

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

FEB 03 2017

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes, III, Circuit Court Judge

Case No.: 2009-CP-07-03201

Appellate Case No.: 2016-002220

National Bank of SC..... Respondent,

v.

Thaddeus F. Segars; KCS Investments, LLC; Singleton
Place Homeowners Association Inc.; and Suntrust
Mortgage Inc.,..... Defendants,

Of Whom Thaddeus F. Segars is the Petitioner.

**PETITIONER'S REPLY TO RESPONDENT'S
RETURN TO PETITIONERS PETITION FOR A
WRIT OF CERTIORARI**

Thomas J. Finn
S.C. Bar No.: 66534
Finn Law Firm, PC
Post Office Box 6003
Hilton Head Island, SC 29938
Phone (843)682-3555
Fax (843)682-3558
finlaw@hargray.com

Attorney for Petitioner

Pursuant to South Carolina Appellate Court Rules 221(a) and 240(e) Petitioner Segars submits his Reply to Respondent's Return to Petitioner's Request for a Writ of Certiorari. Filed January 18, 2017.

STATEMENT OF THE FACTS

Petitioner Segars hereby incorporates by reference the Statement of Facts in Petitioners Final Brief pages 2 through 7.

ARGUMENT

I. THE STATUTE OF LIMITATIONS HAD NOT EXPIRED BECAUSE PETITIONER COULD NOT HAVE DISCOVERED NBSC'S NEGLIGENCE WITHOUT DOCUMENTS SOLELY IN THE CONTROL OF NBSC.

Petitioner Segars claims that there are novel issues of law to be addressed by this Court. The issues presented in this particular case have not yet been addressed by this Court and there is no precedent to be found regarding these issues. First, Segars' cause of action for negligent misrepresentation against NBSC only arose when he obtained a copy of the appraisal in April 2009 and learned which plat the appraiser had relied upon and (2) that Segars negligent misrepresentation counterclaim was a compulsory / permissive counterclaim that arose out of NBSC's foreclosure action and was timely filed in response to that action.

This Court has not addressed the when the statute of limitations begins to run on claims of liability against a bank for the tortuous acts of its appraiser / agent. The negligent acts of the appraiser were not discovered until the respondent brought a foreclosure action against Petitioner and Petitioner requested and received the appraisal information. Respondent argues that

In the present case, Respondent NBSC hired the appraiser to appraise the subject lot. The appraiser did in fact prepare the appraisal. There were two plats on file in Beaufort County regarding the subject property. One which showed the OCRM Baseline which would allow for the room to construct a dwelling on the subject lot and one Plat which showed the OCRM Baseline in a position which would not allow for the construction of a dwelling. The appraiser appraised the property as if the subject lot could be built upon when in fact restrictive covenants meant it could not be built upon. However, the appraiser relied upon the very plat which showed the restrictions on the ability for the property owner to build. Therefore, the appraiser was mistaken, or negligent, when he appraised the property as buildable and valued at \$1,600,000.00.

The Petitioner was not provided the appraisal by the Respondent but was only informed of the appraised value of the subject lot. The Respondent represented to Petitioner that the lot was valued at \$ 1,600,000.00. Financing was approved by the Respondent and Petitioner accepted the financing based upon the inaccurate appraisal. It is likely that the Respondent itself was not aware what documents its own agent / appraiser relied upon in preparation of the appraisal, yet it asserts that Petitioner should have known of the appraiser's negligence. In fact, there was no way for Petitioner to know of the appraiser's negligent acts as he was the Respondent's agent and no documents, not even the appraisal, were provided to the Petitioner until after the foreclosure action was filed. Therefore, the statute of limitations for tort claims against a bank as a result of its agent / appraiser's negligence should begin to run when the injured party has the reasonable basis upon which to think he may have a potential claim. Petitioner could not reasonably have known he had a claim until he was aware of the

documents used in preparation of the appraisal. Petitioner arguably was not even entitled to see such documents until he requested them while preparing to defend the foreclosure action. Only an examination of the documents used in the appraisal could reveal a potential claim for negligent misrepresentation and petitioner was not privy to said documents until he was granted access to them while defending the foreclosure action.

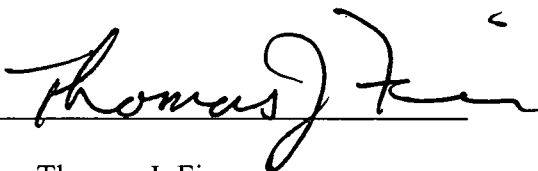
**II. WHETHER PETITIONER'S COMPULSORY/
PERMISSIVE COUNTERCLAIMS FILED WITHIN
THE TIME ALLOWED TO FILE A RESPONSIVE
PLEADING SHOULD NOT HAVE BEEN DISMISSED IS
A NOVEL QUESTION OF LAW IN SOUTH CAROLINA.**

Petitioner's claims for negligent misrepresentation were brought in the form of a counterclaim contained in Petitioner's responsive pleading filed in response to Respondent's foreclosure action. Respondent filed their action to foreclose on the subject property which was purchased by Petitioner using a loan from Respondent. The lower Court ruled and the Court of Appeals affirmed the ruling, that the Petitioner's counterclaims were barred by the relevant statute of limitations. South Carolina Courts have not specifically ruled on the issue of whether the statute of limitations ceases to run on permissive or compulsory counterclaims that the defendant later imposes in a timely responsive pleading. Petitioner request that the Court refer to the Petitioner's argument on this issue set forth in pages 7 through 10 of Petitioner's Petition for Writ of Certiorari.

CONCLUSION

For the reasons set forth in this Reply and in Petitioner's Petition for Writ of Certiorari Petitioner respectfully requests that this Court grant his petition for Writ of Certiorari.

FINN LAW FIRM, P.C.

By: 

Thomas J. Finn
S.C. Bar No.: 66534
Finn Law Firm, PC
Post Office Box 6003
Hilton Head Island, SC 29938
Phone (843)682-3555
Fax (843)682-3558
finlaw@hargray.com

Attorney for Petitioner

This 30th day of January, 2017
Hilton Head Island, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes, III, Circuit Court Judge

Case No.: 2009-CP-07-03201

Appellate Case No.: 2016-002220

National Bank of SC..... Respondent,

v.

Thaddeus F. Segars; KCS Investments, LLC; Singleton
Place Homeowners Association Inc.; and Suntrust
Mortgage Inc.,..... Defendants,

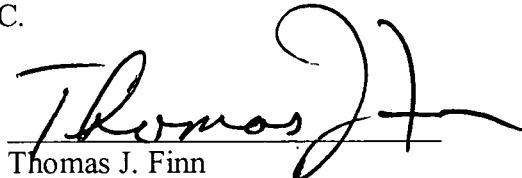
Of Whom Thaddeus F. Segars is the Petitioner.

PROOF OF SERVICE

I, the undersigned attorney for the Petitioner, do hereby certify that I have served all counsel in this action with a copy of the Petitioner's Reply to Respondent's Return to Petitioner's Writ of Certiorari by mailing a copy of same by United States Mail, postage prepaid, to the following address:

Counsel Served: Bryson Gear, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 1806
Charleston, S.C.
29402-1806

January 30, 2017


Thomas J. Finn