

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY

COURT OF COMMON PLEAS

Hon. Michael G. Nettles, Circuit Court Judge

RECEIVED

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SC Court of Appeals

Appellate Case No: 2016-001526

The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the benefit of Certificateholders of Popular ABS, Inc. Mortgage Pass-Through Certificates Series 2006-E, Respondents,

v.

Charles Taylor, Burgess Brogdon Bldg. Supply, Palmetto Health Alliance, Defendants,

Of Whom Charles Taylor is the Appellant.

FINAL REPLY BRIEF OF APPELLANT

CHARLES TAYLOR, APPELLANT
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none

REPLY TO RESPONDENTS' STATEMENT OF THE CASE

1. That this Appeal surrounds specifically the issues as stated in Appellant's Initial Brief pages 1 -- 2 therein, & so as not to be unnecessarily duplicative, (*see same*); and;
2. That Apln't. respectfully urge that this Court should reverse the lower Court's rulings based on all of the reasons in Aplnt's. whole brief(s) accordingly, and;
3. That, accordingly, Respd's. mis-framed the issues in their, Statement of the Case, on p.1-2 in their Initial Brief & based of that, mis-framed, all other-s in their brief too, accordingly, as juxtapose to Initial Brief p.1-2 of Aplnt's., who is the Apln't. in this case, and;
4. That to highlight just 1 of such, but the most important 1, that Respd's. conveniently made no mention of in the entirety of their brief, which is that Respd's. & their servicer was caught by the Federal Authorities putting their innocent customers (*Appellant 1 of them*) into foreclosure illegally & they made to pay millions-billions to their cheated (*induced into phony default*) customers & that, (*Appellant 1 of them*), received a recompense & allowed, encourage to sue them; & because all details later discovered-required Apln't. to later move to amend-SCRCP 15-his earlier pleadings to Respd's. phony default suit in the 1st place, which motion to amend was denied, & after a rule 59 (e) motion too, was denied, this appeal was immediately file, because the denials affect Aplnt's. substantial right(s) &/or merits re SC. SEC. 14-3-330(1)(2), because given the facts of the case, Apln't. can't defend if he can't amend, &
5. That--*even*--may be moot-because the bottom line is that, Apln't. believes this court want aid Respd's. in foreclosing on such a bogus original default, (*admitted by them and paid a recompense accordingly to Apln't. et al. victims*) & allow all to sue too-details main brief.

REPLY TO RESPONDENTS' ARGUMENTS

- 1...*Incorporate p.1 above here...*& that all of Respd's. arguments in their brief taken as a whole or otherwise, even if taken at face value, can't overcome (*they are trying*) the fact that the origin of their foreclosure suit is the product of an attempted theft against Apln't. & Respd's. other victimized customers, (*by bogus defaults*), caught luckily for them by the Federal Authorities lest Respd's. could /would seem to have grounds for foreclosures, and;
2. That's why, although throughout Aplnt's. main brief, they--Respd's. mention not a word to address such in their reply brief to Aplnt's. brief? Could it be that such was just an oversight? or in their 11 page brief they thought they could muddy the water enough that no one would notice? or that they are just too ashamed to face what they did, and;
3. That Apln't. surmises the reasons, besides latter 2 above, is that they realize that such alone, warrants the dismissal of their foreclosure suit, all other arguments in their brief notwithstanding, so Respd's. saw best to say nothing-at all, let alone address it in their brief, because under the unclean hands doctrine (R. p. 66 & 87) such precluded Respd's from foreclosure regardless, (*see--Wachovia Bank v. Coffey, 389 S.C. 68, 75, 698 S.E.2d 244, 247 (Ct. App. 2010) & "Those who seek equity (foreclosure is an equity action) must come into court with clean hands."* and likewise, "*He who seek equity must do equity.*" *see, Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 259, 715 S.E.2d 348, 358 (Ct. App. 2011)*), and;
4. That assuming Apln't. is wrong, per all above, he still should have been allowed to amend his original pleadings based on his arguments in his (*see: Aplnt's Main Brief*); & *see: Arthur, 434 F.3d at 206...."the liberality of rule 15(a) counsels in favor of amendment, even where a party has been less than perfect in the preparation & presentation of a case."* **and**

