

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

RECEIVED

DEC 28 2016

SC Court of Appeals

**APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas**

The Honorable Martin S. Driggers, Special Referee

**Appellate Case No.: 2015-002194
Case No.: 2012-CP-16-1021**

Vanderbilt Mortgage and Finance, Inc..... Respondent,

Vs.

Ashton C. Bull, Linda Bull, Park Avenue Homes and South Carolina Department of
Motor Vehicles,.....

Defendants,

Of Whom Ashton C. Bull and Linda Bull are the
Appellants.

REPLY BRIEF OF APPELLANT

Marcus Woodson
The Woodson Law Firm, L.L.C.
1011 E. Liberty Street
Post Office Box 1657
Marion, SC 29571
(843)423-1977 telephone
(843)423-9608 facsimile

Attorney for the Appellants
Ashton C. Bull and Linda Bull

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....i

STATEMENT OF THE CASE.....1

ARGUMENTS

I. THE SPECIAL REFEREE ERRED IN GRANTING SUMMARY JUDGMENT
AND IMPOSING AN EQUITABLE LIEN.....1

 a. THE CONTRADICTORY RELIEF SOUGHT IS CONTRARY TO EXISTING
 LAW.....3

 b. THERE IS A FACTUAL DISPUTE REGARDING THE EXISTING DEBT.....3

 c. INTENTION OF THE PARTIES.....4

 d. EQUITABLE LIENS ON MOBILE HOMES.....4

 e. SOUTH CAROLINA CODE SECTION 59-19-210.....5

 f. PERFECTION OF LIEN.....6

II. PRESERVATION OF JURY TRIAL ARGUMENT.....7

III. THE COUNTERCLAIM WAS FILED WITHIN THE STATUTE OF
LIMITATIONS?.....8

CONCLUSION.....8

i

TABLE OF AUTHORITIES

Clark vs. Clark, 293 S.C. 415, 361 S.E.2d 328 (S.C. 1987).....2

Jones v. Bennett, 290 S.C. 96, 348 S.E.2d 36 (S.C. App. 1986) quoting *Christopher vs. Christopher* 18 S.C. 600 (1882).....2

Fibkins vs. Fibkins, 303 S.C. 112, 399 S.E.2d 158 (S.C. App. 1990).....2

Nutt Corp. vs. Howell Rd., L.L.C., 396 S.C. 323, 721 S.E.2d 447 (S.C. App., 2011).....3

Carolina Attractions, Inc. vs. Courtney, 287 S.C. 140, 145 337 S.E.2d 140 (1985).....4

Horry County vs. Ray, 382 S.C. 76, 674 S.E.2d 519 (S.C. App. 2009).....4

First Nat. Bank of S.C. vs. Wade, 245 S.C. 426, 141 S.E.2d 102 (S.C. 1965).....5

State vs. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-694 (S.C. 2003).....7

OTHER AUTHORITIES

South Carolina Code Section 56-19-210.....5

South Carolina Code Section 15-3-530.....8

Rule 8(a)(2) of the South Carolina Rules of Civil Procedure.....2

51 Am.Jur. 2d Liens Section 22 at 161.....2

Georgia Code Sections 68-410, 68-421 and 68-427.....7

STATEMENT OF THE CASE

The Appellants adopt and incorporates by reference the Statement of the Case and Facts presented in their Initial Brief. The factual history discussed below is limited to reply to the issues raised in the Respondent's Statement of Facts. The Respondent brings his Statement of Facts by saying "the material facts are not in dispute." The Appellants do question several of the alleged facts. At their depositions they question whether the documents presented were authentic and asked to see the originals. (R.p. 125, lines 9-10 and 23; R.p. 174, lines 11-12).

ARGUMENTS

1. THE SPECIAL REFEREE ERRED IN GRANTING SUMMARY JUDGMENT AND IMPOSING AN EQUITABLE LIEN.

The Respondent filed the original Summons and Complaint on November 12, 2012 (R.p. 10-18). The Respondent filed an Amended Summons and Complaint on January 4, 2013 (R.p. 12-29). The Respondent filed a Second Amended Complaint on April 1, 2013 (R.p. 30-40). The Respondent filed another document on November 8, 2013 and also labeled it as a Second Amended Complaint (R.p. 46-76). In the November 8, 2013 document the Respondent alleges four causes of action. The first cause of action was for a Declaratory Judgment (R.p. 49-50). In paragraph 16 of the document the Respondent requests that they be "entitled to perfect its lien" (R.p. 50). The second cause of action was for reformation of the mortgage. (R.p. 51). The Respondent wanted to "correct the legal description " as alleged in paragraph 21 of the Complaint (R.p. 51). The third cause of action was for mortgage foreclosure (R.p. 51-2).

The fourth cause of action was for mobile home repossession (R.p. 52-53). The Respondent's first request for an equitable lien was in paragraph 8 of their motion for Summary Judgment (R.p. 241).

