THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Gordon G. Cooper
Master-in-Equity

Appellate Case No. 2016-002559
Circuit Court Case No. 2016-CP-42-02422

Fifth Third Mortgage Company.....Respondent

v.

Tracy L. Liggett and South Carolina Department of Motor Vehicles.....Defendants

Tracy L. Liggett is the..... Appellant

FINAL REPLY BRIEF OF APPELLANT

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January 25, 2018

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Argument in Reply

In this Reply Brief, Appellant offers the following points of argument, clarification and rebuttal to the arguments raised by Respondents.

I. The Trial Court abused its discretion by not effectively denying Appellant's request for an Order of Continuance in accordance with South Carolina Law.

In their Initial Brief, Respondents vaguely seem to make the claim that Judge Cooper denied Appellant's request for continuance and they go on to cite several cases that support the Court's right to deny such motion for continuance and further support the reasons why appellate courts can and should deny "reversal of continuance". (R.p. 049; Respondent's Initial Brief)

On page 6 of their Brief (R.p. 50; Respondent's Initial Brief), Respondents refer to the December hearing transcript (Transcript of Record December 1, 2016 Hearing, R.pp.027-028, Lines 2:9-3:3) where they state "When the hearing was called, Judge Cooper confirmed that Ms. Liggett had been properly noticed, and then proceeded to resolve the case." Respondents make no claims that Judge Cooper actually "denied" the request for continuance and in fact, upon review of the Transcript discussed by Respondents, there appears to be no verbal denial of Appellant's request for continuance and that the hearing proceeded without any further consideration of the request for continuance. Even if Judge Cooper had verbally denied the request, that denial would not have satisfied the requirements pursuant to South Carolina Rule of Civil Procedure 58(a) "A judgment is effective only when so set forth and entered in the record." The South Carolina Supreme Court on that issue, is of the opinion that an order isn't valid until it is signed by the judge *and* filed with the clerk's office. Upchurch v. Upchurch, 367 S.C. 16, 624 S.E.2d 643 (2006).

Even a signed but unfiled order is still unenforceable. That is because the order does not become valid until it is actually filed with the clerk's office. "An order is not final until it is entered by the clerk of court; and until the order or judgment is entered by the clerk of the court, the judge retains control of the case." *Bowman v. Richland Mem'l Hosp.*, 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct.App.1999) (citation omitted). Further (in *Bowman*), the trial court dismissed the respondent as a party based on the appellants' failure to amend the complaint within ten (10) days of the date of the trial court's order. Id. at 90, 515 S.E.2d at 259. The order was signed on September 19, 1996, but was not entered by the clerk until September 23, 1996. The appellants served an amended complaint on October 2, 1996, which was 13 days after the order was signed and 9 days after the order was filed. The court of appeals held that the appellant's amendment of the complaint was timely, finding that the "final and effective date of the trial judge's order was the date the order was entered by the clerk of court, not when the order was signed." Id. at 92, 515 S.E.2d at 261.

Requiring an order to be filed before it can be enforced is also important because it preserves the right of appellate review. One has the right to seek supersedeas of a judge's order but the Court of Appeals will not consider supersedeas until the order is filed. That a signed but unfiled order cannot be reviewed for error is one reason the law does not treat such orders as binding.

As in the December 1, 2016 hearing in the instant case, and other situations in which a judge wants immediate compliance with a portion of his or her ruling, the best option for Respondents would have been to ask the judge to execute a simple bench order and to file that order with the clerk's office immediately–with the understanding that a more detailed order will follow. Respondents did not do that, they merely "skipped over" the Appellant's request and moved on with the hearing. Further, because judges' rulings don't become orders until filed with the court,

best practice would have been for Respondents to draft the proposed order to make sure there is minimal delay between the order being signed by the judge and the order being filed with the clerk's office.

