

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. 2017-002200

Circuit Court Case No. 2010-CP-42-05847

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FEB 16 2018
SC Court of Appeals

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

v.

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

of whom

Delbert R. Tangeman is the Appellant.

RESPONDENT'S MOTION TO FILE BRIEF AND DESIGNATION OF MATTER OUT OF
TIME

Pursuant to Rule 263(b), SCACR, Wells Fargo Bank, N.A. as Trustee for Bear Stearns
Asset Backed Securities I Trust 2004-B01 respectfully moves the Court to allow it to file its
initial brief and designation of matter after the initial filing deadline.

BACKGROUND

This case arises out of a foreclosure of real property in Spartanburg County secured by a
mortgage. On or about September 12, 2000, Defendant Betty L. Tangeman obtained a secured
loan from Bank One, NA in the principal sum of \$49,000.00 by executing and delivering a
promissory note to Bank One, NA. In order to secure the payment of loan, Defendant Betty L.

Tangeman and Appellant Delbert R. Tangeman executed and delivered a mortgage unto Bank One, NA. Respondent is the successor in interest of Bank One, NA.

The subject loan has been in default since July 2010, and an action for foreclosure was filed November 3, 2010. Appellant filed an answer to the complaint on December 12, 2010 and subsequently filed a counterclaim alleging Tortious Interference with Prospective Contractual Relationship on December 31, 2010. Respondent filed a Motion for Partial Summary Judgment as to the Appellant's counterclaim, but the action was stayed due to Appellant filing bankruptcy before the Respondent's motion could be heard. The stay was lifted upon dismissal of the bankruptcy, and the Circuit Court granted Respondent's Motion on March 12, 2015 thereby dismissing the Appellant's counterclaim. Appellant filed a Motion to Reconsider the Circuit Court's order granting Respondent's Motion for Partial Summary Judgment. Said Motion was denied by order of the Circuit Court filed June 26, 2015. The case was then referred to the Honorable Gordon G. Cooper, Master in Equity for Spartanburg County by Order of the Circuit Court on July 21, 2015.

Respondent filed a Motion for Summary Judgment on March 6, 2017. The Master in Equity granted Respondent's Motion for Summary Judgment on May 11, 2017 finding Respondent was entitled to foreclose the subject property because the Mortgagors/Appellant breached the terms of the Note and Mortgage. Respondent proved a binding contract existed between the parties; there was a breach or unjustifiable failure to perform the contract; and damage was suffered by Respondent as a direct and proximate result of the breach. Further, Respondent is the real party in interest because the Mortgage was properly assigned to it. The Note was properly indorsed in blank, and Respondent is the current holder of the Note by virtue of it being in physical possession thereof. Thus, Respondent was entitled to enforce the Note. The property was sold at public auction on June 5, 2017.

Appellant filed a "Motion to Reconsider and Open the Case" on June 15, 2017. The Motion was heard by the Master in Equity on September 25, 2017. The Master in Equity denied Appellant's Motion based its lack of merit and untimeliness by an order filed September 27, 2017. Appellant filed his first appeal in this action on September 15, 2017 bearing Appellate Case No. 2017-001799. Said appeal was dismissed for Appellant's failure to timely serve the notice of appeal on the Respondents. Appellant has now filed this appeal purportedly based on the Order of the Master in Equity denying Appellant's Motion to Reconsider and Reopen Case.

DISCUSSION

Rule 263(b), SCACR, vests this Court with wide latitude to modify deadlines for filing any appellate material other than a notice of appeal. As the State's courts remind, procedural rules should not be rigidly enforced, but instead should be "liberally construed" in order to achieve "substantial justice." See *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962), parenthetically for the proposition that "rules of civil procedure should be liberally construed to do substantial justice").

