

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Richard L. Booth, Master in Equity

Appellate Case No. 2015-001341

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OCT 17 2016

SC Court of Appeals

DLJ Mortgage Capital,
Inc.....Respondent,

v.

Ameer A. Amin
.....Appellant.

FINAL BRIEF OF THE RESPONDENT

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Dated: October 17, 2016

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STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER IN EQUITY ERR IN GRANTING RESPONDENT'S WRIT OF ASSISTANCE?

STATEMENT OF THE CASE

Respondent, DLJ Mortgage Capital, Inc filed the instant action seeking foreclosure of property owned by Appellant, Ameer A. Amin, and located in Sumter County, South Carolina on February 11, 2014. The foreclosure is based upon Appellant's failure to make payments required by the terms of his mortgage. (R. pp. 35-38) Beginning on February 21, 2014, Appellant began submitting and filing documents in this matter that are in the nature of "sovereign citizens" type pleadings. All of the Appellant's filings appear to be sham pleadings on their face. The Response to the Summons and Complaint, Claim Reduced to Summary Judgment and Notice of Settlement was filed on February 21, 2014 and is the first example of the sham pleadings filed by Appellant. The case was subsequently referred to the Honorable Richard L. Booth, Master in Equity for Sumter County. (R. p. 72) On November 20, 2014, the summary judgment was granted in favor of Respondent and the subject property was ordered to be sold at public auction. (R. p. 112, line 13 – p. 115, line 27)

On December 18, 2014, Appellant filed a Notice of Constitutional Challenge Brief along with a Notice of Constitutional Challenge Rule 5(1) and Injunction. (R. pp. 8-16)

The foreclosure sale was held on January 5, 2015 and the Master's Report of Sale was filed on February 2, 2015. On February 17, 2015, Appellant filed a Motion to Vacate Judgment and Sale. Thereafter on March 27, 2015, Appellant filed an Amended Motion to Vacate Judgment and Sale.

A hearing on Appellant's motions was scheduled for April 21, 2015. (R. p. 132) On April 9, 2015, Appellant filed a Motion to Request to Reschedule. (R. p. 134) On May 12, 2015, all of Appellant's motions were denied. (R. pp. 25-26) A Writ of Assistance was filed by the Master in Equity on June 10, 2015 directing the Sumter County Sherriff to evict or remove Appellant and any individuals occupying the property along with their possessions. (R. pp. 3-4)

Appellant filed an Amended Notice of Appeal on June 23, 2015 indicating that he is appealing the Writ of Assistance. (R. pp. 146-147)

FACTS

Appellant made, executed and delivered a note, dated November 24, 2009, promising to pay to the order of GMAC Mortgage, LLC the sum of \$ 87,500.00 with an interest rate of 5.625% per annum. (R. p. 110, lines 1-4) To better secure payment of the note, Appellant made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for GMAC Mortgage, LLC encumbering real property located in Sumter

County. (Id.) The mortgage was recorded December 2, 2009 in the Sumter County Registry in Book 1132, Page 3288. (Id.) Thereafter, the Mortgage was assigned to GMAC Mortgage, LLC Successor by Merger to GMAC Mortgage Corporation by assignment recorded on December 2, 2011 in Book 1163 at Page 1870. (Id.) Thereafter, the Mortgage was assigned to DLJ Mortgage Capital Inc. by assignment recorded on May 20, 2014 in Book 1201 at Page 002821. (Id.) Respondent is the holder of the note and mortgage. (Id.) On February 11, 2014, Respondent filed a Complaint for mortgage foreclosure against Appellant as a result of his failure to pay on the mortgage for the installments due June 1, 2013 and thereafter. (R. p. 37, line 13) On February 11, 2014, a process server served Appellant with a copy of the Summons and Complaint. (R. p. 46)

Appellant filed and served an answer on February 24, 2014. (R. pp. 47-48) On May 8, 2014, the Clerk of Court for Sumter County entered an Order of Reference referring this matter to The Honorable Richard L. Booth, as Master in Equity. (R. p. 72) The Order of Reference authorizes the Master in Equity to dispose of any and all issues and enter a final judgment in the cause, without further order of court, to order a judicial sale on any day, not just a regular judicial sales day and to hear any issues and make any orders after sale or judgment, including but not limited to, issues involving surplus funds pursuant to Rule 71(c) SCRPC, Petitions or Motions relating to Writ of Assistance or any other actions as to possession, and/or removal of property, and issues pursuant to appraisal proceedings

