the appeal". SCACR 205.

2. Also, pursuant to Rule 42(b), “[t]he court, in furtherance of convenience or to avoid prejudice.... may order a separate trial of any claim-crossclaim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims or counterclaims, third party claim, or issues, always preserving inviolate the right of a trial by jury...” Rule 42 (b), SCRPC.

3. In this matter, the Order to Bifurcate, the undersigned is, among other things, authorized and empowered to hear Plaintiff’s foreclosure and defenses related to thereto and that Toney’s counterclaims remain with the Circuit Court.

4. In other words, the Order to Bifurcate separated, for purposes to trial, discovery and other litigation matters, the undersigned is not to hear matters related to Toney’s counterclaims nor are they the subject of this hearing.

5. Also, the Order for Summary Judgment does not relate to Plaintiff’s claim for foreclosure or Toney’s defenses related thereto.

6. In addition, the Application, Proposed Objection and Appeal do not take issue with the Court’s ruling in the Order for Summary Judgment that Defendant’s counterclaims, with the exception of the First Counterclaim and Fourth Counterclaim, are defenses to Plaintiff’s foreclosure action that should be addressed by the undersigned.

7. Accordingly, Plaintiff’s claim for foreclosure and the defenses related thereto, including Toney’s counterclaims that have been found to be defenses, are not affected by the Appeal, and therefore the South Carolina Court of Appeals does not have jurisdiction over Plaintiff’s claim for foreclosure and Toney’s defenses related thereto and this matter may immediately proceed.

8. As a result, Toney’s Motion for Continuance is herein denied.

9. To the extent the Doctor’s Letter can be construed as a second motion for continuance, same is denied as it only excuses Toney from school and work and does not make any mention of court appearances.

10. With regard to Toney’s Second Counterclaim, a first mortgage on residential property is exempt from the right to cure requirements under the South Carolina Consumer Protection Code. See S.C. Code Ann. §37-3-105.

11. Therefore, the question of whether Toney is entitled to a notice of default/right to cure is a question what notice is required by the loan documents. See Hendrix v. Franklin, 292

S.C. 138, 355 S.E.2d 273 (Ct. App. 1986); Allendale Furniture Co., Inc., v. Carolina Commercial Bank, 284 S.C. 76, 325 S.E.2d 530 (1985).

12. Pursuant to the Mortgage, the Plaintiff, with or without notice, may declare the entire amount unpaid under the Note and any indebtedness to Plaintiff hereby secured immediately due and payable.

13. Also, Toney is not defined as the “Borrower” in this matter, and does have any legal rights under the Mortgage. She is named as a party to this matter by virtue of any interest she may in the Property by virtue of position as devisee of the Will.

14. Accordingly, Plaintiff was not required to send Toney a notice of default/right to cure, her Second Defense is without merit, and it is therefore dismissed.

15. With regard to Toney’s Third Counterclaim, “All real estate and mortgage closings must be supervised by an attorney.” Matrix Financial Services Corp v. Frazer, 394 S.C. 134, 138, 714 S.E. 2d 532, 534 (2011) (internal citations omitted)

16. This is due to the fact that, “...the presence of attorneys in real estate loan closings s for the protection of the public and that ‘protection of the public is of paramount concern’ in loan closings.” Id. at 394 S.C. 140, 714 S.E. 2d 535 (internal citations omitted).

17. As a result, “...a lender may not enjoy the benefit of equitable remedies when that lender failed to have attorney supervisions during the loan process as required by law Id.

18. However, the defense of the unauthorized practice of law is only available to mortgages filed after 2011. See BAC Home Loan Servicing L.P. v. Kinder, 398 S.C. 619, 731 S.E. 2d 547.

19. In this matter, the Mortgage was filed on August 10, 1984 in the office of the ROD for Lee County in Mortgage Book 102 at Page 279, well before 2011.

20. Also, the execution Note and Mortgage at issue was supervised by William P. Baskin, Esq., deceased, who was an attorney duly licensed in the State of South Carolina, and Toney has failed to present any evidence otherwise.

21. Accordingly, Toney’s Third Counterclaim is denied as the unauthorized it is not available to her, and the execution of the Note and Mortgage was supervised by an South Carolina attorney.

22. Toney’s Fifth Counterclaim and Seventh Counterclaim is also denied as she has failed to present any evidence to support same.