Appellant was clear in her assertions in her Initial Brief, in particular in paragraph C on page 10 (R.p.038; Appellant's Initial Brief) regarding Due Process, that "Due process prior to the taking of one's property is a protection based in both State and Federal Law. Article I Section 3 of the South Carolina Constitution provides that property shall not be taken without due process of law. S.C. Const. art. 1, § 3 (Article I, Section 3, The Constitution of the State of South Carolina; R.p. 067). Appellant in this case, was denied due process prior to the Order allowing the taking of her property. When her request for continuance was apparently passed over and the hearing moved forward, she lost her right to assert any issues, claims or defenses, and was deprived of her due process pursuant to the South Carolina Constitution. For these reasons the trial Court abused its discretion, and the Master's Order and Judgment of Foreclosure Sale should be reversed, and this case remanded to the lower Court, and a new hearing be scheduled, to allow Appellant to exercise her rights of due process in accordance with South Carolina Law.

II. Ms. Liggett was not allowed her Constitutional Right to present and/or preserver her arguments for appellate review.

In Section I of their Brief (R.pp.-046-047; Respondent's Initial Brief), Respondents argue that because Appellant did not raise any of the issues that appear in her opening brief to the circuit court, she has not preserved them for this Court's review. And as such, they state that the Court should reject her arguments and affirm Judge Cooper's decision.

Respondents assert that Ms. Liggett did not assert any affirmative defenses or counterclaims, did not present any evidence or arguments, and did not appear for the foreclosure hearing, citing

Allendale County Bank v. Dunbar, 348 S.C. 367, 375, 559 S.E.2d 342, 346 (Ct. App. 2001) "An issue not raised to or ruled on by the trial court is not preserved for appellate review."). Obviously *Allendale* does not apply here because in that case, both Respondent and Appellant were provided with the right to present their case whereas Ms. Liggett, was deprived of that right.

In their brief Respondents specifically refer to Appellants arguments in her opening brief, for example, "that Fifth Third does not have standing to foreclose on the parties' note and mortgage (R.pp.035-036; Appellant's Initial Brief), that Fifth Third did not satisfy "conditions precedent" to foreclose, and that she was denied due process".

All of Respondent's arguments fail because Appellant was deprived of any right to assert her issues, claims or defenses, and was deprived of her due process pursuant to the South Carolina Constitution, when the December 1, 2016 hearing proceeded without her as stated above, and stated previously in her opening brief (R.pp.038-040; Appellant's Initial Brief). Respondent's entire argument that Ms. Liggett failed to preserve any issues for review is moot, due their own failure to make sure that an order denying Ms. Liggett's Motion for Continuance was properly denied and entered into the Docket.

For these and other reasons, Respondent's arguments fail and this case must be remanded and re-heard by the trial Court.

III. Fifth Third did not prove standing to foreclose and did not have such standing.

Respondents also refer to Ms. Liggett's Federal Lawsuit and subsequent dismissal in Section II. of their Statement of the Case (R.p.047; Respondent's Initial Brief). That case is based upon a TILA and "Reg. Z" Loan Rescission executed by Ms. Liggett. That case, even though dismissed, will be further litigated in the independent court, and the issues arising from that Rescission will be raised in the instant case upon reversal and remand of this case back to the Circuit Court.

The validity of Respondent's standing to foreclose or alternatively, the lack thereof, is an issue that must be remanded and fully litigated in the Lower Court.

CONCLUSION

Based on the foregoing, in addition to the arguments made in the opening brief, Appellant requests that the Appellate Court reverse the trial Court's Judgment against Appellant and remand to the Lower Court for further proceedings in this action.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have served the Final Reply Brief of Appellant upon the following parties: S. Sterling Laney, III, Esq., Joshua J. Howard, Esq., 550 South Main Street, Suite 400, Greenville, SC 29601, slaney@wcsr.com, jhoward@wcsr.com, M. Todd Carroll, Esq., 1221 Main Street, Suite 1600, Columbia, SC 29201, todd.carroll@wcsr.com on this 25th day of January, 2018.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 211(b) SCACR

The undersigned pro se Appellant hereby certifies that the Final Reply Brief of Appellant in this appeal, complies with Rule 211(b), SCACR.

January 25, 2018

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