

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas  
Richard L. Booth, Master in Equity

Appellate Case No. 2018-000197

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DLJ Mortgage Capital, Inc.....Respondent,

v.

Ameer A. Amin .....Appellant.

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**INITIAL BRIEF OF THE RESPONDENT**

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Dated: July 6, 2018

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER IN EQUITY ERR IN GRANTING RESPONDENT'S WRIT OF ASSISTANCE?

## STATEMENT OF THE CASE

Respondent, DLJ Mortgage Capital, Inc filed the instant action seeking foreclosure of property owned by Appellant, Ameer A. Amin, and located in Sumter County, South Carolina on February 11, 2014. The foreclosure is based upon Appellant's failure to make payments required by the terms of his mortgage. (Complaint pp. 1-4). Respondent ultimately prevailed on its cause of action for foreclosure and obtained a Writ of Assistance to evict Appellant from the subject property. Appellant appealed the previous Writ of Assistance (SC Appellate Court Case 2015-001341) as well as the Master's denial of his Motion to Vacate Sale and Set Aside Summary Judgment. This Court affirmed the Master's denial of Appellant's motions and the Master's issuance of a writ of assistance in an unpublished opinion filed July 26, 2017. The case was remitted to the circuit court on August 11, 2017. Following the Remittitur, Respondent sought and obtained a new Writ of Assistance and Appellant filed a renewed Motion to Set Aside Sale and Vacate Summary Judgment. The Master denied appellant's motion and Appellant now appeals the renewed Writ of Assistance and Order denying his motion.

## FACTS

Appellant made, executed and delivered a note, dated November 24, 2009, promising to pay to the order of GMAC Mortgage, LLC the sum of \$ 87,500.00 with an interest rate of 5.625% per annum. (Master in Equity's Order and Judgment of Foreclosure and Sale p. 2.) To better secure payment of the note, Appellant made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for GMAC Mortgage, LLC encumbering real property located in Sumter County. (Id.) The mortgage was recorded December 2, 2009 in the Sumter County Registry in Book 1132, Page 3288. (Id.) Thereafter, the Mortgage was assigned to GMAC Mortgage, LLC Successor by Merger to GMAC Mortgage Corporation by assignment recorded on December 2, 2011 in Book 1163 at Page 1870. (Id.) Thereafter, the Mortgage was assigned to Respondent by assignment recorded on May 20, 2014 in Book 1201 at Page 002821. (Id.) Respondent is the holder of the note and mortgage. (Id.) On February 11, 2014, Respondent filed a Complaint for mortgage foreclosure against Appellant as a result of his failure to pay on the mortgage for the installments due June 1, 2013 and thereafter. (Complaint p. 3.) On February 11, 2014, a process server served Appellant with a copy of the Summons and Complaint. (Affidavit of Service p. 1.)

Appellant filed and served an answer on February 24, 2014. (Response to Summons and Complaint Acceptance p. 1, Claim Reduced to Summary Judgment p. 1, and Notice of Settlement p. 1.) On May 8, 2014, the Clerk of Court for Sumter County entered an Order of Reference referring this matter to The Honorable Richard L. Booth, as Master in Equity. (Order of Reference

p. 1.) The Order of Reference authorizes the Master in Equity to dispose of any and all issues and enter a final judgment in the cause, without further order of court, to order a judicial sale on any day, not just a regular judicial sales day and to hear any issues and make any orders after sale or judgment, including but not limited to, issues involving surplus funds pursuant to Rule 71(c) SCRCP, Petitions or Motions relating to Writ of Assistance or any other actions as to possession, and/or removal or property, and issues pursuant to appraisal proceedings under S.C. Code Ann. Section 29-3-680, et seq. (1976 SC Code of Law, as amended). On May 15, 2014, Appellant filed an objection to the order referring this case to the Master in Equity. (Objection to Order of Reference p. 1.) Thereafter, Appellant filed a motion dismissing the case on July 21, 2014. (Motion to Dismiss p. 1.) On October 2, 2014, Respondent filed an affidavit asserting Appellant's Debt. (Affidavit of Indebtedness p. 1.) Subsequently on October 10, 2014, a Motion for Summary Judgment was filed on behalf of Respondent. (Motion for Summary Judgment p. 1.) A Notice of Hearing was sent October 21, 2014, informing the defendant that a hearing on Plaintiff's Motion for Summary Judgment was scheduled for November 20, 2014. (Notice of Hearing on Plaintiff's Motion for Summary Judgment p. 1.) Two days prior to the Motion for Summary Judgment Hearing, Appellant filed an Affidavit of No Original Note along with a Request for Settlement. (Affidavit of No Original Note p. 1, and Request for Settlement p. 1.) On November 20, 2014 the Court ruled in favor of Respondent and issued a judgment of foreclosure and sale, finding that Respondent was the holder of the subject note and mortgage, that Appellant had failed to make payments required by the note, and that the total debt secured by the note and mortgage was