23. As to Toney's Sixth Counterclaim, the Mortgage was properly witnessed and notarized, and Toney has failed to present any evidence otherwise, and same is dismissed accordingly.

24. In addition to the above, Toney's Second Counterclaim, Third Counterclaim, Fifth Counterclaim, Sixth Counterclaim, and Seventh Counterclaim are dismissed pursuant to Rule 41(b), SCRPC, as she has failed to prosecute same or otherwise comply with the South Carolina Rules of Civil procedure. Rule 41(b), SCRPC.

25. The Defendant(s) named herein and all persons whosoever claiming under him, them or it be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

26. Plaintiff's Mortgage constitutes a first lien on the subject property.

27. There is due to the Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$232,039.83 representing the total debt due Plaintiff as set out in the Findings of Fact supra, and Defendant Laura Ann Toney has presented no evidence to contradict the same.

28. The Plaintiff has incurred the actual sum of \$30,597.00 in attorney's fees in the prosecution of this action and costs in the sum of \$2,585.50 as set forth in the Affidavit of Taylor A. Peace, Esquire, and anticipates that it will incur the additional sum of \$10,000.00 in attorney's fees through the final conclusion of the action.

29. The attorney's fees are fair and reasonable under the six (6) applicable factors to be considered under Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989):

- (a) This litigation involved a complex residential dispute, which included the defense of numerous counterclaims and affirmative defenses containing allegations of breach of contract, fraudulent misconduct, and unfair trade practices by Plaintiff;
- (b) The time actually devoted to the matter was necessary to complete extended discovery, numerous motions, appeals, and presenting the case at a trial;
- (c) The professional standing of the attorneys at Tyler, Jackson, Peace and Silver, LLC, is excellent and they regularly represent clients in matters similar to the issues presented in this case;
- (d) The Contingency of Compensation factor is inapplicable since this was not a contingency case;

- (e) The rates of the attorneys involved in this matter are consistent with those customarily charged in the Counties of Richland Lee for similar legal services; and
- (f) The beneficial results that Plaintiff received in prevailing on its action to foreclose on a Note.

30. The amount due in the preceding paragraph (the "Total Debt" as set forth hereinabove) shall accrue interest at the rate of 11.875% per annum and together with such interest shall constitute the total debt due the Plaintiff.

31. The amount due shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

32. That on or before the date of sale of the property hereinafter described, Plaintiff or Plaintiff's attorney, is to be paid the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

33. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Master in Equity for Lee County at public auction, at the Lee County Courthouse, 123 South Main Street, Bishopville, County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on some other day appointed by the Court), on the following terms, that is to say:

- A. FOR CASH: The undersigned Master in Equity for Lee County will require, at the time of the bid, a deposit of five (5%) percent on the amount of the bid (in cash or equivalent) same to be applied on the purchase price if compliance is made; but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to Plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at the time of bid or comply with the other terms of the bid within twenty (20) days, then the property may be re-sold on the same terms and conditions on some subsequent sales day, but at the risk of the defaulting bidder(s).

- B. Interest on the bid shall be paid through the day of compliance at the rate of 11.875%.
- C. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.
- D. Plaintiff to pay for any statutory commission on sale from the proceeds of sale, and Purchaser to pay for deed preparation, costs of recording the deed and deed stamps.
- E. A personal or deficiency judgment being demanded, the bidding will remain open after the date of sale for thirty (30) days.

34. A personal or deficiency judgment being demanded, the bidding will remain open after the date of sale for thirty (30) days.

35. That the undersigned Master in Equity for Lee County, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within twenty (20) days after date of sale, then the undersigned Master in Equity for Lee County may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

36. That the undersigned Master in Equity for Lee County will apply the proceeds of sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further Order of this Court.

37. That Plaintiff shall have judgment of foreclosure. That Plaintiff shall have judgment against Defendant Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr. for the full amount found to be due Plaintiff on the Note and Mortgage, which judgment shall be reduced by the net proceeds of sale pursuant to S.C. Code Ann §29-3-650, as amended, as determined by this Court in a subsequent Order for Deficiency Judgment. Plaintiff may waive any of its rights prior to sale, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure. Plaintiff's waiver shall be made in writing.

38. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity for Lee County only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

39. Should the Plaintiff, Plaintiff's attorney or agent fail to appear on sales day, the property shall not be sold, but shall be re-advertised and sold at some convenient sales day thereafter when the Plaintiff, Plaintiff's attorney or agent is present.

40. In the event the successful bidder is other than the Defendant in possession herein, upon the presentation of a Writ of Assistance, the Sheriff of Lee County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession. Pursuant to Rule 70, SCRCP, the Clerk, upon application of the successful bidder is hereby directed to execute a Writ of Assistance. All valid tenant rights pursuant to Protecting Tenants at Foreclosure Act of 2009 shall be protected.

41. That the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Clerk of Court or Register of Deeds in the name of the owner of record of

subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity for Lee County, who executes such deed as grantor.

42. The Master in Equity for Lee County, shall direct the Clerk of Court/Register of Deeds to release of record the mortgage lien being foreclosed, after the Order Confirming Sale and Disbursements has been executed and filed, which mortgage lien is described as follows: That certain Mortgage given by Maxie Lee Thomas a/k/a Maxie Lee Thomas, Jr. to Plaintiff dated August 10, 1984 and recorded in the Office of the Clerk of Court/Register of Deeds for Lee County on August 10, 1984 in Book 102 at Page 279.

43. The undersigned Master in Equity for Lee County will retain jurisdiction to do all the necessary acts incident to this foreclosure including, but not limited to, the issuance of a Supplemental Order to evidence additional debt incurred if the sale of the property is delayed by the filing of a bankruptcy petition, transfer of service of the Note and Mortgage by the Plaintiff, or an attempt of the parties to reach a settlement, the issuance of a Supplemental Order to correct a harmless error in the action that does not substantially affect the rights of the parties, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71(c), SCRCP, and hearing any issues involving appraisal proceedings under §29-3-680 et seq of the South Carolina Code of Laws (1976) as amended.

44. Mortgaged property to be sold by Master in Equity for Lee County:

All that certain piece, parcel or lot of land situate, lying and being in Bishopville Township, Lee County, S.C., described as Lot NO. 20 on a plat of Broad Acres Subdivision, prepared by J.P. Edwards, RLS dated November 4, 1971, and recorded in Plat Book M at Page 104 in the Office of the Clerk of Court for Lee County, S.C., and being bounded and described as follows, to wit: On the Southwest by lands now or formerly of A.B. Baskin Estate and measuring thereon 120 feet, more or less; on the Southeast by Lot No. 21 according to said Plat, and measuring thereon 251.32 feet, more or less; on the Northeast by Broad Acres Drive and fronting thereon 120 feet, more or less; and on the Northwest by Lot No. 19 according to said Plat, and measuring thereon 251.32 feet, more or less.

Subject to Restrictive Covenants N-2-11 and D-39, Lee County, S.C. Registry.

Said Lot No. 20 being more recently described according to a Plat thereof made by Frank E. Hinson, Surveyor, dated January 28, 1984, and recorded in Plat Book U at Page 45, said Registry.

This being the same property conveyed to Maxie Lee Thomas by deed of A.B. Baskin, Jr., Eldridge Baskin, Louise Baskin Stevenson and Virginia Baskin Fletcher dated July 12, 1984 and recorded August 10, 1984 in Book N-3 at Page 21.

TMS No.: 029-00-00-059-000

Address: 71 Broad Acres Road, Bishopville, South Carolina 29010

45. The Note and Mortgage are not subject to the Home Affordable Modification Program ("HMP").

46. Plaintiff has complied with Administrative Order of the Supreme Court of South Carolina dated May 2, 2011 (2011-05-02-01).

ELECTRONIC SIGNATURE PAGE TO FOLLOW

Attorney for Plaintiff:
Taylor A. Peace
S.C. Bar No. 100206
Tyler, Jackson, Peace & Silver, LLC
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 779-4997



Lee Common Pleas

Case Caption: United States Of America VS Maxie Lee Thomas Jr , defendant, et al
Case Number: 2009CP3100131
Type: Master/Order/Foreclosure & Sale and Form 4

So Ordered

s/S. Bryan Doby, Lee County Master-in-Equity
3070

EXHIBIT B

November 10, 2015

P.O. Box 722
Bishopville, SC 29010

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

NOV 12 2015

TCJPS

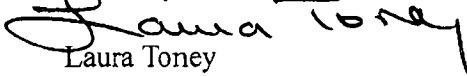
Dear Sir or Madam:

Please find enclosed the Notice of Appeal, Certificate of Service and fee of \$100.00. Please file the Appeal and mail a copy using the enclosed self addressed stamped envelope to:

P.O. Box 722
Bishopville, SC 29010

Thank you for your attention in this matter.