This is a routine foreclosure matter, and Appellant did not present to the circuit court any legitimate defense to enforcing the Note and Mortgage. Appellant filed the initial Notice of Appeal in this action on October 20, 2017; however, the notice of appeal was not accompanied by the order being challenged, proof of a filed copy of notice of an appeal with the lower court, nor the requisite filing fee. Moreover, Appellant failed to order the transcript by the deadline. After two deficiency letters were issued by the court, Appellant corrected the aforementioned deficiencies and filed his first initial brief on November 15, 2017. A third deficiency letter was issued by the court regarding multiple deficiencies in the initial brief such as failure to redact sensitive information, failure to include a designation of matter, failure to sign, and failure to comply with Rule 208, SCACR. Appellant then filed a Motion for Extension of Time on December 18, 2018 without submitting the required fee for same.

On January 3, 2018, Appellant mailed Respondent the corrected Initial Brief and Designation of Matter. After receipt thereof, Respondent received a fourth deficiency letter regarding Appellant's failure to submit the requisite fee for the Motion for Extension of Time. The fourth deficiency letter stated, "[Appellant] must submit the \$25 filing fee within ten (10) days for your motion for extension, filed December 18, 2017, before the Court can accept your initial brief and designation of matter." The language in the fourth deficiency letter coupled with the absence of an Order granting Appellant's Motion for Extension of Time led Respondent to reasonably infer the service of the corrected Initial Brief and Designation of Matter was improper. In that regard, Respondent was not aware the time for serving and filing Respondent's initial brief and designation of matter had expired until receipt of a letter from the Court, dated February 12, 2018, informing Respondent of same.

The interplay between the first appeal being dismissed, the multiple filings and multiple deficiencies related thereto created confusion with respect to Respondent's filing obligations before the Court, and caused Respondent to misunderstand its filing deadlines on appeal. Respondent has been diligent in trying to protect its interests related to the loan which is the subject of the foreclosure action before Judge Cooper and this appeal. Accordingly, but for the confusion caused by the multiple filings and deficiencies related thereto, Respondent would have filed its initial brief and designation of matter within the original filing deadlines set by this Court.

Based upon the above, Respondent respectfully requests an opportunity to file its initial brief and designation of matter to include in the record on appeal. There would be no prejudice to Appellant, as the posture of this appeal has not advanced beyond the stage where Respondent would naturally file these documents. And it is important that the record be clear and that the Court be fully informed as it considers Appellant's arguments which Respondent maintains were untimely filed and have no merit.

Although a timely Motion to Reconsider would toll the time for appeal, Appellant's Motion to Reconsider was not filed within ten days of receipt of the Judgment as required by Rule 59(e). SCRPC 59(e). "A timely Rule 59(e) motion to alter or amend judgment stays the time for appeal until the appellant receives "written notice of entry of the order granting or denying such motion." *Camp v. Camp*, 662 S.E.2d 458, 378 S.C. 237 (S.C. App., 2008). Appellant's Motion to Reconsider was not filed within ten days of written notice of entry of the order granting Respondent's Motion for Summary Judgment as is required by Rule 59(e). SCRPC 59(e). The order granting Respondent's Motion for Summary Judgment was filed May 11, 2017 and served on Appellant on May 23, 2017. Appellant did not file his Motion to Reconsider until June 15, 2017. Consequently, Appellant's Rule 59(e) Motion to Reconsider was not filed timely and cannot be used to stay the time for appeal.

CONCLUSION

For these reasons, Respondent respectfully requests leave from the Court to file its initial brief and designation of matter out of time. If the Court grants this motion, Respondent respectfully requests a period of thirty days to prepare its filings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James D. Floyd', written over a horizontal line.

James D. Floyd (S.C. Bar No. 101035)

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Attorneys for Respondent

February 16, 2018

PROOF OF SERVICE

I, the undersigned, Legal Secretary of Hutchens Law Firm, LLP, Attorneys for Respondents, do hereby certify that on today's date, I served on the person(s) below a copy of the Respondent's Motion to File Brief and Designation of Matter Out of Time by depositing same in the United States Mail with sufficient postage affixed and addressed as follows:

Betty L. Tangeman
104 Riverside Lane
Duncan, SC 29334

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

Delbert R. Tangeman
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Appellant

Delbert R. Tangeman
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And Donald C. Coggins, Jr.*

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This the 16 of February, 2018.

BY: 
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