

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CALHOUN COUNTY

Honorable Martin R. Banks, Master in Equity

Case No: 2015-CP-09-00126

Appellate Case: 2017-001493

Flagstar Bank, FSB Respondent

v.

Ruby Elaine Pinnex, ...Appellant

AMENDED INITIAL BRIEF OF RESPONDENT

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October 12, 2017

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Master in Equity err when he signed the order granting the respondent’s Writ of Assistance while the case was in the Federal Court because the case was already moved to the Federal Court prior to him receiving the order?
- II. Because of the error of the Master in Equity does this make the Order void?

STATEMENT OF THE CASE

This is a mortgage foreclosure action. Flagstar Bank, FSB, Plaintiff in the Common Pleas Court and Respondent in this Appeal (hereinafter “Respondent”), filed its Complaint seeking the foreclosure of its first mortgage lien and judicial sale of the property due to the

failure of Ruby Elaine Pinnex (hereinafter “Appellant”) to make the required monthly payments as required in the Note and Mortgage on July 10, 2015. (Complaint). On August 31, 2015, an Answer was filed by Appellant. (Answer). This matter was referred to Martin R. Banks, Master in Equity for Calhoun County by order filed May 5, 2016 (Order of Reference) and a Motion for Summary Judgment was filed by Respondent on the same day. (Motion for Summary Judgment).

On June 16, 2016, Appellant filed with the U.S. District Court District of South Carolina a Notice of Removal. (2016 Notice of Removal). Magistrate Judge Shiva V. Hodges filed a Report and Recommendation that the matter be remanded back to the South Carolina Court of Common Pleas for lack of subject matter jurisdiction on June 21, 2016. (2016 Report and Rec.) On July 12, 2016, U.S. District Court Judge J. Michelle Childs issued an order remanding the case back to the Court of Common Pleas. (2016 Remand). Subsequently, Appellant sent two checks to the Federal District Court’s Office; thereafter, Judge J. Michelle Childs issued an additional order confirming that the matter had been remanded back to the Calhoun County Court of Common Pleas and that the request for removal to federal court remains closed. (2016 Subsequent Order).

A hearing on Respondent’s Motion for Summary Judgment was held, and on September 7, 2016, an order granting the motion, ordering the Respondent’s mortgage lien be foreclosed and ordering the judicial sale of the property was entered. (MIE’s Judgment). Subsequently a hearing was held as to Respondent’s Motion for Supplemental Order in order to update the original judgment debt amount and the Supplemental Order to the Master in Equity’s Order and Judgment of Foreclosure and Sale was filed April 4, 2017. (MIE’s Supp. Judgment). Appellant was the winning bidder at the judicial sale held on May 1, 2017. The Master in Equity’s Deed of Foreclosure conveying the property to Appellant was executed on May 8, 2017 and recorded in

the Register of Deeds Office for Calhoun County in Book 322 at Page 139 on May 25, 2017. (MIE's Deed).

On May 31, 2017, Appellant filed an additional Notice of Removal in federal court. (2017 Notice of Removal). On June 9, 2017, Magistrate Judge Shiva V. Hodges filed a Report and Recommendation recommending that the matter be remanded back to state court due to lack of subject matter jurisdiction. (2017 Report and Rec.) On July 6, 2017, by order of U.S. District Court Judge J. Michelle Childs, the Report and Recommendation was adopted and the case again was remanded by to the Court of Common Pleas for Calhoun County. (2017 Remand).

On June 22, 2017, Respondent's Petition for Writ of Assistance and the Writ of Assistance for the eviction of Respondent and any occupants residing in the property was filed. (Petition for Writ and Writ). Appellant filed this appeal on July 7, 2017. (Notice of Appeal)

STATEMENT OF FACTS

On June 17, 2008, Respondent executed and delivered to Residential Finance Corp. a certain promissory note (hereinafter "Note") in writing wherein she promised to pay to Residential Finance Corp., its successors and assigns, the principal sum of \$154,280.00. (Note). In order to secure the payment of the Note, Respondent, also executed and delivered a certain mortgage (hereinafter "Mortgage") to Mortgage Electronic Registration Systems, Inc., as nominee for Residential Finance Corp., its successors and assigns, a certain mortgage ("Mortgage") covering real property located in Calhoun County. (Mortgage). The mortgage was recorded in the Office of the Register of Deeds for Calhoun County, on June 27, 2008, in Book M352, at Page 225; thereafter, said Mortgage was assigned to Flagstar Bank, FSB by assignment instrument dated December 11, 2012 and recorded December 18, 2012 in Book M413 at Page 163. (Assignments).