Sincerely,


Laura Toney

I, Laura Ann Toney, appeals the order of Judge R. Ferrell Cothran dated October 22, 2015.
The Appellant received the order on November 9, 2015.

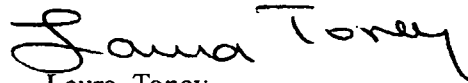
Laura Toney
P.O. Box 722
Bishopville, SC 29010
(803) 459-6006

CC: The Honorable R. Ferrell Cothran, Jr.
16 North Brooks Street
Manning, SC 29102

Tyler, Cassell, Jackson, Peace & Silver L.L.P.
P.O. Box 11656
Columbia, SC 29211-1656

The Honorable Bryan Doby
P.O. Box 106
Bishopville, SC 29010

Lee County Clerk of Court
P.O. Box 387
Bishopville, SC 29010


Laura Toney
P.O. Box 722
Bishopville, SC 29010
(803) 459-6006

Certificate of Mailing

I, Laura Toney, certifies that a copy of the Notice of Appeal was mailed via United States Postal Service on November 10, 2015, addressed as follows:

The Honorable R. Ferrell Cothran, Jr.
16 North Brooks Street
Manning, SC 29102

Tyler, Cassell, Jackson, Peace & Silver L.L.P.
P.O. Box 11656
Columbia, SC 29211-1656

The Honorable Bryan Doby
P.O. Box 106
Bishopville, SC 29010-0106

Lee County Clerk of Court
P.O. Box 387
Bishopville, SC 29010

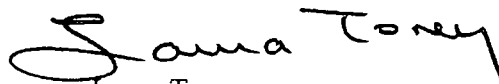

Laura Toney
P.O. Box 722
Bishopville, SC 29010

EXHIBIT C

COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEE

CIVIL ACTION NO.: 2009-CP-31-0131

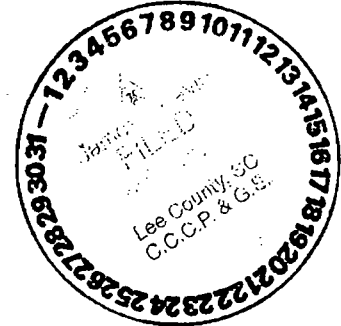
United States of America, acting through the
Farmers Home Administration, United
States Department of Agriculture,

Plaintiff,

vs.

Maxie Lee Thomas, Jr. a/k/a Maxie Lee
Thomas, deceased, and all other heirs at law
and/or distributees of Maxie Lee Thomas, Jr.
a/k/a Maxie Lee Thomas, deceased, his
heirs, personal representatives, executors,
administrators, successors and assigns, and
any spouses if any he has, and all persons
entitled to claim under or through him or any
of them; all persons unknown claiming any
right, title, estate, interest in or lien upon the
real estate described in the Complaint herein;
also any persons who may be in the military
service of the United States of America, being
a class designated as John Doe; and any
unknown minors or persons under a disability
being a class designated as Richard Roe;
Laura Ann Toney, and Brittany Nichol Thomas,

Defendants.