5. That further addressing the Respondents' arguments in their reply brief to Aplnt's. brief;

I. That Apln't Can't Appeal Denial of his Motion to Dismiss Respd's'. Foreclosure Claim;

But Apln't. disagree for reasons in his main brief (see: esp. *Arg'mt. #3 p. 5-6 et al. etc.*); &;

A. That the Denial of a Motion to Dismiss is Not Subject to an Immediate Appeal;

But Apln't. disagree because it too affect merits &/or Aplnt's. substantial right; (see:

Brown v. County of Berkley, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005), re: sc.

sec. 14-3-330(1)(2)); & not to be subject to (*forward*) a foreclosure originating from an,

(*admitted, un rebutted-see-para. 4 p.1 above & Apln't main brf*), bogus original default-all

else notwithstanding of Respd's. arguments, Appellant replies, & furthermore,

an order that is not directly appealable will nonetheless be considered if there is an

appealable issue before the Court & that a ruling on appeal will avoid unnecessary

litigation, (see—*Hite v. Thomas & Howard Co., 305 S.C. 358, 360, 409 S.E.2d 340,*

341 (1991)) and (see-*Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558,*

565, 564 S.E.2d 94, 98 (2002), "*This Court reviews interlocutory orders when they*

contain other appealable issues."); & in the instant case other appealable issues are

in Aplnt's. Main Brief beginning on p.1 therein, which Respd's. don't deny, and;

further, that the court's order warrants an immediate appeal under sc. sec. 14-3-330

(Supp. 2012); pursuant to subsection (1-2) of that statue, in light of the unique nature

of the whole issues in this appeal as stated in Aplnt's. main brief & herein, and

that the substance & effect of the court denial(s) goes beyond an ordinary denial(s)

& directly involves the merits &/or, substantial rights & defenses of Apln't., & the

denial-s affirm Respd's. non right to do what they did & still potentially foreclose, and;

B. That Appellant Fail to Identify a Basis for Reversal of the Lower Court's Order;

But Apln't. disagree, & the err is argued in, (*Aplnt's main Br. Arg'mt. #3 p.5-6*), and; the court err therein, not to as a matter of course too, convert Aplnt's. rule 12 motion into a rule 56 sum. motion for reasons stated in Aplnt's. m-Brief Arg'mt. #3 p.5-6, &; further, that Respondent asserts in their brief p.4 under B line 7 "*nothing in the lower court's order suggests that material outside of the pleadings were submitted or considered in making the determination to deny Appellant's motion*; but that's not correct because (*see: Aplnt's. main Br. Arg'mt. #3 p. 5-6 citing to the order in ROA*), &; further, Respd's. foreclosure complaint could not state facts sufficient to constitute a valid claim for relief, *in light of* their admitted wrongdoing, as stated herein & in Aplnt's. main Brief, thus the court err not dismissing Respds' comp'l., Apln't replies &; further in said light, Apln't motion for Respds'. foreclosure comp'l. dismissal because it originated from, not a genuine default, but a (bogus) one induced by Respd's. & their servicer, in a scheme to rob homeowners with sizeable equity in their homes, (*Aplnt's was over \$100,00.00+*), which they were later caught at red handed & made to pay by Fedr. Auth'rts. & allow victims (*Apln't was I*) to sue Respd's. et al. also, & it's admitted / not denied nowhere in Respds'. brief, & in fact, as Apln't. so aptly pointed out above, they—Respd's—were too afraid to even mention, let alone address the matter in their own 11 p. brief; & *see: Firestone v. Firestone, 76 F.3d 1205, 1208 (D.C. Cir. 1996)...in pertinent part that...A rule 59(e) motion should be granted to (1). prevent a manifest injustice, (2).to accommodate for newly discovered evidence; etc., &;*