The Note and Mortgage were subsequently modified by a Loan Modification Agreement effective June 1, 2014. (Loan Mod.).

The legal description of the real property which was subject to the Respondent's mortgage and which Respondent currently owns by virtue of the Master in Equity's Foreclosure Deed is as follows:

All that certain piece, parcel or tract of land with any improvements thereon, situate, lying and being in Calhoun County, South Carolina, more particularly shown and delineated as 3.69 acres on a plat surveyed for Ruby Elaine Pinnex by Richardson Land Surveying, approved by Thomas B. Richardson, S.C.P.L.S., dated February 12, 1992, and recorded in the Office of the Clerk of Court for Calhoun County in Plat Book 10, Page 416, and being bounded and measuring as follows: On the northeast by property now or formerly of Edgar L. Bair and by a county dirt road for a distance of 476.97 feet; on the southeast by property now or formerly of Clifton M. Jones for a distance of 345.54 feet; on the southwest by property now or formerly of Clifton M. Jones and by property now or formerly of Felicia Bair for a distance of 479.93 feet; and on the northwest by property now or formerly of William F. Jones for a distance of 327.86 feet.

This being the same property conveyed to Ruby Elaine Pinnex by Deed of Marion E. Jones dated February 18, 1992 and recorded February 19, 1992 in Book 64 at Page 339 in the ROD Office for Calhoun County.

TMS No. 191-00-03-010

Property address: 204 Baronet Lane
Elloree, SC 29047

This case proceeded as herein described above in the Statement of Case and after the Supplemental Order to the Master in Equity's Order and Judgment of Foreclosure and Sale was filed April 4, 2017, the property was set for judicial sale. (MIE Supp. Order). The judicial sale was properly advertised as required by statute and the sale was held May 1, 2017. Respondent was the highest bidder and a Master in Equity's Deed of Foreclosure was executed on May 8, 2017 and recorded in the Register of Deeds Office for Calhoun County in Book 322 at Page 139 on May 25, 2017. (MIE Deed).

As current owner of the property, Respondent sent a Petition for Writ of Assistance to the Master in Equity, and the Master in Equity signed the Writ of Assistance. Both were filed June 22, 2017. (Petition for Writ and Writ). The Writ of Assistance was served on Appellant on June 29, 2017. (Service Aff. of Writ). No post-judgment motions, pursuant to the South Carolina Rules of Civil, were filed or heard by the Master in Equity.

STANDARD OF REVIEW

“A mortgage foreclosure is an action in equity.” Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). “In an appeal from an action in equity, the appellate court may find facts in accordance with its own view of the preponderance of the evidence.” Lowcountry Open Land Trust v. Charleston S. Univ., 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008). Nevertheless, “the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings.” U.S. Bank Trust Nat. Ass’n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) (*quoting* Pinkney v. Warren, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001)). The Court may affirm the trial court’s ruling for any ground appearing in the record. Rule 220(c) SCACR; see also I’On v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

ARGUMENT

1. APPELLANT FAILED TO PROPERLY PRESEVE THESE ISSUES FOR APPEAL.

Appellant was personally served with the Writ of Assistance on June 29, 2017. (Service Aff. of Writ). Appellant failed to file any motion objecting to the substance of the Writ of Assistance or the issuance thereof. Instead, Appellant filed the Notice of Appeal in this matter

on July 7, 2017. At no time has the Master in Equity heard or ruled upon the arguments that Appellant has presented in her appellate brief. “It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.” Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505, 510 (2006). Appellant has therefore, failed to preserve these issues for appeal.

2. **APPELLANT HAS FAILED TO PROVIDE ANY CONVINCING EVIDENCE OR ARGUMENT THAT THE MASTER IN EQUITY ERRED IN EXECUTING THE WRIT OF ASSISTANCE.**

Appellant has the burden to convince this Court that the trial court erred in its findings. See Lewis v. Lewis, 392 S.C. 381, 385, 709 S.E.2d 650, 652 (2011). Appellant’s brief fails to point to any convincing evidence or provide any convincing argument supported by legal authority that the issuance of the Writ of Assistance was improper. Instead, Appellant’s brief contains three conclusory statements declaring that the “signing of the Order for the Writ of Assistance was improper because the jurisdiction of the case was under the Federal Court Jurisdiction.” (Appellant’s Initial Brief p.2). Appellant does not explain how the federal court jurisdiction was obtained. Appellant does not cite any legal authority to support her conclusion that the “Master in Equity did not have the authority to entertain the motion.” (Appellant’s Initial Brief p.2). Appellant has failed to present to this Court any evidence or authority to suggest that the conclusory statements she makes within her brief are correct; and therefore, has failed to meet her burden to convince this Court that the issuance of the Writ of Assistance was improper.

