

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-08-2618

Bank of North Carolina
Anthony Whitfield, Third Party Plaintiff
PLAINTIFF(S)

Whitfield, et al.
David Swanson, Third Party Defendant
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 12(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

16 SEP 29 PM 4: 12

FILED

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Third Party Defendant's Motion to Reconsider Granted.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

RECEIVED

OCT 24 2016

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Handwritten Signature]

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9/21/2016

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Bank of North Carolina,)
)
 Plaintiff,)
 vs.)
 Anthony Whitfield and Cindy Whitfield,)
 Defendants,)
 Anthony Whitfield,)
 Third Party Plaintiff,)
 vs.)
 David Swanson,)
 Third Party Defendant.)

IN THE COURT OF COMMON PLEAS
 IN THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 2012-CP-08-2618

ORDER GRANTING MOTION TO RECONSIDER

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 SC Court of Appeals

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This matter comes before the Court on Third-Party Defendant David Swanson’s motion to reconsider filed July 18, 2016 requesting reconsideration of the Court’s June 30, 2016 order denying his motion to dismiss. A hearing was held on September 20, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third Party-Defendant Swanson’s motion is granted.

Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Two actions are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; three are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; and one is pending in Charleston County: Case No. 2012-

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CP-10-5887. Defendant Whitfield initially asserted claims against David Swanson in the Charleston County action alleging causes of action for abuse of process and civil conspiracy, and subsequently asserted identical claims against Mr. Swanson in each of the five remaining foreclosure actions.

Mr. Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Defendant Whitfield alleges that Mr. Swanson never actually provided the advice to the bank, but conspired with the bank to fabricate a defense to Defendant Whitfield's counterclaims by providing deposition testimony in which he substantiated a conversation that he had with a bank employee. These allegations form the basis of Defendant Whitfield's claims against Mr. Swanson in each of the six foreclosure actions.

Defendant Swanson moved to dismiss the claims against him pursuant to Rules 12(b)(8) and 12(f) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim. Defendant Swanson also moved to dismiss the claims against him in Berkeley County Case No. 2012-CP-08-3478, and Dorchester County Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793 on the same grounds.

The Court heard Defendant Swanson's motions to dismiss in this action and Berkeley County Case No. 2012-CP-08-3478 on June 27, 2016. Counsel for Bank of North Carolina, Anthony Whitfield, and David Swanson were present, and the Court was presented with copies of the pleadings from the Charleston County foreclosure action. The Court denied the motions by way of Form 4 orders entered on June 30, 2016. On July 11, 2016, Defendant Swanson served motions to reconsider in both Berkeley County actions, attaching as exhibits three orders granting

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Defendant Swanson's motions to dismiss in Dorchester County Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793.

Findings and Conclusions

Pursuant to Rule 59(e), SCRPC, a party may request that a trial court reconsider its prior ruling where the party believes the trial court misunderstood, failed to fully consider, or overlooked an argument or issue. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004). Upon this Court's review and consideration of the parties' arguments and submissions, the pleadings in this action and the related foreclosure actions, and the applicable law regarding the motion to dismiss, the Court finds that reconsideration is warranted.

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Ct. App. 2009); *see also* Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

The Court has reviewed copies of the pleadings in the related foreclosure actions, including the Charleston County action that is the subject of the Black Rush Property. The Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRPC.

Upon further review and consideration, the Court finds the claims asserted against David Swanson in this action should be dismissed pursuant to Rule 12(b)(8). The Court finds that the

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parties to the subject claims in this action and the Charleston County action are identical, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings.

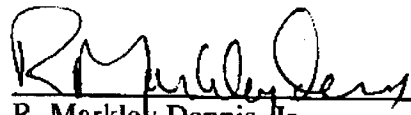
Compare Def.'s Fifth Am. Answer, Berkeley Co. Case No. 2014-CP-08-2618, ¶¶ 55-72 with Def.'s Fifth Am. Answer, Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. In both actions, Defendant Whitfield seeks to hold Mr. Swanson liable for abuse of process and civil conspiracy for the same alleged conduct—providing deposition testimony in which he substantiated a conversation that he had with a bank employee. The Court further observes that these claims were first asserted against Mr. Swanson in the Charleston County action, and that Mr. Swanson has not filed a Rule 12(b)(8) motion to dismiss in the Charleston County action.

Based upon the foregoing, the Court finds that with respect to the claims Defendant Whitfield has asserted against David Swanson in this action, another action is pending between the same parties for the same claims and that dismissal is warranted pursuant to Rule 12(b)(8), SCRPC.

Accordingly, Defendant David Swanson's motion to reconsider is GRANTED and the claims asserted against him in this action are hereby DISMISSED.

IT IS SO ORDERED.

This 21st day of September, 2016


R. Markley Dennis, Jr.
Circuit Court Judge

Moncks Corner, South Carolina

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