

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No. 2016-001989

RECEIVED

MAR 23 2017

SC Court of Appeals

Laura Toney,

Appellant,

v.

LaSalle Bank National Association as Trustee for the
Registered Holder of Structured Asset Securities
Corporation, Structured Asset Investment Loan Trust,
Mortgage Pass-Through Certificates, Series 2004-11,
A/K/A Altisource Homes, Wayne Capell, Lee County
Treasurer and Lee County Planning and Zoning,

Respondents.

RETURN TO MOTION FOR LEAVE OF COURT

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Appellant Pro Se

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MEMORANDUM

Respondent U.S. Bank, National Association, as Trustee for Structured Asset Securities Corporation, Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 and Altisource Homes (“U.S. Bank”),¹ hereby submits the herein return to Appellant’s Motion for Leave of Court in accordance with Rule 240(e) of the South Carolina Appellate Court Rules.

Appellant has filed what she styles as a Motion for Leave of Court. She appears to request leave from this Court to file motions in the trial court under Rules 60(b)(2) and 60(b)(3), SCRPC. As grounds for her motion, Appellant asserts, (1) that an “Exparte [sic] Hearing was held in this case on March 30, 2016,” and (2) that Attorney Paul Fata’s representation of the Lee County Respondents in this action is somehow improper.

For the reasons explained herein below, Appellant’s motion should be denied. The issues she seeks to raise here were squarely addressed by the trial court in filed orders and must now be raised, if at all, in this pending appeal. See *Smith Companies of Greenville v. Hayes*, 311 S.C. 358, 428 S.E.2d 900 (Ct. App. 1993) (relief from judgment is not a substitute for appeal from final judgment, particularly when it is clear party seeking relief could have litigated at trial and on appeal claims he now makes by motion); accord *Tench v. S.C. Dep’t of Educ.*, 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001).

1. Appellant’s First Purported Grounds for this Motion Should Be Rejected.

Appellant’s first purported grounds for this motion, that an “Exparte [sic] Hearing was held in this case on March 30, 2016,” was addressed squarely and thoroughly by the trial court in

¹ This Defendant is incorrectly named on page 1 of the Complaint as “LaSalle Bank National Association as Trustee for Structured Asset Securities Corporation, Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11, A/K/A Altisource Homes.”

its “Order Granting the Motion to Dismiss of Defendant U.S. Bank, Granting the Motion for Summary Judgment of Defendant Lee County, and Denying All Motions of Plaintiff Laura Toney,” filed July 11, 2016. Toney then filed a “Motion for Reconsideration” under Rule 59(e), SCRCP on July 20, 2016, which the trial court denied by its “Order Denying Amended Motion for Reconsideration” on August 26, 2016. Toney then filed the within appeal, which seeks review of the July 11, 2016 Order and the August 26, 2016 Order.

In the trial court’s “Order Granting the Motion to Dismiss of Defendant U.S. Bank, Granting the Motion for Summary Judgment of Defendant Lee County, and Denying All Motions of Plaintiff Laura Toney,” filed July 11, 2016, the court explained at pp. 3 – 8 the procedural history of this action, including the circumstances involving the dispositive hearing on all pending motions which began on November 30, 2015 and was resumed five months later on March 30, 2016 after due and proper notice.

In Section 1 of the court’s Ruling and Decree, at pp. 8 - 10, the court explained in detail its justification and reasoning for proceeding on March 30, 2016 with the resumption of the dispositive hearing on all pending motions despite Appellant not being present in the courtroom. The court noted that (1) Toney filed no motion requesting a continuance; (2) Toney’s claim of unavailability on the date of the hearing lacked credibility; (3) Toney’s overall conduct in regard to court appearances in this action had demonstrated a propensity and a pattern of abuse of the court system; and (4) because S.C. Supreme Court Admin. Order No. 2015-09-10-01 provides that a court may grant oral argument or proceed without it, and given the fact that Toney had submitted a number of written filings setting forth her arguments on all issues, including the pending motions, all of which were duly considered, it was proper for the court to exercise its discretion to proceed with the motions hearing at the duly noticed date and time. Finally, as a

further safeguard the court allowed Toney 15 days to submit a proposed order on the pending motions, which she did. The court considered her submission before issuing its ruling some three months later.

