

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

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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 Brøgdon Bldg. Supply, Palmetto Health Alliance,
Defendants,

Of Whom Charles Taylor is the Appellant.

FINAL BRIEF OF APPELLANT

CHARLES TAYLOR, APPELLANT
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FOR THE APPELLANT PRO SE

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR TO DENY APPELLANT'S RULE 59(e) MOTION TO AMEND HIS ANSWER AND COUNTERCLAIM TO THE RESPONDENTS' FORECLOSURE SUIT? P. 3-3

- II. DID THE LOWER COURT ERR TO DENY APPELLANT'S RULE 59(e) MOTION RE: GRANTING RESPONDENTS' MOTION TO DISMISS & STRIKE APLNT'S COUNTERCLAIM TO RESPONDENTS' FORECLOSURE SUIT? P. 4-5

- III. DID THE LOWER COURT ERR TO DENY APPELLANT'S RULE 59(e) MOTION TO DISMISS RESPONDENTS' FORECLOSURE SUIT? P. 5-6

INTRODUCTION / STATEMENT OF THE CASE / STATEMENT OF FACTS / COMBINED

1. That in brief-this is a foreclosure case file by the Bank of New York et al. ("Hereinafter Respd's.") on 1-28-11 & receive by Charles Taylor ("hereinafter Apln't Taylor") on 2-2-11 & answered & counter claimed 3-1-11, (*jury trial* demanded), which was once amended 7-28-11 as a matter of course; which case was later stayed 8-27-12 pursuant to SC Supreme Court's Administrative Modification Workout Order No: 2011--05-02--01; which stay was lifted only 3-31-16 to proceed from original stay 8-27-12 (*almost 4yrs. in between*), &;
2. That these relevant (to this appeal) motions were filed on the following dates:
 - a. 3-31-11 Respds' motion to dismiss & 8-1-11 motion to strike Aplnt's counterclaim, &;
 - b. 2-28-12 Appellant Taylor's motion to dismiss the Respondents' foreclosure suit, and;
 - c. 1-22-16 Appellant Taylor's motion to amend his answer & counter claim; (*re: the stay's length-para.1 line 6 above-& a relevant lot happen & change in that time--obviously--on p. 3*) &;
3. That these motions were heard, before the Honorable Judge Nettles, on 5-16-16, &;
4. That Respds.' motions were granted & Aplnt's. denied in the Judge's 6-8-18 order, &;
5. That Apln't. can't really defend Respds' suit if he can't amend--see-all of #2c above, &;
6. Thus Apln't Taylor file 6-13-16 a reconsider Rule 59(e) Motion to Amend etc. & it too was denied in the Judge's 7-7-16 order-judgment; from which this appeal comes; now [pursuant to South Carolina's section 14-3-330 sub-section numbers (1) and (2)]; on grounds-the lower court erred (*fatally for Aplnt*) to grant Respds' motions & deny his; see: Appellant's arguments in argument sections beginning on p. 3 next below.

ARGUMENTS

(Standard of Review: Abuse of Discretion)

Argument: #1: THE LOWER COURT ERR TO DENY APPELLANT'S RULE 59(e) MOTION TO AMEND HIS ANSWER AND COUNTERCLAIM TO RESPONDENTS' FORECLOSURE SUIT; p. 3-3

(1-a). Because a motion to amend should be freely given where justice requires & no prejudice would occur--*Rule 15* & see: *Forman v. Davis*, 371 U.S. 178, 182 (1962); & in this case;

(1-b). Justice required it; Because Apln't needed / must / amend pleadings to prevent an injustice; in that Respd's /their loan servicer--*agents*--had been later caught by Federal Authorities, forcing some of their customers & (*Apln't was one of them*) into illegal default et al. etc., by their withholding & returning payments to them to later have "cause" (bogus) to file foreclosure suit against their mortgagors that had sizeable equity in their homes over & above the mortgage balance so that they could steal it in foreclosure fees etc., (*Apln't had over \$100,000.00 house equity above the \$39ish mortgage balance*), & thus was 1 of their victims (payments held & return: R. pp. 91-92) & Aplnt's recompense 5-3-13 from their being caught (R. p. 70); which required Aplnt. Taylor to must--after stay lifted 3-31-16--amend his said 4 years old (*earlier*) answer & counterclaim for said reason-s herein & for the important others detailed in (*Aplnt's. 1-22-16 motion to amend w/ supporting memorandum attach thereto-a copy of the proposed amended complaint:* R. pp. 71 – 83); Aplnt argues, &;

