THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-in-Equity

Case No. 2012-CP-42-3027

Appellate Case No. 2017-001238

Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-W11

Respondent,

v.

Geary Thomas Dooly, Eleanor S. Dooly, and United States of America,

Defendants,

Of whom, Geary Thomas Dooly is the Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Master-In-Equity had authority and jurisdiction to grant Respondent Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc. Asset-Backed Pass-Through Certificates, Series 2004-W11's motion for summary judgment.
2. Whether the Master-In-Equity properly dismissed Appellant Geary Thomas Dooly's purported counterclaims, which were raised at summary judgment.
3. Whether this Court affirmed the Master-In-Equity's earlier dismissal of Appellant Geary Thomas Dooly's previously asserted counterclaims.

STATEMENT OF THE CASE AND FACTS

This appeal arises out of a foreclosure action resulting from default on a home mortgage. [*See generally* Mem. Mot. Summ. J., R. pp. 276–94.] As the distortions and omissions evident in Appellant Geary Thomas Dooly's ("Dooly") Statement of the Case and Facts make clear, this Appeal is another delay tactic stalling Respondent Deutsche Bank National Trust Company, as Trustee for Argent Securities, Inc. Asset-Backed Pass-Through Certificates, Series 2004-W11's ("Deutsche Bank") lawful exercise of its rights and interests in the subject property. The factual and procedural history of this matter is as follows:

On or around July 30, 2004, Dooly and his wife, Eleanor S. Dooly, executed a promissory note (the "Note") in favor of Argent Mortgage Company, LLC, for a loan of $152,800.00 secured to the real property located at 690 Zion Hill Road, Spartanburg, South Carolina (the "Property") as evidenced by a mortgage (the "Mortgage"). [R. pp. 1–2; Exs. 1 & 2; R. p. 283; Compl. ¶¶ 13–14; R. p. 44.] The Note provides that each signee "is fully and personally obligated to keep all of the promises made . . . including the promise to pay the full amount owed." [Mem. Mot. Summ.

J. Ex. 1 ¶ 8; R. p. 284.] The Note further provides that, "if I do not pay the full amount of each monthly payment on the date it is due, I will be in default." [*Id.* ¶ 6(B); R. p. 284.]

The Mortgage provides that upon default "Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument." [*Id.* at Ex. 2 ¶ 9; R. p. 60.] The Mortgage also provides that "[t]he Note or a partial interest in the Note [together with this Security Instrument can be sold . . . without prior notice to the Borrower." [*Id.* ¶ 20; R. p. 64.] The Note and Mortgage were later assigned to Deutsche Bank, which is the current holder of the Note. [*Id.* at Ex. 3; R. at 287.]

Dooly failed to make his monthly payments in accordance with his loan obligations, and the loan entered default. [*See Id.* at Ex. 4; R. p. 289.] Deutsche Bank commenced the instant foreclosure proceedings on July 19, 2012. [Compl. ¶ 24; R.pp. 46–47.] In response, Dooly asserted counterclaims for lack of standing and recoupment. [Answer; R. p. 90.] Deutsche Bank filed a Motion to Dismiss Dooly's counterclaims. The Honorable Roger L. Couch, Circuit Court Judge, granted the Motion to Dismiss, dismissed the counterclaims for failure to state affirmative claims for relief, and referred the case to the Master-In-Equity. [Jan. 10, 2013 Mot. Dismiss; R. pp. 109, 120–27; July 1, 2013 Order; R.pp. 1–6.] Dooly did not appeal this Order.

Prior to the July 1 Order, Dooly amended his Answer on July 20, 2013, and reasserted the same two counterclaims—lack of standing and recoupment—as set forth in his first Answer. [3d Am. Answer; R. p. 129.] Deutsche Bank once again moved to dismiss these counterclaims because 1) Dooly failed to state a claim for relief and 2) the unappealed July 1, 2013 Order constituted the law of the case. [*See generally* Aug. 1, 2013 Mot. Dismiss; R. pp. 250–65.]

