

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master in Equity

RECEIVED

MAR 01 2018

SC Court of Appeals

Case No.: 2016-CP-02-02033

Appellate Case No.: 2017-002060

CitiMortgage, Inc., Respondent,

v.

Mary L. Moxley a/k/a Mary Moxley n/k/a Mary Richardson;
Hudson & Keyse LLC; First Manufactured Housing Credit
Corporation who acquired First Carolina Financial Corporation;
And South Carolina Department of Motor Vehicles, Defendants,

Of whom Mary L. Moxley is the Appellant.

FINAL BRIEF OF APPELLANT

Tom G. Woodruff, Jr.
220 Richland AV, W.
Aiken, South Carolina 290801
Phone: 803-649-1910
Email: tw@aikenlaw.com
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
ARGUMENT	
I. BECAUSE THERE WAS INSUFFICIENT EVIDENCE OF THE APPELLANT EVER SIGNING THE MORTGAGE, THE MASTER IN EQUITY ERRED IN FINDING THE APPELLANT DID SIGN THE MORTGAGE	4
II. BECAUSE THE APPELLANT MARY L. MOXLEY NEVER SIGNED THE MORTGAGE, THE MASTER IN EQUITY ERRED IN ORDERING THE SALE OF THE MOBILE HOME AND THE LAND	7
CONCLUSION	7

TABLE OF AUTHORITIES

Cases	Page
<u>State v. Buyers Service Co., Inc.</u> , 292 S.C. 426, 357 S.E.2d 15 (1987)	3
<u>Wachovia Bank, Nat. Ass'n v. Blackburn</u> , 407 S.C. 321, 328, 755 S.E.2d 437, 440 (2014)	4
<u>Hayne Fed. Credit Union v. Bailey</u> , 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997)	4

STATEMENT OF ISSUES ON APPEAL

I. BECAUSE THERE WAS INSUFFICIENT EVIDENCE OF THE APPELLANT EVER SIGNING THE MORTGAGE, THE MASTER IN EQUITY ERRED IN FINDING THE APPELLANT DID SIGN THE MORTGAGE.

II. BECAUSE THE APPELLANT NEVER SIGNED THE MORTGAGE, THE MASTER IN EQUITY ERRED IN ORDERING THE SALE OF THE MOBILE HOME AND THE LAND.

STATEMENT OF THE CASE

The issue in this case involves whether the Appellant Mary L. Moxley, ever signed the mortgage, which is the subject of this foreclosure action.

This action began as a foreclosure action against property (which consists of a double-wide mobile home and approximately five acres of land located in Aiken County, South Carolina), which was conveyed to William C. Moxley, Jr. and Mary L. Moxley, as joint tenants with right of survivorship, on November 5, 1998 (and recorded on December 11, 1998); it is further uncontested, William C. Moxley, Jr., died testate on February 21, 2013; therefore, full ownership of the property, is now vested in Mary L. Moxley.

On September 29, 2000, William C. Moxley, Jr., signed a note and mortgage in favor of ABN AMRO Mortgage Group, Inc. (the predecessor in interest to CitiMortgage), relating to the double-wide mobile home and land; it is uncontested, the Appellant Mary L. Moxley never signed the note; it is further uncontested, a signature purporting to be of "Mary L. Moxley" is affixed to the mortgage, but the Appellant Mary L. Moxley has consistently throughout this litigation, denied ever signing the mortgage; and, it is additionally uncontested, the "probate

clause” of the mortgage does not indicate the witness (nor the notary) witnessed “Mary L. Moxley” sign the mortgage; it is further uncontested, the probate clause for William C. Moxley’s signature indicates the document was signed in Richland County, South Carolina, and purports to have been witnessed by two individuals who worked with the Ratchford Law Firm based in Columbia, South Carolina, being Mr. John Ballentine and Ms. Tracy Kirkpatrick.

The Respondent instituted a foreclosure action against the Appellant Mary L. Moxley and the estate of her deceased husband, William C. Moxley, Jr., on February 4, 2013.

The Appellant Mary L. Moxley, individually and in her capacity as the Personal Representative of her husband’s estate, filed a timely Answer and Counterclaim against the Respondent on March 6, 2014.

In the Answer and Counterclaim of the Appellant Mary L. Moxley, she denied ever signing the mortgage in question. In the Response to the Respondent’s Request to Admit, the Appellant Mary L. Moxley denied ever signing the mortgage (and, it is not contested by the Respondent, the Appellant Mary L. Moxley never signed the note). The Appellant Mary L. Moxley also filed a sworn Affidavit relating to a motion for summary judgment, wherein the Appellant Mary L. Moxley again denied signing the mortgage.

