

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Wells Fargo Bank, N.A. as Trustee for Bear
Stearns Asset Backed Securities I Trust 2004-
B01,

PLAINTIFF,

vs.

Betty L. Tangeman; Barry D. Mallek and
Alice R. Mallek; Donald C. Coggins, Jr.;
Delbert R. Tangeman.

DEFENDANT(S)

ORDER DENYING MOTION TO
RECONSIDER AND REOPEN CASE OF
DEFENDANT DELBERT R. TANGEMAN

(NON-JURY MORTGAGE
FORECLOSURE)

C/A NO: 2010-CP-42-05847

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OCT 30 2017

SC Court of Appeals

This matter came before this Court on September 25, 2017 upon the Motion to Reconsider and Reopen Case, ("Motion"), of Defendant Delbert R. Tangeman, ("Defendant"). Appearing at the hearing were John B. Kelchner, counsel for Plaintiff Wells Fargo Bank, N.A. as Trustee for Bear Stearns Asset Backed Securities I Trust 2004-B01, ("Plaintiff") and Defendant representing himself pro se.

INTRODUCTION AND PROCEDURAL HISTORY

The within action was filed on November 3, 2010 to foreclose on real property located in Spartanburg County. Thereafter, Defendant Betty L. Tangeman and Defendant filed counterclaims, which were subsequently dismissed. This Court issued an Order and Judgment for Foreclosure and Sale on May 11, 2017 ("Judgment"). Plaintiff served a copy of the Judgment on all Defendants on May 23, 2017 by mail as shown by that Certificate of Service filed May 24, 2017. Pursuant to the Judgment, the subject property was sold at public sale on June 5, 2017. On June 15, 2017, Defendant filed the Motion. Plaintiff served all parties with Notice of the hearing on the Motion on August 8, 2017.

STANDARD OF REVIEW

"A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), South Carolina Rules of Civil Procedure. (SCRCP) "A party may wish to file such a motion when she believes the Court has

misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the Court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Elam v. South Carolina Dept. of Trans.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). “The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’” *Arnold v. State*, S.C. 157, 172, 420 S.E.2d 673, 675 (1992).

“On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.” Rule 60(b) SCRCP. “A party seeking to set aside a judgment has the burden of presenting evidence entitling him to the requested relief.” *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 46 590 S.E.2d 502, 504 (Ct. App. 2003); *See* Rule 60(b) SCRCP. “Whether to grant or deny a motion for relief from judgment lies within the sound discretion of the judge.” *Raby Const., L.L.P v. Orr*, 358 S.C. 10, 18 594 S.E.2d 478, 482 (2004); *See* Rule 60(b) SCRCP.

CONCLUSIONS OF LAW

Defendant bases his Motion on a recitation of affirmative defenses previously made in his responsive pleadings including failure to apply payment correctly, Plaintiff’s lack of standing, and the applicable statute of limitations barring Plaintiff’s action. In addition, Defendant claims that he was not served properly. Defendant does not reference with which pleadings, notices or orders he was improperly served.

Defendant does not reference the Rule under which he makes the Motion, SCRCP Rule 59(e) or 60(b). Under Rule 59(e), Defendant would have been required to move within ten days of receipt of the Judgment. The Judgment was filed on May 11, 2017 and served on May 23, 2017 but Defendant did not file his Motion until June 15, 2017. Therefore, his Motion was not timely filed.

Even if this Motion would have been considered timely, Defendant still failed to meet the requirements of Rule 59(e). This Court determined that Plaintiff established that it was the holder of the subject loan with the right to bring the within action by presenting a properly endorsed Note, Mortgage, and correct chain of assignments of the Mortgage. Plaintiff presented sufficient evidence reflecting the existence of a contract, the breach of said contract, and its damages resulting from that breach. The statute of limitations cited by Defendant is not applicable to mortgage foreclosure actions. Finally, this Court finds that Defendant was properly served with the Complaint, all notices of hearings in this case, and the Judgment.