\$97,192.36. (Master in Equity's Order and Judgment of Foreclosure and Sale pp. 2-7.) The Respondent produced the original note for the Court's and the Appellant's inspection at the hearing on November 20, 2014. (Transcript of November 20, 2015 hearing, P. 7)

Nearly a month after the judgment, Appellant filed a Notice of Constitutional Challenge Brief along with a Notice of Constitutional Challenge Rule 5(1) and Injunction. (Notice of Constitutional Challenge Brief p. 1, and Notice of Constitutional Challenge Rule 5(1) and Injunction p. 1.) The property was sold back to the Respondent on February 2, 2015. (Master's Report on Sale p. 1.) A Master in Equity's Foreclosure deed was recorded February 25, 2015 in Book 1209 at Page 00900.

In response to the Master's Report on Sale, Appellant filed two motions to vacate the judgment and sale (Motion to Vacate Judgment and Sale filed February 17, 2015; Amended Motion to Vacate Judgment and Sale filed March 27, 2015.) A hearing on Appellant's motion was scheduled for April 21, 2015. (Amended Notice of Hearing on Defendant's Motion to Vacate Judgment and Sale p. 1.) Prior to Defendant's Motion to Vacate Judgment Hearing, on April 9, 2015, Appellant filed a motion to continue the hearing due to "unforeseen events occurring". (Motion for Request to Reschedule p. 1.) All three of Appellant's motions were denied by the court:

"... I am going to deny the motion to vacate as stated both in the original motion and the amended motion. And I am going to deny the request to reschedule as nothing in any of the documentation provided to the Court explain any reason that he should not – could not attend or be excused from attending his own motion. He merely referred to unforeseen circumstances and I do not believe that rises to the level of proof to a Court that a previously scheduled motion should be continued or be rescheduled without viable evidence."

(Transcript of April 21, 2015 Hearing p. 4.)

An order denying Appellant's motions was entered on May 12, 2015. (Order Denying Defendant's Motion to Vacate Judgment and Sale and Motion to Continue pp. 1-2.) The writ of assistance was filed on June 10, 2015. (Writ of Assistance pp. 1-2.)

On June 23, 2015, Appellant filed an Amended Notice appealing the Writ of Assistance signed by the Honorable Richard L. Booth. (Amended Notice of Appeal p. 2.)

Beginning on February 21, 2014, Appellant began submitting and filing documents in this matter that are in the nature of "sovereign citizens" type pleadings. Appellant's filings all appear to be sham pleadings on their face. The Response to the Summons and Complaint, Claim Reduced to Summary Judgment and Notice of Settlement was filed on February 21, 2014 and is the first example of the sham pleadings filed by Appellant. The case was subsequently referred to the Honorable Richard L. Booth, Master in Equity for Sumter County. (Order of Reference p. 1.) On November 20, 2014, summary judgment was granted in favor of Respondent and the subject property was ordered to be sold at public auction. (Master in Equity's Order and Judgment of Foreclosure and Sale pp. 4-7.)

On December 18, 2014, Appellant filed a Notice of Constitutional Challenge Brief along with a Notice of Constitutional Challenge Rule 5(1) and Injunction. (Notice of Constitutional Challenge Brief p. 1, and Notice of Constitutional Challenge Rule 5(1) and Injunction p. 1.) The foreclosure sale was held on January 5, 2015 and the Master's Report of Sale was filed on February 2, 2015.

On February 17, 2015, Appellant filed a Motion to Vacate Judgment and Sale. Thereafter, on March 27, 2015, Appellant filed an Amended Motion to Vacate Judgment and Sale.