The Honorable Gordon G. Cooper, Master-In-Equity, granted Deutsche Bank's Motion to Dismiss, finding that 1) because Dooly failed to appeal the prior order, under the law of the case

doctrine, the counterclaims were barred and 2) the counterclaims failed to state claims for relief. [Dec. 31, 2013 Order; R. pp. 7–12.]

Dooly appealed the Master-In-Equity's Order to this Court. [Jan. 30, 2014 Notice of Appeal; R. at 266.] Upon review of the record and the Parties' arguments, this Court affirmed the Master-In-Equity's Order and remitted the case back to the lower court. [*See generally* Aug. 12, 2015 Opinion; R.pp. 268–70; Sept. 9, 2015 Remittur; R. p. 271.]

On March 24, 2017, Deutsche Bank moved for summary judgment. [Mot. Summ. J.; R. pp. 275–94.] In response, Dooly filed his in "Counterclaim as Answer to Motion for Summary Judgment" (hereinafter "Response to Summary Judgment"), in which he reasserted the very same counterclaims that had been previously denied. Dooly also erroneously claimed this Court had affirmed his appeal. [R. Summ. J., *passim*; R. p. 295.]

On May 16, 2017, the Master-In-Equity conducted a hearing on the Summary Judgment Motion. During the hearing, the Master-In-Equity explained to Dooly the nature of this Court's affirmance, stating "[the Court of Appeals has] confirmed that I have jurisdiction in this case." [May 16, 2017 Tr. at 10:15-16; R. p. 364.] In regard to the purported counterclaim, the Master-In-Equity noted that "[t]he counterclaim you submitted has already been dismissed with prejudice, the entire counterclaim." [*Id.* at 5:22-23; R. p. 359.] The Master-In-Equity went on to "grant the motion for summary judgment based on the pleadings in this case [and] based on the appeal as far as the affirmation of my original Order back on December 31, 2014." [*Id.* pp. 9:23-25; R. p. 363.] Dooly appealed.

STANDARD OF REVIEW

"'A mortgage foreclosure is an action in equity.'" *Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 440–41 (2014) (quoting *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 tried by a

judge, appellate courts may find facts in accordance with their own views of the preponderance of the evidence." *Id.* (citing *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775–76 (1976)). "However, this broad scope does not relieve the appellant of his burden to show that the trial court erred in its findings." *Ballard v. Roberson*, 399 S.C. 588, 593, 733 S.E.2d 107, 109 (2012) (citing *Pinckney v. Warren*, 344 S.C. 382, 387–88, 544 S.E.2d 620, 623 (2001)). "Furthermore, [the appellate court is] not required to disregard the findings of the trial judge, who was in a better position to determine the credibility of the [evidence]." *Id.* at 593, 733 S.E.2d at 109. Thus, "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCRAP.

ARGUMENT

I. THE MASTER-IN-EQUITY HAD PROPER JURISDICTION TO HEAR AND RULE ON DEUTSCHE BANK'S MOTION FOR SUMMARY JUDGMENT

While the precise issues Dooly raises on appeal are difficult to discern, Dooly appears to challenge, once again, the jurisdiction of the Court and reassert the validity of his counterclaims. *See* Appellant Initial Br. at p. 2. Dooly's appeal is contrary to the law and facts of this case. The Master-In-Equity clearly had jurisdiction and authority to grant the Summary Judgment Motion. Jurisdiction has been affirmed time and time again, including on appeal to this Court. Pursuant to the law of the case doctrine, Dooly is precluded from rechallenging the Master-In-Equity's jurisdiction over the proceeding.

In support of jurisdiction, South Carolina law is clear: "In an action . . . for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court." Rule 53(b), SCRCP. Indeed, "[a]ctions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53." *Id.* at 71(b). "Once referred, the master or special referee shall

exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter." *Id.* at 53(c).