At trial on April 10, 2017, the Respondent called as a witness, one of the purported witnesses to the mortgage, being Mr. John Ballentine; Mr. Ballentine testified he went to work for the Ratchford Law Firm¹ in the year 2000, and despite having never had any legal training,

¹ This law firm is sometimes referred to as “Ratchford and Mayes.”

he was immediately given the title of “paralegal.” (R.p. 169, line 11 - p. 170, line 3.) Mr. Ballentine indicated his job function at the law firm was to travel around the state of South Carolina and witness mortgages, which the firm was closing.² (R.p. 170, lines 7-10.) Mr. Ballentine testified there was never a lawyer with him, when he traveled the state of South Carolina to conduct closings. (R.p. 172, lines 17-20.) Mr. Ballentine further testified he traveled to Aiken, South Carolina on numerous occasions, and there would not be a second witness available; he further testified when a second witness was unavailable, he would travel back to Columbia to the law firm he worked for, and Ms. Tracy Kirkpatrick would regularly witness the mortgage (despite having not ever been present when the mortgage was signed); Mr. Ballentine further testified, he never traveled the state with anyone else from his law firm (i.e., with Ms. Tracy Kirkpatrick). (R.p. 172, lines 17-20.) Based upon the full testimony of Mr. Ballentine, it would have been impossible for the Mr. Ballentine and Ms. Kirkpatrick to have ever been in a position to have witnesses the mortgage. (R.p. 181, line 3 - p. 183, line 19.)³

The original loan amount of the note and the mortgage in 2000, was \$69,700.00; the testimony indicated the mortgage was up to date as of June, 2013 (four months after the death of William Moxley, Jr.); the amount now claimed by the Respondent which was due on the mortgage and the note at the time of the Master in Equity hearing was \$91,574.84.

² For purposes of this brief, the implications of a non-lawyer closing loans is not being addressed, as counsel and this Court are accurately aware of the implications of State v. Buyers Service Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987).

³ It is noted Mr. John Ballentine, after leaving his employment with the Ratchford firm, went to work for Sturkie Mortgage in Lexington, South Carolina. Mr. Ballentine is no longer in either the legal field, nor the mortgage brokerage business, and is employed in the finance area at a Columbia based hospital.

At the hearing before the Master in Equity for Aiken County, Mr. Ballentine was subpoenaed by CitiMortgage. It was at the trial, that Appellant's attorney first ever became aware of the fraudulent witnessing of the mortgage, and it is now contended the mortgage was signed by the Appellant Mary Moxley in Aiken County, South Carolina. Additionally, although the Respondent CitiMortgage would have presumably had the original mortgage in their possession during the pendency of this action, there was not testimony ever introduced as to any type of expert handwriting analysis of the purported signature.

ARGUMENTS

I. BECAUSE THERE WAS INSUFFICIENT EVIDENCE OF THE APPELLANT EVER SIGNING THE MORTGAGE, THE MASTER IN EQUITY ERRED IN FINDING THE APPELLANT DID SIGN THE MORTGAGE.

The Master in Equity, in his Order from the hearing, made a finding in paragraph five (5), page 11, of his Order, the Appellant did sign the mortgage, and the mortgage was subject to foreclosure, and did order the mobile home and the land sold at public auction at the Aiken County Courthouse.

The standard for review by this Court, is, "a mortgage foreclosure is an action in equity." Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d 437, 440 (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.* At 328, 755 S.E.2d at 441.

In this matter, the Appellant has consistently stated she never signed the mortgage. *See*: Answer and Counterclaim of the Appellant Mary L. Moxley (R.p. 25 - p. 32); *See also*, Affidavit of Appellant Mary L. Moxley (R.p. 625 - 627), submitted relating to CitiMortgage's Motion for Summary Judgment. *See also*, Deposition of Appellant Mary L. Moxley, (R.p. 683, line 13 - p. 685, line 23).

At all times until the trial in this matter, the Appellant and her counsel were led to believe the mortgage was signed, witnessed and notarized in Richland County, South Carolina. It was not until the presentation of the subpoenaed witness Mr. Ballentine, for CitiMortgage at trial, that Appellate was ever put on notice a claim would be made the mortgage was not signed in Richland County, but a claim it was signed in Aiken County, by a non-lawyer who was holding himself out as a paralegal. And, the argument of CitiMortgage at trial, was when there were no other witnesses available, Mr. Ballentine would then return to the law office he worked for in Richland County, and have a co-employee fraudulently witness the mortgage. (R.p. 147, line 6 – p. 196, line 6).