A hearing on Appellant's motions was scheduled for April 21, 2015 (Notice of Hearing filed on April 1, 2015). On April 9, 2015, Appellant filed a Motion to Request to Reschedule (Motion for Continuance). On May 12, 2015, all of Appellant's motions were denied. (Order Denying Defendant's Motion to Vacate Judgment and Sale and Motion to Continue pp. 1-2.). A Writ of Assistance was filed by the Master in Equity on June 10, 2015 directing the Sumter County Sherriff to evict or remove Appellant and any individuals occupying the property along with their possessions. (Writ of Assistance filed June 10, 2015).

Appellant appealed the Master in Equity's denial of his motions as well as the issuance of a Writ of Assistance (SC Appellate Court Case 2015-001341). The Court of Appeals affirmed the Master's denial of Appellant's motions and the Master's issuance of a writ of assistance in an unpublished opinion filed July 26, 2017. The case was remitted to the circuit court on August 11, 2017.

Following the remittitur, Respondent sought a new eviction date (Petition for Rule to Show Cause filed October 18, 2017). Appellant issued a Response to the updated Petition on November 6, 2018 which set forth further "sovereign citizens" type arguments (Response to Rule to Show Cause and Opposition to Petition for Ruel to Show Cause). On November 13, 2017, The Master in Equity issued an Amended Rule to Show Cause and scheduled a hearing for December 19, 2017 (Amended Rule to Show Cause). On November 20, 2017, Appellant filed a new Motion to Set Aside Sale and Vacate Judgment and again made "sovereign citizens" type arguments (Motion to Set Aside Sale and Vacate Summary Judgment). It bears noting that Appellants arguments related

to his “constitutional challenge” was specifically addressed in section 3 of this Court’s July 26, 2017 Opinion. Appellant also filed a Response to the Amended Rule to Show Cause (Response to Amended Rule to Show Cause and Opposition to Petition for Rule to Show Cause). Following the December 19, 2017 hearing, the Master issued a Writ of Assistance (Writ of Assistance filed January 18, 2018) and an Order denying Appellant’s motion (Order Denying Defendant’s Motion to Set Aside Sale and Vacate Summary Judgment filed January 18, 2018). The lockout date was set for January 30, 2018. Notwithstanding, as of July 6, 2018, the lockout has not occurred and appellant unlawfully remains in possession of the subject property. Appellant filed the instant appeal on January 22, 2018.

### STANDARD OF REVIEW

“A mortgage foreclosure is an action in equity.” *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, the appellate court may find facts in accordance with its own view of the preponderance of the evidence.” *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008). Nevertheless, “the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings.” *U.S. Bank Trust Nat. Ass’n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) (quoting *Pinkney v. Warren*, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623). The Court may affirm the trial court's ruling for any ground appearing in the record.

SCA CR 220(c); See also *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

## ARGUMENT

1. THE MASTER IN EQUITY PROPERLY DENIED APPELLANT'S MOTION AND ISSUED THE RENEWED WRIT OF ASSISTANCE.

Appellant has exhibited the behavior of filing a series of sham pleadings and “sovereign citizens” type filings throughout this foreclosure. Appellant filed his first sham pleading on February 21, 2014, labeled as a response to the summons and complaint. The documents included in the responses are titled: acceptance, claim reduced to summary judgment, and notice of settlement. These pleadings are nonsensical and allege inaccurate law. Prompted by Respondent’s motion for summary judgment filing, Appellant filed further sham pleadings labeled Affidavit for request for settlement and Affidavit of no original note. The purported Affidavits are nonsensical, lack the legal necessities to render an affidavit valid, and state facts that are wholly untrue.

Present at the Respondent’s motion for summary judgment hearing were Caroline Glenn, counsel for Respondent, and Appellant, pro se. Based on the Court’s finding that there were no genuine issues of material fact, the South Carolina Rules of Civil Procedure, affidavits, and upon inspection of the original note, the motion for summary judgment was granted:

“...I want to note the file that Appellant has participated to the maximum degree a pro se Defendant possibly can. He has done so without the benefit of counsel and

appears to me, given the substance and composition of the documents he has filed with the Court. I have read them, and I take note of them, but I do not find them dispositive or responsive of the allegations set forth in the Complaint. And therefore, I believe that it is proper at this time to grant the Motion for Summary Judgment for the Plaintiff. And I shall do so.”