under S.C. Code Ann. Section 29-3-680, et seq. (1976 SC Code of Law, as amended). On May 15, 2014, Appellant filed an objection to the order referring this case to the Master in Equity. (R. p. 78) Thereafter, Appellant filed a motion dismissing the case on July 21, 2014. (R. pp. 84-85) On October 2, 2014, Respondent filed an affidavit asserting Appellant's Debt. (R. pp. 89-90) Subsequently on October 10, 2014, a Motion for Summary Judgment was filed on behalf of Respondent. (R. p. 94) A Notice of Hearing was sent October 21, 2014, informing the defendant that a hearing on Plaintiff's Motion for Summary Judgment was scheduled for November 20, 2014. (R. p. 98) Two days prior to the Motion for Summary Judgment Hearing, Appellant filed an Affidavit of No Original Note along with a Request for Settlement. (R. p. 7) On November 20, 2014 the Court ruled in favor of Respondent and issued a judgment of foreclosure and sale, finding that Respondent was the holder of the subject note and mortgage, that Appellant had failed to make payments required by the note, and that the total debt secured by the note and mortgage was \$97,192.36. (R. p. 110, line 26) The Respondent produced the original note for the Court's and the Appellant's inspection at the hearing on November 20, 2014. (R. p. 122, line 18 – p. 123, line 5)

Nearly a month after the judgment, Appellant filed a Notice of Constitutional Challenge Brief along with a Notice of Constitutional Challenge Rule 5(1) and Injunction. (R. pp. 9-11) The property was sold back to the Respondent on February 2, 2015. (R. p. 131) A

Master in Equity's Foreclosure deed was recorded February 25, 2015 in Book 1209 at Page 00900.

In response to the Master's Report on Sale, Appellant filed two motions to vacate the judgment and sale. (R. p. 17; p. 21) A hearing on Appellant's motion was scheduled for April 21, 2015. (R. p. 132) Prior to Defendant's Motion to Vacate Judgment Hearing, on April 9, 2015, Appellant filed a motion to continue the hearing due to "unforeseen events occurring". (R. p. 134, line 2) All three of Appellant's motions were denied by the court:

"... I am going to deny the motion to vacate as stated both in the original motion and the amended motion. And I am going to deny the request to reschedule as nothing in any of the documentation provided to the Court explain any reason that he should not – could not attend or be excused from attending his own motion. He merely referred to unforeseen circumstances and I do not believe that rises to the level of proof to a Court that a previously scheduled motion should be continued or be rescheduled without viable evidence."

(R. p. 140, lines 10-22)

An order denying Appellant's motions was entered on May 12, 2015. (R. pp. 25-26)

The writ of assistance was filed on June 10, 2015. (R. pp. 3-4)

On June 23, 2015, Appellant filed an Amended Notice appealing the Writ of Assistance signed by the Honorable Richard L. Booth. (R. pp. 146-147)

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). "In an appeal from an action in equity, 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. 2008). Nevertheless, "the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings." *U.S. Bank Trust Nat. 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). The Court may affirm the trial court's ruling for any ground appearing in the record. SCA CR 220(c); See also *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

ARGUMENT

1. THE MASTER IN EQUITY PROPERLY ISSUED THE WRIT OF ASSISTANCE.

Appellant has exhibited the behavior of filing a series of sham pleadings and sovereign citizen type filings throughout this foreclosure. Appellant filed his first sham pleading on February 21, 2014, labeled as a response to the summons and complaint. The documents included in the responses are titled: acceptance, claim reduced to summary judgment, and notice of settlement. These pleadings are nonsensical and allege inaccurate law. Prompted

by Respondent's motion for summary judgment filing, Appellant filed further sham pleadings labeled Affidavit for request for settlement and Affidavit of no original note. The purported Affidavits are nonsensical, lack the legal necessities to render an affidavit valid, and state facts that are wholly untrue.

Present at the Respondent's motion for summary judgment hearing were Caroline Glenn, counsel for Respondent, and Appellant, pro se. Based on the Court's finding that there were no genuine issues of material fact, the South Carolina Rules of Civil Procedure, affidavits, and upon inspection of the original note, the motion for summary judgment was granted:

"...I want to note the file that Appellant has participated to the maximum degree a pro se Defendant possibly can. He has done so without the benefit of counsel and appears to me, given the substance and composition of the documents he has filed with the Court. I have read them, and I take note of them, but I do not find them dispositive or responsive of the allegations set forth in the Complaint. And therefore, I believe that it is proper at this time to grant the Motion for Summary Judgment for the Plaintiff. And I shall do so."