In the Master in Equity Order, again at his finding number five, page 11 of the Order (R.p. 11), the Master indicated he made his determination the Appellant did sign the mortgage by a preponderance of the evidence, based on the following four factors: a) the Appellant did make one payment after the death of her husband; b) the procedure described by the non-lawyer Mr. Ballentine as to his fraudulent witnessing and notarizations of the mortgage; c) the Appellant's testimony as to her memory (which resulted from the stress of hearing the gunshot and discovering her husband had committed suicide while she prepared lunch for him at their home);

and, d) the changes in her signature and what the Master in Equity contends was a differences in her deposition and trial testimony.

As to the payment after the death of her husband, the Appellant testified she made one payment, and this payment was only made after she was badgered by CitiMortgage numerous times for the payment.

As to the procedure described by the non-lawyer Mr. Ballentine, it is clear he engaged in a conspiracy involving the unauthorized practice of law, and the fraudulent and illegal witnessing of numerous mortgages in this state, and upon his leaving the law firm he was working for, he went to work for the same mortgage company which originated this loan (i.e., Sturkie Mortgage Company).

As to the Appellant's testimony as to her memory, it would be perfectly normal to have memory problems during the time period after suffering the stress of preparing her husbands lunch, hearing a gunshot, running into the den and finding your husband had shot himself with a handgun. Deposition of Appellant Mary L. Moxley, May 26, 2016. (R.p. 690, line 22 - p. 692, line 24).

The last item stated by the Master in Equity relating to the apparent finding of the Master in Equity, as to purported changes in the Appellant's signature and what the Master in Equity contends was a differences in her deposition and trial testimony; as to these contentions, the Appellant explained the minor differences in her signature. Also, the Respondent CitiMortgage would have presumably had the original mortgage in its possession during the pendency of this action, there was not testimony ever introduced as to any type of expert handwriting analysis of

the purported signature. Had CitiMortgage had any questions as to the validity of the signature, then surely they would have had ample opportunity to do so.⁴

II. BECAUSE THE APPELLANT MARY L. MOXLEY NEVER SIGNED THE MORTGAGE, THE MASTER IN EQUITY ERRED IN ORDERING THE SALE OF THE MOBILE HOME AND THE LAND.

The Master in Equity erred in Ordering the sale of the mobile home and land, as there was never any valid mortgage wherein the Appellant signed the mortgage.

CONCLUSION

The trial court erred in finding by a preponderance of the evidence, the Appellant Mary L. Moxley signed the mortgage. A foreclosure action is an action in equity, and this Court has the right to make a determination of the facts in accordance with its own views of the preponderance of the evidence.

The fraudulent activity of Mr. Ballentine by his admitted actions involving a significantly large number of mortgages in this state, borders on unconscionable. It is clear, the Appellant Mary L. Moxley has at all times in this litigation denied ever signing the mortgage which is the subject of this foreclosure.

Further, when a mortgage(nor a note) is not signed by a party, the Court has not authority to Order the sale of the property.

⁴ CitiMortgage did present at trial, Ms. Patsy Judd, who testified she was a Business Operation Analyst, with CitiMortgage, based in Arizona. She further testified she flew from Arizona, to South Carolina, to testify at the trial. She also testified she was not specifically familiar with the requirements for a valid mortgage in South Carolina. (R.p. 126, line 9 – p. 127, line 10).

For the reasons stated, this Court should make a judicial finding the Appellant Mary L. Moxley never signed the mortgage, and should Order the sale of the land and mobile home vacated.

Respectfully submitted,

February 26, 2018

s/ Tom G. Woodruff, Jr.
Tom G. Woodruff, Jr.
220 Richland AV, W.
Aiken, South Carolina 290801
Phone: 803-649-1910
Email: tw@aikenlaw.com
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAR 01 2018
SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master in Equity

Case No.: 2016-CP-02-02033

Appellate Case No.: 2017-002060

CitiMortgage, Inc., Respondent,

v.

Mary L. Moxley a/k/a Mary Moxley n/k/a Mary Richardson;
Hudson & Keyse LLC; First Manufactured Housing Credit
Corporation who acquired First Carolina Financial Corporation;
And South Carolina Department of Motor Vehicles, Defendants,

Of whom Mary L. Moxley is the Appellant.

CERTIFICATE OF COUNSEL

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

February 26, 2018

s/ Tom G. Woodruff, Jr.
Tom G. Woodruff, Jr.
220 Richland AV, W.
Aiken, South Carolina 290801
Phone: 803-649-1910
Email: tw@aikenlaw.com
Attorney for Appellant