Defendant's Motion also fails to meet the burden of presenting evidence in accordance with Rule 60(b) SCRPC. Defendant offers no evidence that the Judgment should be set aside by virtue of mistake, inadvertence, surprise or excusable neglect. Likewise, Defendant presented no newly discovered evidence nor sufficiently alleged any fraud, misrepresentation, or other conduct by an adverse party justifying reconsideration of the Judgment. The Judgment is not void nor has it been satisfied, released or discharged.

IT IS THEREFORE ORDERED that the Defendant's Motion is denied.

IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Spartanburg Common Pleas

Case Caption: Wells Fargo Bank Na Trustee For Bear Stearns Asset Backed Securities
1 Trust 2004 BO1 , plaintiff, et al VS Betty L Tangeman , defendant,
et al
Case Number: 2010CP4205847
Type: Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Wells Fargo Bank, N.A. as Trustee for Bear
Stearns Asset Backed Securities I Trust
2004-BO1,

PLAINTIFF,

vs.

Betty L. Tangeman; Barry D. Mallek; Alice
R. Mallek; Donald C. Coggins, Jr.; Delbert
R. Tangeman,

DEFENDANT(S)

CERTIFICATE OF SERVICE

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2010-CP-42-05847

I, the undersigned, do hereby certify that on today's date, I served on the person(s) below a filed copy of the signed Order Denying Motion to Reconsider and Reopen Case of Defendant Delbert R. Tangeman for the above-referenced case by e-file and/or depositing same in the United States Mail with sufficient postage affixed and addressed as follows:

Betty L. Tangeman
104 Riverside Lane
Duncan, SC 29334

Delbert R. Tangeman
104 Riverside Lane
Duncan, SC 29334

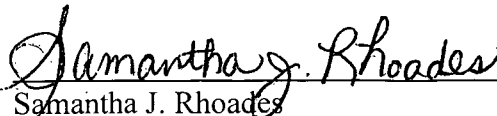
Betty L. Tangeman
102 Oak Ridge St.
Spartanburg, SC 29306

Delbert R. Tangeman
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Donald C. Coggins, Esq.
P.O. Box 3547
Spartanburg, SC 29304
*Attorney for Defendants Alice R. Mallek
And Donald C. Coggins, Jr.*

This the 28th of September, 2017

BY:



Samantha J. Rhoades
Legal Assistant
Hutchens Law Firm
P.O. Box 8237
Columbia, SC 29202
803-726-2700

Order received on the
10-7-17



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September 28, 2017

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*Attorney for Defendants Alice R. Mallek
And Donald C. Coggins, Jr.*

Re: Wells Fargo Bank, N.A. as Trustee for Bear Stearns Asset Backed Securities I Trust 2004-BO1
vs. Betty L. Tangeman, et al.
Docket Number: 2010-CP-42-05847

Dear Sir/Madam:

Enclosed and served upon you, please find a filed, signed copy of the Order Denying Motion to Reconsider and Reopen Case of Defendant Delbert R. Tangeman.

Sincerely,

Samantha J. Rhoades
Samantha J. Rhoades
Legal Assistant

cc: The Honorable Gordon G. Cooper

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR. THE PURPOSE OF THIS COMMUNICATION IS TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE, except as stated below in the instance of bankruptcy protection.

IF YOU ARE UNDER THE PROTECTION OF THE BANKRUPTCY COURT OR HAVE BEEN DISCHARGED AS A RESULT OF A BANKRUPTCY PROCEEDING, THIS NOTICE IS GIVEN TO YOU PURSUANT TO STATUTORY REQUIREMENT AND FOR INFORMATIONAL PURPOSES AND IS NOT INTENDED AS AN ATTEMPT TO COLLECT A DEBT OR AS AN ACT TO COLLECT, ASSESS, OR RECOVER ALL OR ANY PORTION OF THE DEBT FROM YOU PERSONALLY.

Firm Case No. 1201588 (CVL.CAE)