3. THE APPEAL IS MOOT.

It is a longstanding principal that courts should not rule on moot matters. “A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” Mathis v. S.C. State Highway Dep’t, 260 S.C. 344, 195 S.E.2d 713 (1973). “The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the right of some party to the litigation. Accordingly, cases or issues which have become moot or academic in nature are not a proper subject of review.” Sloan v. Greenville Cnty., 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003).

The Writ of Assistance executed by the Master in Equity states:

Ordered, Adjudged and Decreed that the Sheriff of Calhoun County is herein and hereby ordered and directed to, with whatever force necessary, eject and remove from the premises the occupants and their personal possessions from the real property located at 204 Baronet Lane, Elloree, SC, 29047 with the individuals occupying the property to be removed by 10[:00] a.m. on 7/6/2017. (Writ of Assistance p.2)

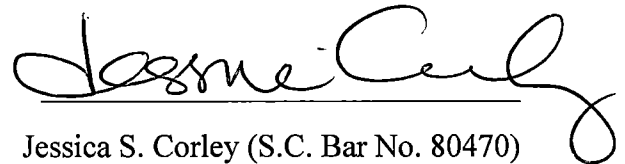
The Writ of Assistance was not effectuated because July 6, 2017 has expired and Appellant remains in the subject property. Additionally, the federal court’s order remanding this matter has now been entered, and Respondent has filed a new subsequent Petition for Writ of Assistance, which the Master in Equity is reviewing for execution and filing. Given that the order at issue was not effectuated by its required date and that any subsequent order would not be subject to the May 31, 2017 Notice of Removal by virtue of the subsequent order to remand to state court, some event has occurred making it impossible for this Court to grant any further relief. Respondent has already received what she is asking from this court-to prevent the orders within the Writ of Assistance from being carried out. Therefore, this matter has become an

academic exercise such that the issues before the Court are moot; and therefore, the appeal should be dismissed.

CONCLUSION

Respondent has failed to properly preserve the issues before this Court for appeal as the lower court was not given the opportunity to rule upon the issues raised within Respondent's appeal. Additionally, Respondent has failed to meet her burden required to convince this Court that her conclusion as to the Master in Equity's lack of jurisdiction at the time of the execution of the Writ of Assistance is correct. More importantly, this matter is moot as the time for the execution of the judgment and lockout of the property's occupant has passed, and the issuance of an order by this Court will not result in any relief for Respondent.

October 12, 2017

A handwritten signature in black ink, appearing to read "Jessica Corley", with a long, sweeping horizontal line extending to the right.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CALHOUN COUNTY

Court of Common Pleas

Honorable Martin R. Banks, Master-in-Equity

Case No. 2015-CP-09-00126

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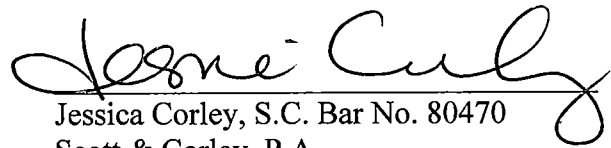
v.

Ruby Pinnex.....Appellant.

PROOF OF SERVICE

I certify that I have served the Amended Initial Brief of Respondent on Ruby Pinnex by depositing a copy of it in the United States mail, postage prepaid, on October 12, 2017, at her address indicated below.

Dated: 10/12/2017



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October 12, 2017

The Honorable Jenny Abbott Kitchings
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RE: Flagstar Bank, FSB v. Ruby Pinnex
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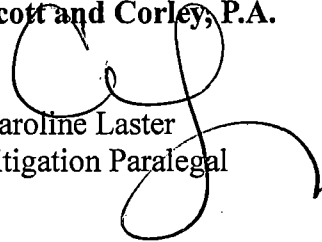
Dear Ms. Kitchings,

Enclosed please find one original and copy of the Initial Brief of Respondent with Proof of Service and Designation of Matter with Proof of Service and Amended Proof of Service, in the above referenced matter. Upon filing, kindly return a clocked copy of same to our office in the self-addressed, postpaid envelope provided.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Scott and Corley, P.A.


Caroline Laster
Litigation Paralegal

Enclosed:
Ruby Elaine Pinnex

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE, EXCEPT AS STATED BELOW IN THE INSTANCE OF BANKRUPTCY PROTECTION.

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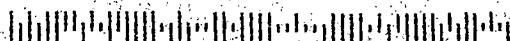
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