6. That further addressing the Respondents' arguments in their reply brief to Aplnt's. brief;

II. That the Lower Court Properly Dismiss Counterclaim & Struck Improper Pleadings;

But Apln't. disagree for reasons argued in (*Aplnt's. main Br. Arg'mt. #2 p.4-5 et al.*); and;

A. That Appellant's Failure to Plead all nine Elements of Fraud is Fatal to the Claim;

But that Apln't. further disagrees because, succinctly stated, those do not apply to the fact-s (pattern) in this case & therefore are not applicable, but even if they were, then, for all of the reasons in, (*Aplnt's. main Br. Argument #2 p. 4-5 et al.*), would come into play as to how the court err as stated in same argument #2 etc., & furthermore, Respd's. having admitted--not denied & can't deny their wrongdoing after having been caught red handed & made to pay & the victims allow to sue, so there would be no need for Apln't to plead the Respd's. claim 9 elements of fraud, &;

B. That the Appellant's July 20, 2011 and July 28, 2011 Pleadings were Properly Stricken for Appellant's Failure to Comply with SCRCP 15;

But Apln't. disagree for reasons argued in (*Aplnt's main Br. Arg'mt. #2 p.4-5 et al., and herein, & in the end, taken all as a whole, &/ or in any part (s) thereof*), &; further, Apln't. note Respd's. saying (*in their brf. p.7 1st para.*) that Apln't. had another way to amend his pleadings if he wish, by getting permission from the Respd's., but conveniently, yet again, they refuse to mention that Apln't. did write to them for the said permission, (R. p. 83), but Respd's. wouldn't grant it, evidently believing that would ultimately get them off the hook for their wrongdoing if they then argued against Apln't. being able to amend after their wrongdoing was later fully revealed, and;

7. That further addressing the Respondents' arguments in their reply brief to Aplnt's. brief;

III. That Lower Court Didn't Abuse Discretion in Denying Aplnt's. Motion to Amend;

But Apln't. disagrees for reasons argued in (*Aplnt's. main brf. arg'mt. #1 p.3 et al.*), and; further highlighted here, even if all else notwithstanding, that discovery had just really begin as argued in same argument #1 just above cited, & (R. p. 93), & in fact, Aplnt's. interrogatories & request to produce was just recently answered by Respd's. on 7-25-16 & which continued discovery was only interrupted by this appeal, lest they continue for trial & Aplnt's. counterclaim against Respd's. (*w/o dismissal*) for Aplnt's. further damages, (*notwithstanding the minimum payments to date*), from Respd's. admitted wrongdoing as stated thoroughly herein & in Aplnt's. main brief, citing to the ROA; & so Respd's. argument-s in their brief p. 8-10 exclaiming only, (*we would be prejudice*), but never how so? (*see: Heyl & Patr'sn. Int'l., Inc. v. F.D. Rich Housing of Virgin Islands, Inc., 663 F.2d 290, 300 n.19 (3d Cir. 1969)..in pertinent part that...the non-moving party has the burden of establishing, "that it was unfairly disadvantaged or deprived of the opportunity to present facts & evidence which it would have offered had the [movant] amendment been timely."* **if** Apln't. was allow to amend his original pleadings; but Respd's claiming prejudice; just a farce (*to mask their said wrongdoing*), as is evident by the said continued discovery, even after, the court's 6-8-16 & 7-8-16 orders were entered, (R. p. 3-8 & 93), & Respd's. further on in their brief p. 8-10 further exclaim that why Apln't. waited so long (*5 yrs. they said*) to amend his pleadings, but they already knew

the answer was (1).because case was under stay **from** 5-2-11 (R. p. 9) **to** 3-31-16 (R. p. 14) & (2).their wrongdoing wasn't fully known to do that which they exclaim should've been done, *namely*, amend earlier; as 1 example (*see*: recompense ck. R. p. 70), & in fact, the last recompense check. was just receive 8-8-16 & still preserving Aplnt's right to sue Resp'd's, et al; & in part..Delay alone is insufficient to deny a party's motion to amend a pleading. *see*: USX Corp. v. Barnhart, 395 F.3d 161, 167 (3d Cir. 2004); and;