Moreover, the issue of the Master-In-Equity's jurisdiction has been previously decided and is now the law of the case. "The law of the case doctrine promotes judicial economy and finality. . . ." *Walker v. Kelly*, 589 F.3d 127, 137 (4th Cir. 2009). "'As most commonly defined, the doctrine [of the law of the case] posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.'" *United States v. Aramony*, 166 F.3d 655, 661 (4th Cir. 1999) (quoting *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 815–16 (1988)) (alteration in original). Accordingly, "[u]nder the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (S.C. 2009)

On July 1, 2013, Judge Couch entered an Order clearly referring the matter to a master-in-equity from the Circuit Court. [July 1, 2013 Order; R. pp. 1–6.] And on appeal, this Court affirmed the Master-In-Equity's jurisdiction. [Aug. 12, 2015 Opinion at 2; R. pp. 268–70.] Therefore, the Master-In-Equity had "all power and authority which a circuit judge sitting without a jury would have in a similar matter." Rule 53(b), SCRCP. And since this issue was addressed on appeal, Dooly "is precluded from relitigating, after an appeal, matters that were . . . raised on appeal, but expressly rejected by the appellate court." *Judy*, 381 S.C. at 458, 674 S.E.2d at 153. Accordingly, Dooly's challenge to the Master-In-Equity's authority is and remains baseless.

II. THE MASTER-IN-EQUITY PROPERLY DISMISSED DOOLY'S PURPORTED COUNTERCLAIMS

On this appeal, Dooly attempts to reassert counterclaims that have been repeatedly rejected during the course of this litigation. *See* Appellant Initial Br. at p. 2. Specifically, at summary judgment Dooly asserted counterclaims that challenge the foreclosure sale on the basis of lack of jurisdiction. [*See* Response to Summ. J., *passim*; R. p. 295.] Dooly previously asserted the same counterclaim for "declaratory and injunctive relief" alleging that Deutsche Bank lacked authority to foreclose. [*See* Answer, p. 3; R.p. 92.] Nonetheless, Dooly once again claims that the Master-In-Equity erred when he dismissed these counterclaims. However, even if these counterclaims had not been previously dismissed, they are not timely filed under the Rules of Civil Procedure for South Carolina.[1] The Master-In-Equity properly dismissed these purported counterclaims, and the court's dismissal should be affirmed.

Even a perfunctory review of this case's procedural history quickly reveals that the Master-In-Equity's Order should be affirmed. When first asserted, Judge Couch dismissed Dooly's counterclaims because they failed to state affirmative claims for relief. [July 1, 2013 Order; R. p. 6.] Dooly did not appeal Judge Couch's Order. As stated above, "[a]n unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal." *Judy*, 381 S.C. at 459, 674 S.E.2d at 153. Thus, when Dooly attempted to reassert these counterclaims, the Master-In-Equity properly held that the counterclaims were barred by the law of case doctrine. [Dec. 31, 2013 Order; R. p. 11.] Dooly appealed, and this Court affirmed the Master-In-Equity's finding. [Aug. 12, 2015 Opinion; R. p. 268.]

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[1] Pursuant to Rule 13(f): "When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, **he may by leave of court** set up the counterclaim by amendment." (Emphasis added). Dooly never requested leave of court to assert these purported counterclaims.

Not to be deterred, Dooly has once again attempted to assert these counterclaims during summary judgment. Dooly even admits that he is reasserting his counterclaims. *See* Appellant Initial Br. at p. 5 ("The Plaintiff was allowed to not be required to file Appellant's answer to Motion of Summary Judgment by accepting the statement from Attorney that filing was 'only' a restatement of previous counterclaims, whereas some were and some were not."). In accordance with Judge Couch's ruling, this Court's ruling and the Rules of Civil Procedure for South Carolina, the Master-In-Equity properly dismissed Dooly's counterclaims. Therefore, Dooly's appeal should be denied and the Master-In-Equity's grant of summary judgment should be affirmed.

III. DOOLY'S CLAIM THAT THIS COURT DID NOT AFFIRM THE MASTER-IN-EQUITY'S PRIOR DISMISSAL IS WITHOUT MERIT

This Court's previous ruling clearly affirmed the Master-In-Equity's Order. Dooly, however, attempts to muddy the waters claiming that "the ruling by Court of Appeals [is] nebulous, particularly to someone not trained in law, in that, it clearly states that my appeal of 3 specific items is AFFIRMED, and never once says denied, nor says explicitly what was AFFIRMED[.]" Appellant Initial Br. at p. 2.