(1-c). No prejudice would occur; Because discovery just begin (5-19-16: R. p. 93) & continued after lifting stay (3-31-16: R. p. 14); & more importantly no prejudice to Respd's for all other reasons in Aplnt's (mot. to amend: R. pp. 71-83 & / or 59-e motion: R. pp. 86 - 93 *esp. para. 12-13:* R. p. 90); Aplnt argues.

Argument: #2: THE LOWER COURT ERR TO DENY APPELLANT'S RULE 59(e) MOTION RE: GRANTING RESPONDENTS' MOTIONS TO DISMISS AND STRIKE APPELLANT'S COUNTERCLAIM TO RESPONDENTS' FORECLOSURE SUIT; p. 4-5

(Standard of Review: Abuse of Discretion)

(2-a). Because Resps' 12b-6 motion (R. p. 45) shouldn't be granted where facts are sufficiently stated to constitute a cause of action, &, if the facts & inferences drawn from the facts alleged in the pleadings (counterclaim, R. pp. 20--28 & / or the proposed counterclaim R. pp. 73 - 83), viewed in the light most favorable to the non-moving party, would entitle the non-moving party (Appellant Taylor) to any relief on any theory in his counterclaims, then the grant of a motion to dismiss for failure to state a claim is improper. *see Brazell v. Windsor*, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009); In the instant case, Aplnt Taylor's counterclaim, stated valid claims for relief as it did state such facts in counterclaim (R. pp. 20-28) &/or proposed counterclaim (R. pp. 73-83) & therefore, it was prejudicial & reversible court err / abuse of discretion, to dismiss the counterclaims (which effectively was / is too--Appellant's defenses (affirmative) to Resps' foreclosure suit: R. pp. 73 - 83 and R. pp. 86 - 93), all Appellant Taylor argues, and;

(2-b). Even if a defect as said in (6-8-16 order: R. p. 3 #1) Apln't still should've been allowed to amend his counterclaims, as oppose to dismissal, for reasons argued in Argument #1-1c above p.3, w/ amending the most appropriate & preferred remedy-(*the rules of civil procedure "encourages an opportunity to amend before dismissal see 2 James Wm. Moore, et al., Federal Practice 12.34[5] (3d ed. 2000)*); thus it was prejudicial & reversible court err-abuse of discretion to grant Respd's. motion to dismiss the counterclaims, Apln't. Taylor argues; &;

(2-c). Because Respds'. Rule 12(f) motion to strike, (*said counterclaim as amended 7-28-11 once as a matter of course*) alleged it was untimely amended back on 7-28-11 as the motion's reason for (*their Mot. to Strike*: R. p. 50 L. 6); but even if it otherwise might not be err to grant such motion, here it was because the case was stayed from 8-27-12 (R. p. 9) to 3-31-16 (R. p. 14) 4 years (& *Respds' fault see 2-d below*) & because of such expiration of time & all that happened (*as stated*) between the almost 4 years' time period, the counterclaims, even if with a defect as (*untimely amending 7/28/11*), here again too, Apln't. should've been allowed to amend it, (*Re: the stay*), as opposed to--*fatally for Aplnt*--striking it, as he argued for leave to do in Argument #1-1c on p.3, w/ amending the most appropriate & preferred remedy as stated, & thus it was prejudicial & reversible court err / abuse of discretion to grant Respd's. motion to strike the counterclaim; all Apln't. Taylor argues; &;

(2-d). **It should be highlighted here:** That the long length of said stay (8-27-12 to 3-31-16) before the Respd's. move to lift it (*as the ball was in their court to do so at any time*) was their fault because they feared the Aplnt's. counterclaims re what they had done & been caught at by the Federal Authorities as stated (R. p. 87) so did not move----more reason(s) supporting why their motion(s) should have been denied, Apln't. Taylor argues; &;