Summary Judgment was granted on grounds not requested in the last Complaint filed by the Respondent. "A complaint must contain a "short and plain statement of the facts showing that the pleader is entitled to relief." Rule 8(a)(2) SCR. *Clark vs. Clark*, 293 S.C. 415, 361 S.E.2d 328 (S.C. 1987). "It has long been held that relief is not limited by the prayer of the complaint if an answer is filed and the relief is consistent with the case made. *Jones v. Bennett*, 290 S.C. 96, 348 S.E.2d 36 (S.C. App. 1986) quoting *Christopher vs. Christopher* 18 S.C. 600 (1882). The relief granted is an equitable mortgage. The relief requested is reformation of the mortgage. The mortgage reformation requested modifies an existing mortgage. An equitable mortgage recognizes a lien and relates back to the time it was created. The relief requested was amendment of a mortgage and the relief granted was in essence the creation of a mortgage that relates back in time.

The Respondent quotes *Fibkins vs. Fibkins*, 303 S.C. 112, 399 S.E.2d 158 (S.C. App. 1990). In addition to what the Respondent quotes, that case goes on to state that "An equitable lien is a "mere floating equity until a judgment or decree subjecting the property to the payment of the debt or claim is rendered, but even though not judicially recognized until a judgment declaring its existence, it relates back to the time it was created by the conduct of the parties." Quoting 51 Am.Jur.2d Liens Section 22 at 161 (1970). This Court has said that equitable liens relate back to the time that it was

created. The Respondent seems to argue that the Order Granting for Summary Judgment establishes an equitable lien. The Order Granting Summary Judgment does not state the specific amount of the lien (R.p. 4-7).

THE CONTRADICTORY RELIEF SOUGHT IS CONTRARY TO EXISTING LAW

The Order for Summary Judgment grants equitable relief. The Plaintiff's Complaint requests remedies at law. The South Carolina Supreme Court has held "...equity is generally only available when a party is without an adequate remedy at law" *Nutt Corp. vs. Howell Rd., L.L.C.*, 396 S.C. 323, 721 S.E.2d 447 (S.C. App., 2011). "Equity will not impose an equitable lien where there is an adequate remedy at law. The Special Referee erred in granting equitable relief when the Respondent requested a remedy at law.

"Characterization of an action as equitable or legal depends on the appellant's main purpose in bringing the action. The main purpose of the action should be generally ascertained from the body of the complaint." *Nutt Corp vs. Howell Road, L.L.C.* 396 S.C. 323, 325, 721 S.E.2d 447, 450 (S.C. App. 2011). The main purpose in bringing this action was based upon remedies at law.

THERE IS A FACTUAL DISPUTE REGARDING EXISTENCE OF A DEBT

The Respondent argues on page 6 of his brief that the Appellant admitted to signing the promissory note in paragraph 11 of the Second Amended Answer and Counterclaim. The Respondent asserts that based on this admission

“there is no factual dispute...” The Appellant denied paragraph 7 of the Second Amended Complaint filed on November 8, 2013 (R.p. 78, last line). That paragraph of the Complaint alleges that the Note and Mortgage were “covering the following described property.” (R.p. 49, paragraph number 7). The Appellants have consistently denied that the note and mortgage cover the mobile home which is the subject of this action.

INTENTIONS OF THE PARTIES

The Respondent alleges on page 8 of its brief that “the mobile home and Farmhouse Lane Property were intended to be security for repayment of the loan.” The Appellants consistently testified that the mobile home they received was not intended to be a security of the loan (R.p. 127, lines 12-22; R.p. 160, lines 2-21; R.p. 179, lines 7-14; R.p. 191, lines 9-21, R.p. 194, lines 18-21; R.p. 195, lines 21-25). The South Carolina Supreme Court held in *Carolina Attractions, Inc. vs. Courtney*, 287 S.C. 140, 145 337 S.E.2d 140 (1985) that the debt, duty or obligation must have “a res to which the obligation attaches, which can be described with reasonable certainty....” The mobile home in the Mortgage and Note are not described with reasonable certainty.

EQUITABLE LIENS ON MOBILE HOMES

On page 9 of the Respondent’s brief, it states:

“C. An equitable lien can attach to an untitled mobile home.”

The Respondent quotes no authority backing up that header. The brief quotes *Horry County vs. Ray*, 382 S.C. 76, 674 S.E.2d 519 (S.C. App. 2009). That case does not refer to a mobile home in any way. That case talks about the priority of an equitable

lien over a mortgage. It does not support the Respondent's allegation that an equitable lien can attach to an untitled mobile home.

The Respondent argues on page 11 of its brief that Vanderbilt did not "mortgage" the mobile home but rather CIT. "A valid assignment of a chattel mortgage and of the debt which it secures puts the **assignee in the place of the mortgagee**; the rights and interests of the mortgagee pass to him, although generally the assignee has no better rights than his assignor." *First Nat. Bank of S.C. vs. Wade*, 245 S.C. 426, 141 S.E.2d 102 (S.C. 1965) [emphasis added]. Although CIT was not the original party to the mortgage, they step into the shoes of the mortgagee by way of the assignment.

