

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Federal National Mortgage Association,

Plaintiff,

v.

John D. Dalen, Julie A. Dalen and Wawtockace Hills Property Owners Association,

Defendants,

John D. Dalen and Julie A. Dalen

Counterclaim Plaintiffs,

v.

Bank of America, N.A., successor by merger to BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P.,

Counterclaim Defendant.

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

Case No.: 2011-CP-37-01056

RECEIVED

NOV 14 2016

SC Court of Appeals

FILED OCONEE COUNTY, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT  
2016 OCT 13 P 12:27

**ORDER DENYING MOTION TO RECONSIDER**

This matter comes before the court upon a Motion for Reconsideration<sup>1</sup> filed by John D. Dalen and Julie A. Dalen (“Defendants”). Defendants’ Motion for Reconsideration asks the court to reevaluate the court’s order granting Counterclaim Defendant Bank of America, N.A.’s renewed motion for summary judgment (“Summary Judgment Order”). The court conducted a hearing for the Motion for Reconsideration on September 8, 2016. The Defendants, who are proceeding pro se; Plaintiff Federal National Mortgage Association (“Fannie Mae”); and

<sup>1</sup> The Court considers Defendants’ motion to be motion to alter or amend judgment pursuant to Rule 59(e), S.C.R.C.P. For the ease of reference for the purposes of this order, the Court will continue to refer to the motion as a “Motion for Reconsideration” throughout this order.

Counterclaim-Defendant Bank of America, N.A. (“BANA”) appeared at the hearing to present their respective positions on the motion. After considering entire the record for this action, including the transcript and evidence presented at the March 23, 2016 hearing for BANA’s renewed motion for summary judgment; Defendants’ submissions to the court; and all of the parties’ oral arguments, the court denies Defendants’ Motion for Reconsideration pursuant to the following findings of fact and conclusions of law:

**STANDARD FOR DECISION**

“The purpose of Rule 59(e), S.C.R.C.P., to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). In South Carolina, “[t]he losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 722 (2000). Under this rule, “[i]f the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.” *Id.* Further, “[u]nder South Carolina law, a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment.” *See McClurg v. Deaton*, 380 S.C. 563, 579-80, 671 S.E.2d 87, 96 (Ct. App. 2008) (citing *Kiawah Proper. Owners Group v. Pub. Serv. Comm’n*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004)).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing Defendants’ motion to reconsider and considering all of their oral arguments, the Court concludes that Defendants have failed identify any issues that were raised at the hearing for Defendant Bank of America, N.A.’s renewed motion for summary judgment



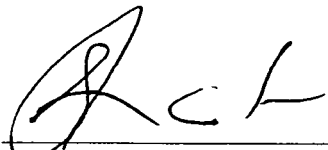
and inadvertently omitted from consideration in the Summary Judgment Order. Indeed, a comparison of the issues identified in Defendants' Motion to Reconsider and the Summary Judgment Order establishes that all of the issues raised in the Motion to Reconsider—namely, Bank of America, N.A.'s standing to initiate this foreclosure action and the viability of Defendants' FDCPA claim—are addressed by the Summary Judgment Order.

Moreover, the Court concludes that Defendants attempt to supplement the record for the summary judgment hearing by attaching exhibits that were never presented during the course of the summary judgment hearing is improper, as is their attempt to raise issues concerning any purported securitization of the note and mortgage as a grounds to establish that Bank of America, N.A. lacked standing to file this foreclosure action. Securitization of the note and mortgage was never mentioned at the hearing for the renewed motion for summary judgment, and therefore, the Court need not consider any such issues that should have been raised and presented during the course of the summary judgment hearing. *See McClurg*, 380 S.C. at 579-80, 671 S.E.2d at 96. Accordingly, after considering the entire record presented by the parties, the Court concludes that Defendants have failed to present any grounds for the Court to reconsider the Summary Judgment Order at all.

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**CONCLUSION**

Based on the foregoing findings of fact and conclusions of law, **IT IS THEREFORE ORDERED** that Defendants' Motion for Reconsideration is **DENIED**.



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The Hon. Steven C. Kirven  
Master-in-Equity for Oconee County

Oconee, South Carolina

10/10, 2016

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