(Transcript of hearing, November 20, 2014, Page 8).

An unappealed ruling is the law of the case and requires affirmance. *Shirley's Iron Words v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013); See also *In re Thames*, 344 S.C. 564, 573, 544 S.E.2d 854, 858 (Ct. App. 2001) (“The unappealed decision of the trial court, right or wrong, is the law of the case.”).

It is unclear from the Appellant’s brief what the issues are on appeal. Appellant appears to misunderstand that this Court’s July 26, 2017 opinion, affirming the Master’s denial of Appellant’s previous motion to Set Aside Sale and Vacate Judgment and issuance of a Writ of Assistance as somehow granting him the relief sought in his prior appeal. Appellant appears to believe that the opinion affirming the Master’s prior rulings somehow serves as an impediment to Respondent obtaining an updated Writ of Assistance. Appellant’s misunderstandings do not create a legally cognizable basis for relief.

The Master in Equity acted properly and within his discretion in issuing the renewed Writ of Assistance and denying Appellant’s renewed Motion to Set Aside Sale and Vacate Judgment.

“In instances in which the mortgagor or someone else living on the property at the time of the sale is not the successful bidder and refuses to vacate the premises, the appropriate common law

remedy for the successful purchaser is a writ of assistance.” 27 S.C. Jur. Mortgages §142. The issuance of a writ of assistance rests in the sound discretion of the trial court. See *Griggs v. Griggs*, 205 S.C. 272, 274, 31 S.E.2d 505, 505 (1944). The object of a writ of assistance is to take “possession [of property] from a party whose rights have been determined by the suit in which the sale [of property] was ordered.” *Id.* at 275, 31 S.E.2d at 506 (citation omitted). A writ of assistance is “issued only when the right is clear and free from doubt – when there is no equity or appearance of equity in defendant, and when the decree, and the sale and proceedings thereunder, are beyond suspicion...” *Id.* at 274-75, 31 S.E.2d at 505-06 (quoting 5 C.J., §4 at 1317).

The Order of Reference left with the Master in Equity the authority to issue writs of assistance. The Master in Equity properly exercised his authority based upon the foreclosure sale of the property to Respondent and resulting Master in Equity’s deed. By virtue of the deed, Respondent had the right to a writ of assistance giving Respondent possession of the property. Nothing asserted in Appellant’s prior appeal or current appeal legitimately challenges the issuance of the writ of assistance.

Furthermore, Appellant cited no authority to support his proposition that the writ of assistance should be overturned. By failing to provide any arguments or authority to support his position regarding the writ of assistance, Appellant has abandoned the issue. See *First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994).

Likewise, the Master acted well within his discretion in denying Appellant's renewed Motion to Set Aside Sale and Vacate Summary Judgment. As noted by the Master in the January 18, 2018

Order:

“Mr. Amin attempted to raise a constitutional challenge to the foreclosure order and sale by asserting that proof of an original note was lacking and this therefore, violated his constitutional rights. The transcript from the hearing on Plaintiff's summary judgment motion provides that the Plaintiff was in possession of the original note during that hearing and presented it to the Court for review. Mr. Amin has alleged no basis in law or in fact to grant his motion and any claims that Mr. Amin has raised in the Court today, I find to be without merit.”

(Order Denying Defendant's Motion to Set Aside Sale and Vacate Summary Judgment filed January 18, 2018).

Appellant has neither asserted any facts nor presented any legally cognizable argument to demonstrate that the Master abused his discretion in denying Appellant's motion or issuing the renewed Writ of Assistance.

### **CONCLUSION**

For the reasons stated, this Court should affirm the judgment of the Circuit Court.

*Signature page to follow*

July 6, 2018

Respectfully Submitted,

A handwritten signature in cursive script that reads "Caroline Glenn".

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on July 6<sup>m</sup>, 2018, the Respondent's **Initial Brief** and **Designation of Matter to be Included in the Record on Appeal** was served on the Appellant by depositing a copy thereof in the United States Mail, first class, postage prepaid, addressed to:

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*Appellant*

  
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