**ORDER DENYING AMENDED
NOTICE OF EX-PARTE APPLICATION and
EX-PARTE APPLICATION TO VACATE
ORDER**

THIS MATTER came before the Court on October 1, 2015 on the Defendant Laura Ann Toney's Amended Notice of Ex-Parte Application and Ex-Parte Application to Vacate Order ("Amended Motion to Vacate"). Appearing at the hearing was Taylor A. Peace, Esq., attorney for Plaintiff. The Court notified Defendant Laura Ann Toney ("Toney") of the time and place of the hearing and Plaintiff provided her a Notice of Hearing stating same; however, neither Toney nor her representative appeared. Based on the Amended Motion to Vacate, statutory law, case law, and such other and further argument of counsel, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On or about September 19, 2013, Plaintiff filed a Notice of Motion and Motion to Dismiss Jury Trial Demand of Defendant Laura Ann Toney (hereinafter "Motion to Dismiss Jury Demand").
2. On October 31, 2013, Plaintiff filed a Notice of Motion and Motion for Summary Judgment as to Defendant Laura Ann Toney's Counterclaims (hereinafter "Motion for Summary judgment").
3. On or about March 21, 2014, a hearing on the Motion for Summary Judgment and Motion to Dismiss Jury Demand was held, and same was attended by Donald W. Tyler, Jr., Esq., attorney for Plaintiff, and Toney, who appeared *pro se*.
4. Prior to the March 21, 2014 hearing, Toney provided no affidavit or other evidence in opposition to the Motion for Summary Judgment.
5. On January 5, 2015, the Court informed Plaintiff and Toney that it was granting the Motion for Summary Judgment and Motion to Dismiss Jury Demand, gave reasons for the decision, and asked Plaintiff's counsel to draft a proposed order reflecting same.
6. On January 16, 2015, Plaintiff's counsel delivered to Nelson Russell Parker, Jr., former clerk for the undersigned ("Parker"), by electronic mail, a proposed Order Granting Plaintiff's Motion for Summary Judgment and Motion to Dismiss Jury Demand ("Order Granting Summary Judgment").
7. Plaintiff's counsel did not deliver to Toney a copy of the proposed Order Granting Summary Judgment at the same time and by the same means as it was provided to Parker since he did not have an electronic mail address for Toney.
8. On March 26, 2015, the Court signed the proposed Order Granting Summary Judgment, and same was filed with the Clerk of Court for Lee County on March 26, 2015.
9. Plaintiff's counsel delivered a copy of the filed Order Granting Summary Judgment to Toney, who responded by filing a Notice of Ex-Parte Application and Ex-Parte Application to Vacate Order ("Motion to Vacate") on April 8, 2015.

10. The Motion to Vacate alleges Plaintiff's counsel did not deliver the proposed Order Granting Summary Judgment to her at the same time and in the same manner as it was provided to the court, and it should be vacated as a result. The Motion also alleges Toney is entitled to damages.

11. On April 10, 2015, Parker received, by electronic mail, a communication from Plaintiff's counsel proposing two resolutions to the Motion to Vacate ("April 10, 2015 E-mail").

12. The two resolutions set forth in the April 10, 2015 E-mail were:

- a. That the Order Granting Summary Judgment be vacated, Toney be given fourteen (14) days to propose changes and provide comment to same, that said changes and/or comments be approved and/or rejected by the Court and any and all approved changes be incorporated into an amended Order Granting Summary Judgment; or
- b. That Toney be given fourteen (14) days to propose changes and/or comments to the Order Granting Summary Judgment and the Court issue an amended Order Granting summary Judgment based on same.

13. The April 10, 2015 E-mail states that it was being sent to Toney by certified mail, return, receipt requested.

14. Neither Plaintiff's counsel nor the Court received any communication from Toney until the filing of the Amended Motion to Vacate on April 23, 2015.

15. The Amended Motion to Vacate acknowledged that Toney received the April 10, 2015 e-mail by certified mail.

CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, the Court finds and concludes as follows:

1. This Court has subject matter and personal jurisdiction over the parties and venue is proper.
2. Based on the language of the Amended Motion to Vacate, same was filed pursuant to the Rule 59(e), SCRCF and Rule 60(b), SCRCF.
3. Pursuant to Rule 59(e), SCRCF, a motion to alter or amend the judgment shall be served no later than ten (10) days after receipt of written notice of the entry of the order. Rule 59(e), SCRCF.

4. Under South Carolina law, "[u]nless otherwise ordered by the court because of numerous defendants or other parties, all (1) written orders ... shall be served upon each of the parties of record" pursuant to Rule 5(a), SCRCF.

5. Relatedly, "[a]ny party providing a proposed order, proposed findings of fact or conclusions of law, or proposed judgment or other paper to the court for its consideration in any matter pending shall serve the same on all counsel of record at the same time and by the same means" pursuant to Rule 5(b)(3).

6. However, *ex parte* communication resulting from a trial judge signing proposed order drafted by opposing counsel, but not sent to the opposing party is not a reversible error as long as the record does not reflect partiality or prejudice. See e.g. Grant v. South Carolina Coastal Council, 319, S.C. 348, 356, 461 S.E.2d 388, 392 n.5 (1995) (citing Burgess v. Stern, 311 S.C. 326, 428 S.E.2d 880, (1993)).