For all of these reasons, Appellant's motion should be denied. The issues she seeks to raise here were squarely addressed by the trial court in filed orders and must now be raised, if at all, in this pending appeal.

2. Appellant's Second Purported Grounds for this Motion Should Be Rejected.

Appellant's second purported grounds for this motion, that Attorney Paul Fata's representation of the Lee County Respondents in this action is somehow improper, was addressed squarely and thoroughly by the trial court in its "Order Denying Motion to Disqualify Attorneys Fata and O'Connor," filed February 4, 2016.

Having reviewed Toney's assertions pursuant to the applicable Rule 1.9 of the South Carolina Rules of Professional Conduct ("SCRPC"), the trial court found that Toney was not a current client of Attorney Fata or his law firm. Instead, Plaintiff was, at most, a former client. The court found that under the applicable Rule 1.9, Mr. Fata had no duty to Plaintiff to refrain from representing Lee County in the instant case, was not required to obtain Plaintiff's consent to represent Lee County, and was not in violation of the SCRPC by representing Lee County. The trial court found that the previous matters in which Mr. Fata or his firm represented Plaintiff were not related in any manner to the instant matter. Further, Mr. Fata or his firm's serving as the bidding agent for the foreclosure sale of the subject real property did not disqualify him from representing Lee County or being adverse to Plaintiff, and therefore denied Toney's motion.

For all of these reasons, Appellant's motion should be denied. The issues she seeks to raise here were squarely addressed by the trial court in filed orders and must now be raised, if at all, in this pending appeal.

CONCLUSION

As noted in the Procedural History of the trial court's "Order Granting the Motion to Dismiss of Defendant U.S. Bank, Granting the Motion for Summary Judgment of Defendant Lee County, and Denying All Motions of Plaintiff Laura Toney," filed July 11, 2016, Toney has repeatedly asserted the same arguments over and over, which arguments have been rejected by state and federal courts again and again over a period of more than ten years since the initial judgment of foreclosure and sale as to the subject property was filed on March 9, 2007.

The record of the instant action is replete with multiple, repetitive, procedurally improper filings by Toney. The instant Motion for Leave of Court is but the latest. For all the reasons stated above and pursuant to applicable authority cited herein, Appellant's motion should be denied.

(SIGNATURE PAGE FOLLOWS)

Respectfully submitted,



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March 21, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEE COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Appellate Case No. 2016-001989

Laura Toney,

Appellant,

v.

LaSalle Bank National Association as Trustee for the
Registered Holder of Structured Asset Securities
Corporation, Structured Asset Investment Loan Trust,
Mortgage Pass-Through Certificates, Series 2004-11,
A/K/A Altisource Homes, Wayne Capell, Lee County
Treasurer and Lee County Planning and Zoning,

Respondents.


PROOF OF SERVICE

I hereby certify that on this, the 21st day of March, 2017, a copy of Respondent's *Return to Motion for Leave of Court* was served upon all interested Parties to the Appeal by mailing a copy of the same with sufficient first class postage affixed thereto and addressed as follows:

Laura Toney
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[SIGNATURE ON FOLLOWING PAGE]


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March 21, 2017

REPLY TO:
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MAR 23 2017

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Laura Toney v. LaSalle Bank National Association as Trustee for the Registered Holder of Structured Asset Securities Corporation, et al.*
Appellate Case No. 2016-001989
Our File No.: 52310.49499

Dear Ms. Kitchings:

Enclosed for filing, please find Respondents' original *Return to Motion For Leave of Court* along with six additional copies and an accompanying *Proof of Service*. Copies of the same have been served on Appellant and Paul M. Fata, Esq., both of whom are also copied on this correspondence. At your convenience, we would respectfully request that you please file the enclosed and return a filed copy to our office using the enclosed, prepaid envelope.

Thank you for your assistance. If you have any questions or concerns, please contact me at your convenience.

With warmest regards, I am

Yours very truly,



Malena A. Dinwoodie
Litigation Paralegal

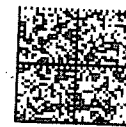
SAO/mad


cc: Laura Toney, Appellant (w/encl.)
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