Essentially, Dooly relies on his *pro se* status to circumvent this Court's previous ruling. While some grace is extended to *pro se* litigants "like all other litigants, [*pro se litigants*] must comply with substantive and procedural courtroom rules" because "self-representation is not a license to ignore 'relevant rules of procedural and substantive law.'" *United States v. Beckton*, 740 F.3d 303, 306 (4th Cir. 2014) (quoting *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975)). When a litigant decides to proceed without counsel "he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel." *Faretta*, 422 U.S. at 834–35.

The Master-In-Equity explained to Dooly that he was "misreading the Order from the Appellate Court" and that this Court "affirmed [the] Order dismissing [Dooly's] counterclaims."

[June 19, 2017 Tr., pp. 4, 7; R. pp. 358, 361.] Nevertheless, Dooly continues to submit arguments demonstrating that he "do[es] not interpret this document that way." [*Id.* at p. 7; R. p. 361.] Dooly's self-serving interpretation is irrelevant. His "self-representation is not a license to ignore relevant rules of procedural and substantive law." *Beckton*, 740 F.3d at 306. This Court affirmed the Master-In-Equity's Order that dismissed his counterclaims with prejudice and remitted the case back to the lower court. [*See generally* Aug. 12, 2015 Opinion; R. pp. 268–70; Sept. 9, 2015 Remittur; R. p. 271.] This Court's Order was clear. Further the Master-In-Equity explained the Order to Dooly. Therefore, Dooly's appeal should be denied and the Master-In-Equity's grant of summary judgment should be affirmed.

IV. DOOLY'S CLAIMS ARE NOT PRESERVED FOR APPELLATE REVIEW

A. The Master-in-Equity Did Not Rule on Several Issues Raised by Dooly in This Appeal; Therefore They Are Not Preserved for Appellate Review and Dooly's Appeal Should be Denied

Dooly raises several issues that were not raised or ruled on by the Master-In-Equity. As such, these issues were not preserved for appellate review. Specifically, Dooly asserts the following issues and/or arguments, which were not raised or ruled upon by the Master-In-Equity:

1. Whether there was "fraud, deception, and bad faith facts through the subject case;"

2. Whether Deutsche Bank failed to "establish authority and jurisdiction to act on behalf of Deutsche Bank National Trust Company;"

3. Whether Deutsche Bank failed "to reply, defend, or comply in a timely fashion with the allegations presented in [Dooly's] Answer to Motion for Summary Judgment;"

4. Whether the Master-In-Equity "focus[ed] the hearing on the erroneous statement of Counsel that the points of [Dooly's] Answer to Motion for Summary Judgment 'are just restatements of the counterclaim already dismiss;'"

5. Whether the Master-In-Equity "act[ed] in bad faith by continuing the case after [Dooly] stated that he was the living man;"

6. Whether the Master-In-Equity knew and understood that he "[was] the surety in this case and that the living man standing before him [was] the Beneficiary;"

7. Whether the Master-In-Equity "ignore[d] and pretend[ed] that he was not conducting a Military Court under a military flag posted in his courtroom, by ignoring the statement that is 'on the court record;'"

8. Whether the Master-In-Equity and the attorney of record "act[ed] in bad faith by ignoring and failing to answer or address" the issue of jurisdiction over Dooly;

9. [omitted][2]

10. Whether it was an "act of bad faith" by Deutsche Bank's attorney to "fail to respond to [Dooly's] Answer;"

11. Whether this Court's previous ruling was "nebulous, particularly to someone not trained in law;" and

12. Whether there is a serious need to fully document with proof to the Master-In-Equity, the Court, the public, and all positions of government that [Dooly] is . . . a living man, is not dead, is not the surety in any case."

Appellant Initial Br. at pp. 2-3.