7. As applied to this matter, Toney has alleged that Plaintiff violated Rule 5, SCRCF, by not sending her a copy of the proposed Order for Summary Judgment at the same time and by the same means and it was provided to the Court.

8. However, the Court notified Toney and Plaintiff of its decision with regard to the Order for Summary Judgment, and she was on notice of and had knowledge of same.

9. Also, Toney has failed to present evidence that the record reflects that the Court exhibited partiality towards Plaintiff or that she has been prejudiced in any way.

10. Accordingly, Toney has failed to show that the Order Granting Summary Judgment should be altered or amended pursuant to Rule 59(e), SCRCF.

11. Regarding Rule 60(b), SCRCF, "[o]n motion and upon such terms as are just, the court may relieve a party ... from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application". Rule 60(b), SCRCF.

12. Lack of fairness is not a ground for relief from judgment. Gainey v. Gainey, 382 S.C. 414, 431 675 S.E. 2d 792, 801. (S.C. Ct. App. 2009).

14. Although most often used when relief is sought from a judgment by default, Rule 60(b)(1) applies to any final judgment. RRR, Inc. v. Toggas, 378 S.C. 174, 182 662 S.E. 2d 438, 442 (S.C. Ct. App. 2008) (citing Goodson v. Am. Bankers Ins. Co. of Fla, 295 S.C. 400, 402, 368 S.E. 2d 687, 689 (S.C. Ct. App. 1988)).

15. In determining whether to grant relief from judgment based on mistake, inadvertence, surprise or excusable neglect, the court must consider the following factors: (1) the promptness with which the relief is sought, (2) reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice of the other party. Rouvet v. Rouvet, 388 S.C. 301, 309, 696 S.E. 2d 204, 208 (S.C. Ct. App. 2010).

16. Regarding Rule 60(b)(3), SCRCP, "extrinsic fraud is the only type of fraud for which relief may be granted under Rule 60(b)(3)". Gainey v. Gainey, 382 S.C. 414, 425, 675 S.E. 2d 792, 798 (S.C. Ct. App. 2009) (citing Raby Const., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E. 2d 478, 483 (2004)).

17. Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard". Id (citing Hilton Head Ctr. Of S.C. v. Public Serv. Commn., 294 S.C. 9, 11, 362 S.E. 2d 176, 177 (1987)).

18. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action. Id.

19. As applied to this matter, Toney has failed to present any evidence of mistake, inadvertence, surprise or excusable neglect pursuant to Rule 60(b)(1), SCRCP or the factors to be considered when deciding same.

20. Rather, Toney was aware and had knowledge of the Court's decision with regard to the Order for Summary Judgment.

21. Toney also failed to present any evidence of "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)" as none was presented at the hearing on the Amended Motion to Vacate. Rule 60(b)(2), SCRCP.

22. Regarding Rule 60(b)(3), SCRCP, Toney has failed to show any evidence of fraud, extrinsic or otherwise, misrepresentation, or that Plaintiff or it's counsel participated in misconduct. Rule 60(b)(3), SCRCP.

23. To the extent the Amended Motion to Vacate makes allegations of *ex parte* communication or a violation of Rule 5, SCRCP, Toney was informed by the Court of its decision with regard to the Motion for Summary Judgment, and she has made no complaint, proposed amendment, or proposed alteration concerning same.

24. Toney has further shown no evidence that she has been deprived of an opportunity to be heard, or present her case or that there has been misconduct by an adverse party.

25. Additionally, has failed to show any evidence that the Order for Summary judgment is void or that it has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated. Rule 60(b)(4), SCRCP.

26. Furthermore, Toney has failed to show that it is no longer equitable that the Order for Summary Judgment should have prospective application. Rule 60(b)(5), SCRCP.

27. Accordingly, Toney has failed to present evidence any evidence that the Order for Summary Judgment should be altered or amended under Rule 59(e), SCRCP or vacated under Rule 60(b), SCRCP.

RULE 59(e) and RULE 60(b) STANDARD

Under South Carolina law, the decision of whether to grant a motion made under Rule 59(c) and Rule 60(b), SCRCP is left to the sound discretion of the trial court. Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 723 S.E. 2d 835 (S.C. Ct. App. 2012). Also, the party bringing the motion has the burden of presenting evidence proving the facts essential to entitle him/her to the requested relief. See McClurg v. Deaton, 380 S.C. 563, 671 S.E. 2d 87 (S.C. Ct. App. 2008);

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, Toney's Motion to Vacate is hereby denied.