(R. p. 123, lines 7-18)

An unappealed ruling is the law of the case and requires affirmance. *Shirley's Iron Words v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013); See also *In re Thames*, 344 S.C. 564, 573, 544 S.E.2d 854, 858 (Ct. App. 2001) ("The unappealed decision of the trial court, right or wrong, is the law of the case.") It is unclear from the

Appellant's brief what the issues are on appeal. The basis for Appellant's appeal appears to be that the Respondent lacked standing to bring the foreclosure action. Appellant's assertions regarding standing are wholly without merit and were resolved in the Order granting foreclosure, which was not appealed. As Appellant's main issue on appeal was resolved in an unappealed Order, it is not preserved for appeal.

Subsequent to the Order of foreclosure judgment and sale being entered, Appellant filed another sovereign citizen type pleading, labeled "constitutional challenge." This pleading, as was the case with all of Appellant's prior pleadings, was merely submitted as a delay tactic. None of the information contained in this filing has any legal significance whatsoever.

The subject property was sold January 5, 2015 to Respondent. Appellant then filed further sham pleadings, consisting of a motion to vacate judgment and sale and an amended motion to vacate judgment and sale. These motions are in the same vain as Appellant's prior pleadings and they state no grounds upon which the judgment should be vacated.

These motions were set for hearing on April 21, 2015; on April 9, 2015 the Respondent submitted a motion for request to reschedule due to unforeseen events.

At the hearing April 21, 2015 the Judge properly denied the Appellant's motion to vacate judgment and sale and motion to continue:

“...So Appellant has filed a motion to vacate the judgment. He has filed an amended motion to vacate the judgment in this matter and then he has indicated he cannot attend his own motion. And after reviewing these I do not necessarily find anything on the face of any of these filed documents that rises to the level of an actionable position supported by any rule of civil procedure or any application of any statute of which I’m aware of or any case law dealing with rights of due process or the substantive law to apply in this matter. Mr. Burgess is here on behalf of the Plaintiff. The Defendant has not appeared.All right. Well I am in accord with that and I am going to deny the motion to vacate as stated both in the original motion and the amended motion. And I am going to deny the request to reschedule as nothing in any of the documentation provided to the Court explain any reason that he should not- could not attend or be excused from attending his own motion. He merely referred to unforeseen circumstances and I do not believe that rises to the level of proof to a Court that a previously scheduled motion should be continued or be rescheduled without viable evidence.”

(R. p. 139, line 11 – p. 140, line 1; p. 140, lines 9-22)

“In instances in which the mortgagor or someone else living on the property at the time of the sale is not the successful bidder and refuses to vacate the premises, the appropriate common law remedy for the successful purchaser is a writ of assistance.” 27 S.C. Jur. Mortgages §142. The issuance of a writ of assistance rests in the sound discretion of the trial court. See *Griggs v. Griggs*, 205 S.C. 272, 274, 31 S.E.2d 505, 505 (1944). The object of a writ of assistance is to take “possession [of property] from a party whose rights have been determined by the suit in which the sale [of property] was ordered.” *Id.* at 275, 31 S.E.2d at 506 (citation omitted). A writ of assistance is “ ‘issued only when the right is clear and free from doubt – when there is no equity or appearance of equity in defendant,

and when the decree, and the sale and proceedings thereunder, are beyond suspicion...”

Id. at 274-75, 31 S.E.2d at 505-06 (quoting 5 C.J., §4 at 1317).

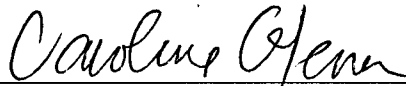
The Order of Reference left with the Master in Equity the authority to issue writs of assistance. The Master in Equity properly exercised his authority based upon the foreclosure sale of the property to Respondent and resulting Master in Equity’s deed. By virtue of the deed, Respondent had the right to a writ of assistance giving Respondent possession of the property. Nothing asserted in Appellant’s brief legitimately challenges the issuance of the writ of assistance.

Furthermore, Appellant cited no authority to support his proposition that the writ of assistance should be overturned. By failing to provide any arguments or authority to support his position regarding the writ of assistance, Appellant has abandoned the issue. See *First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994).

CONCLUSION

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

October 17, 2016


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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that Respondent's Final Brief complies with Rule 211(b).

This the 17 day of October, 2016

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 17, 2016, the Respondent's **Final Brief** was served on the Appellant by depositing a copy thereof in the United States Mail, first class, postage prepaid, addressed to:

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