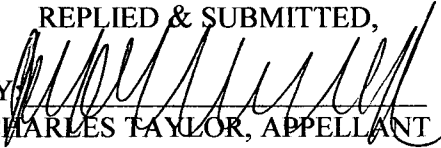
That the Resp'd's. further asserts in their brief in particular p. 10 para. 1 , that the lower court's order still allowed Apln't. to assert affirmative defenses at a foreclosure trial, which affirmative defenses he asserted in his original 3-1-11 pleading, but what Resp'd's. conveniently doesn't tell this court is that the lower court order, as it stands now, limit Aplnt's. defenses, *for litigation's duration*, to **only** those in his 3-1-11 answer (*Ct. 6-8-16 Order p.4:* R. p. 6), notwithstanding all that happen / came to light since 3-1-11 up to 5-16-16 hearing, & which order bars any defense base on anything since 3-1-11; & so, in effect, (*per the lower court's order if it's affirm*), Apln't. would have to proceed to a foreclosure trial, (*in effect w/ both hands tied behind his back*), not being able to raise the defenses re all the Respds'. *admitted wrongdoing* as stated heretofore, both in Aplnt's. main brief & herein throughout, & in fact, Apln't. interprets the order to mean that he could not even bring up the subject at a foreclosure trial, & so the mere fact Resp'd's. saying Apln't. can fully defend against the foreclosure at a trial with only the defenses in his original 3-1-11 answer, Apln't. believe that this court can see that for just what it means & Resp'd's. knows exactly what it means, i.e. they want / can't, under such circumstances, be held liable, for all their admitted

Wrongdoing, & in fact, it couldn't even be a mitigator at such a foreclosure trial, & thus, Aplnt's. basis for reversal is supported by both the facts & evidence in the record et al., etc., contrary to Respd's. argument-s in their p.'s 8-10 in particular & otherwise in their brief as a whole in general, & that lastly in their brief p. 10 *para.* the last one thereon, Respd's. says that Apln't. fail to identify any abuse of discretion or manifest injustice sufficient to require reversal, & needless to say that Apln't. completely disagrees, & would argue that the facts & record evidence disagree w/ the Respd's. as well, & believe that no further proof etc. is needed here, other than what have already been stated, both in Aplnt's. main brief & herein.

REPLY CONCLUSION

It's the same as in Appellant's main brief on p. 6-7 therein, incorporated here verbatim, and therefore, based on all in Appellant's Main Brief and herein, he respectfully urges this Court to reverse the lower Court's Order as Appellant argues for in both his briefs.

MOST RESPECTFULLY
REPLIED & SUBMITTED,

BY: 
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January 2, 2017

¹ Respd's. brief p.4 bot'm ft'note says--Apln't didn't raise rule 12 entwine w/ rule 56 motion arg'mts. etc. as a whole & get ruling, (*Apln't did*) but even if not, justice et al. requires review in instant case-Apln't argues see *Singleton v. Wulff*, 428 U.S. 106, 121 (1976) & *Nat'l Ass'n of Soc. Workers v. Harwood*, 69 F.3d 622, 627 (1st Cir. 1995)--*in pertinent part*--"where justice requires it, the appeals court has the discretion to review &/or consider a matter, issue, or argument, not otherwise properly preserved in the lower court; re whole case here.

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SC Court of Appeals

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Defendants,

Of Whom Charles Taylor is the Appellant.

CERTIFICATE OF APPELLANT

Appellant certifies that his Final Reply Brief complies with Rule 211(b) SCACR.

January 2, 2017

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