Toney failed to show that any alleged *ex parte* communication or alleged violation of Rule 5, SCRCP regarding the delivery of the Order for Summary Judgment caused her prejudice, nor has she shown any evidence


of partiality on the party of the Court towards Plaintiff. Additionally, the Court communicated to Toney decision with regard to the Motion for Summary Judgment and Motion to Dismiss Jury Demand and she was informed of same prior to the entry of the Order for Summary Judgment. Accordingly, she has failed to show evidence that the Motion to Vacate should be granted under Rule 59(e), SCRPC.

Additionally, Toney has failed to present evidence that the Amended Motion to Vacate should be granted under Rule 60(b). In particular, she has failed to show any evidence of any mistake, inadvertence, surprise, or excusable neglect. She has also failed to show any newly discovered evidence. Furthermore, she has failed to show any evidence that Plaintiff perpetrated fraud, extrinsic or otherwise, misrepresentation or that Plaintiff participated in misconduct. Additionally, she has failed to show that the Order for Summary Judgment is void, satisfied, released, discharged, or that it would no longer be equitable for it to have prospective application. It is therefore,

ORDERED, ADJUDGED, and DECREED, that the Amended Motion to Vacate is hereby denied.

IT IS FURTHER ORDER, ADJUDGED, and DECREED, that the Order for Summary Judgment have full force and effect, and that, upon the entry of this Order, Plaintiff may proceed with its foreclosure action.

IT IS SO ORDERED.



Honorable R. Ferrell Cothran, Jr.
Lee County Court of Common Pleas

October 22, 2015
Manning, South Carolina

TYLER, JACKSON, PEACE & SILVER, LLC

ATTORNEYS AND COUNSELORS AT LAW
SUITE 300
1331 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

RECEIVED

SEP 19 2016

SC Court of Appeals

DONALD W. TYLER
THOMAS B. JACKSON, III
M. ALAN PEACE
JEFFREY L. SILVER

TAYLOR A. PEACE

MAILING ADDRESS:
POST OFFICE BOX 11656
COLUMBIA, SOUTH CAROLINA 29211-1656

TELEPHONE (803) 779-4997
TELECOPIER (803) 733-2712
TELECOPIER (803) 765-2468

September 15, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: United States of America, acting through the Farmers Home Administration,
United States Department of Agriculture v. Maxie Lee Thomas, Jr., et al.
Of Whom Laura Ann Toney is Appellant
Appellate Case No. 2015-002380
Our File No.: 2518.23031/DWT

Dear Ms. Kitchings:

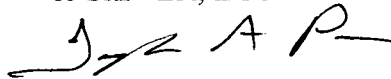
With regard to the above referenced matter, enclosed please find the original and one (6) copy each of the **Return to Petition for Injunction** along with a **Proof of Service** of same. Please file the original with the Court and return a clocked copy to me in the enclosed self-addressed return envelope.

By copy of this letter, I am herewith serving the above documents on Appellant Laura Ann Toney.

If you have any questions or need anything further in this regard, please do not hesitate to contact us at any time.

Sincerely,

TYLER, JACKSON, PEACE,
& SILVER, LLC

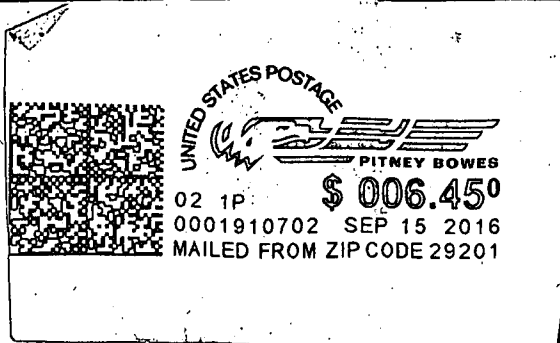


Donald W. Tyler
Taylor A. Peace

TAP/cw

Enclosures

cc: Laura Ann Toney, Appellant



Tyler, Jackson, Peace & Silver, LLC
Post Office Box 11656
Columbia, SC 29211

RECEIVED
SEP 19 2016
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201