"'It is an axiomatic rule of law that issues may not be raised for the first time on appeal.'" *State ex rel. Wilson v. Ortho-Mcneil-Janssen Pharms.*, 414 S.C. 33, 83 n.33, 777 S.E.2d 176, 202 n.33 (2015) (quoting *Talley v. South Carolina Higher Educ. Tuition Grants Comm.*, 289 S.C. 483, 487, 347 S.E.2d 99, 101 (1986)). Each issue "'must have been raised to and ruled upon by the trial court to be preserved.'" *Buist v. Buist*, 410 S.C. 569, 574, 766 S.E.2d 381, 383 (2014) (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006)). "Prohibiting an appellant from raising an issue for the first time on appeal ensures that the trial court is able 'to rule properly after it has considered all relevant facts, law, and arguments.'" *State v. Cope*, 405 S.C. 317, 339, 748 S.E.2d 194, 205 (2013) (quoting *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2012)).

[2] Issue 9 is not a separate issue for appeal, merely a commentary on Issue 8.

Dooly's appeal raises several issues, which even when liberally construed were neither presented before nor ruled on by the Master-In-Equity. Therefore, they were not preserved for appellate review and cannot be addressed by this Court.

B. Dooly Failed to Sufficiently Argue His Claims and Has Not Cited Any Legal Authority in Support of His Claims; Therefore, They Are not Preserved for Appellate Review and Dooly's Appeal Should be Denied

Further, the Court should deny Dooly's appeal based on his failure to sufficiently argue or cite any legal authority in support of his arguments.

Where an "appellant fails to provide arguments or supporting authority for his assertion," "he is deemed to have abandoned this issue." *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). "Mere allegations of error are not sufficient to demonstrate an abuse of discretion. On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling." *Id.*; *Tirado v. Tirado*, 339 S.C. 649, 655, 530 S.E.2d 128, 131 (Ct. App. 2000) (holding that an issue which is not supported by authority or sufficiently argued is not preserved for appellate review).

Here, Dooly fails to cite to any authority in support of his arguments on appeal. The two cases referenced in his "Facts" section do not apply to any argument on appeal. Rather Dooly cites these two cases in support of his proposition that when proceeding *pro se* on appeal the Court must construe liberally all his pleadings. Appellant Initial Br. at p. 4 (citing *Hanes v. Kerner*, 404 U.S. 520 (1972) (regarding a prisoner's *pro se* lawsuit); *Birl v. Estelle*, 660 F.2d 592 (5th Cir. 1981) (discussing a defendant's *pro se* habeas corpus action)). Neither of these cases applies to the issues raised by Dooly's appeal.

The only other case cited by Dooly is *Presbyterian Church of Carlyle v. St. Louis Union Trust Co.*, 18 Ill. App. 3d 713 (1974). He cites this case to support his argument that it must be documented that he is "a living man and that there is no presumption that he is dead." Appellant

Initial Br. at p. 7. In fact, this case sets forth factors that give rise to a presumption of death under Illinois law. *Presbyterian Church of Carlyle*, 18 Ill. App. 3d at 720. At best, this case is inapplicable to the instant case.

Accordingly, because Dooly failed to cite to any legal authority, he has failed to preserve all issues raised on appeal, and his appeal should be denied.

CONCLUSION

For the reasons stated above, Deutsche Bank respectfully requests that the Court affirm the Master-In-Equity's grant of summary judgment in its favor and deny Dooly's appeal. Dooly's challenges to the foreclosure have previously been evaluated, dismissed, and affirmed on appeal by this Court, thus becoming law of the case. Dooly's mischaracterization of this Court's affirmation of the motion to dismiss and his attempt to assert new arguments on appeal do not justify overturning the lower court's decision. The undisputed facts in the record show that the Master-In-Equity had jurisdiction and Dooly's counterclaims were properly dismissed.

Dated: February 22, 2018

By: _____

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SCACR RULE 211(b) CERTIFICATE OF COMPLIANCE

The undersigned counsel for Respondent hereby certifies that Respondent's Final Brief complies with SCACR Rule 211(b).

February 22, 2018

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