South Carolina Code Section 59-19-210

Section 56-19-210 of the South Carolina Code of Laws says that it is unlawful to mortgage a mobile home unless a certificate of title has been issued. The Respondent argues that section 56-19-210 only applies to the mortgagor. This is not what the statute says. It places the illegality on the mortgage transaction itself. The focus is on the illegality of the transaction without reference to the mortgagor or the mortgagee. The statute also references the seller and places a responsibility on him or her. The Respondent argues that the person going into debt violates this statute, but the person or company lending the money is an innocent party. Their argument is the person paying the money is the violator, but the one to whom the money is paid is not. It is generally understood that it takes two parties to mortgage property. Every case quoted in the briefs before this Court involves two parties. It seems undisputed that the existing

“mortgage” is invalid. The whole reason the Respondent sought mortgage reformation is due to defects in the paperwork. The Respondent is pushing for a mortgage or an equitable lien. The Respondent in this case is the one seeking to mortgage the untitled mobile home at this point and the Appellant is alleging that no valid mortgage exists. The mortgagee is attempting to mortgage a mobile home that does not have a certificate of title in violation of the statute. Ironically, the Order Granting Summary Judgment does not address issuing a certificate of title.

The Respondent argues that Summary Judgment granted an equitable lien only. The Respondent says on page 11 of its brief that “The Order Granting Summary Judgment does not impose a mortgage on the mobile home – it imposes an equitable lien.” The Summary Judgment Order grants an equitable lien and goes further to say on the last page of the Order that “Plaintiff is also entitled to Summary Judgment **granting reformation of the mortgage** to reflect the correct VIN of the mobile home as VIN #23-04-79805602ABC. Finally, Plaintiff is entitled to an Order correcting the legal description on the **forementioned mortgage**” [emphasis added]. (R.p. 7). The Respondent received an equitable lien and reformation of the mortgage under the Special Referee’s Order.

PERFECTION OF THE LIEN

The Respondent argues on pages 11 and 12 of its brief that perfection of a security interest only affects “its priority position with regards to third parties but [does] not affect the relationship of creditor and debtor.” The Respondent quotes no

South Carolina authority to back up that assertion. The Respondent quotes secondary authority and a 1964 case from the Georgia Court of Appeals. The Georgia case specifically deals with sections 68-410, 68-421 and 68-427 of the Georgia Code of Laws, which is inapplicable to this state. No other state Courts have quoted this case as authority for the position asserted by the Respondent. The Georgia case involves a automobile and not a mobile home,

PRESERVATION OF JURY TRIAL ARGUMENT

The Respondent alleges that the Appellant did not preserve their argument that the jury trial should have been tried first. There is no record or transcript of the Summary Judgment hearing. The Appellant believes that this issue was argued at the motion hearing. The Appellant did raise the issue to the Special Referee and included this in the proposed Order Granting Motion to Alter or Amend (R.p. 265, paragraph 6). Since this issue was argued before the Special Referee and denied, it has been preserved for Appellate Review. "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." *State vs. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-694 (S.C. 2003).

THE COUNTERCLAIM WAS FILED WITHIN THE STATUTE OF LIMITATIONS

The Respondent does not argue that the Appellant is barred from raising defenses as they relate to the validity of the mortgage. The Respondent argues that

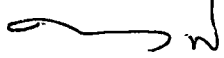
that the three year statute of limitations imposed by South Carolina Code Section 15-3-530 applies to the Appellant's counterclaim. At the time of the mortgage the Appellants were not aware that there was no Certificate of Title to the mobile home. There is no evidence in the record that the Appellants had actual knowledge that a Certificate of Title was not available. The Appellants testified that they found out there was no Certificate of Title when they sought to refinance the home (R.p. page 149, line 6 to page 151, line 19). In their Supplemental Responses to the Defendant's Interrogatories the Respondent produced an October 17, 2012 Housing Counseling Intake Form (R.p. 101). The Appellants were denied help by letter from S.C. Help dated November 19, 2012 (R.p. 99-100). Around that time they found out that there was no Certificate of Title. (R.p. 150, lines 2-8) At best, the three year statute of limitations began to run on November 19, 2012.

CONCLUSION

For these reasons, as well as those addressed in the Petitioner's Final Brief to this Court, the ruling / opinion of the Special Referee below should be reversed.

Respectfully submitted,

THE WOODSON LAW FIRM, L.L.C.



Marcus Woodson
1011 E. Liberty Street
Post Office Box 1657
Marion, SC 29571
(843)423-1977 telephone
(843)423-1977 facsimile

December 21, 2016

Marion, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

DEC 28 2016

SC Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Special Referee

Martin S. Driggers, Jr., Special Referee for Darlington County

Case No. 2012-CP-16-1021

Vanderbilt Mortgage and
Finance Company, Inc.,

Respondent,

v.

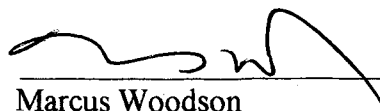
Ashton C. Bull, Linda Bull,
Park Avenue Homes, South
Carolina Department of Motor
Vehicles,

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

December 21, 2016



Marcus Woodson
The Woodson Law Firm, L.L.C.
1011 E. Liberty Street, Post Office Box 167
Marion, South Carolina 29574
(843)423-1977
Attorney for Appellant