(2-e). *See Also, Johnsrud v. Carter, 620 F.2d 29, 32-33 (3d Cir. 1980) & Forman v. Davis, 371 U.S. Supreme Court 178, 182 (1962); in pertinent part that; to dismiss Plaintiff's claim without first permitting an opportunity to amend, would constitute forfeiture resulting simply from non--compliance with the Rules of Civil Procedure.*

Argument: #3 THE LOWER COURT ERR TO DENY APPELLANT'S RULE 59(e)
MOTION TO DISMISS RESPONDENTS' FORECLOSURE SUIT

(Standard of Review: Abuse of Discretion / De Novo?)

(3-a). Because the motion should've been granted as a matter of law-based on the motion's

Supporting memo's / briefs / arguments / etc., all attach (R. pp. 53-58 & 64-70 & 84-96) which the court considered (7-7-16 order p.2: R. p. 8 para. 2); & (6-8-16 order p.1: R. p. 3 top para L.8-10) & (R. p. 5 para. 5 bot'm.); & that this converted the 12 b-6 to a rule 56 summary judgment motion--which Apln't. should have been granted based on the above as just stated, Apln't. Taylor argues---see---*McDonnell v. The Consolidated School District Of Aiken*, 315 S. C. 487, 489, 445 S. E.2d 639, 639n.2 (1994); and *Gilbert v. Miller*, 356 S. C. 25, 586 S.E.2d 861 (Ct. App. 2003); in pertinent part that—if—material outside the pleadings is considered by the lower court—the motion becomes one for summary judgment; & see *Woodson v. DLI Properties, LLC.*, 753 S.E.2d 428-S. C. Supr. Ct. (2014); in pertinent part that; trial courts must base their summary judgment orders on rule 56 SCRCP evidence presented (which in this instance was) (R. pp. 53-58 & 64-70 & 84-96).

CONCLUSION

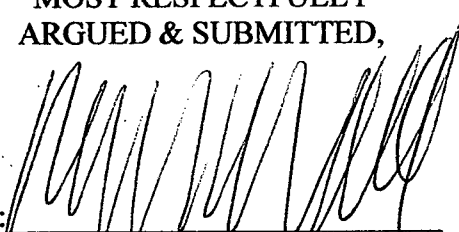
That based on all the foregoing, Respds' motion to dismiss & strike Aplnt's counterclaim being granted was lower court's prejudicial & reversible err, Aplnt argues; for reversal; &;

That Aplnt's motion for leave to amend his answer & counterclaim should've been granted but for the lower court's prejudicial & reversible err, Aplnt Taylor argues; for reversal; &;

That Aplnt's motion to dismiss Respds' foreclosure suit should have been granted but for the lower court's prejudicial & reversible err, Apln't Taylor argues; for reversal; &;

That Appellant's counterclaim, effectively is too, Aplnt's defense-s (affirmative also) to
Respondents' foreclosure suit, against which Aplnt can't really / properly / effectively
defend because the Judge's 6-8-16 order, leaves only Appellant's 4 years old 3-1-11
initial answer as his only operative pleading for the remainder of this case (6-8-16 Order
p. 4: R. p. 6); notwithstanding all else--herein; which ruling--thus--too, is prejudicial &
reversible court err-Apln't argues; for reversal; [which order too, necessitated this appeal;
(now, pursuant to S. C. sec. 14-3-330 sub-sections (1). affecting both: merits & (2). rights);
IF the last line is raise by Respd's as to this Appeal being file now--rather than later].

MOST RESPECTFULLY
ARGUED & SUBMITTED,

BY: 
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Sumter, South Carolina

January 2, 2017

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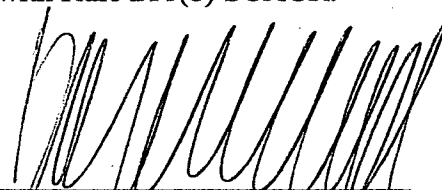
Charles Taylor, Burgess Brogdon Bldg. Supply, Palmetto Health Alliance,
Defendants,

Of Whom Charles Taylor is the Appellant.

CERTIFICATE OF APPELLANT

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

January 2, 2017

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