



The South Carolina Court of Appeals

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July 30, 2018

The Honorable James C. Campbell
Sumter County Judicial Center
215 North Harvin Street
Sumter SC 29150-4974

REMITTITUR

Re: Bank of New York Mellon v. Charles Taylor
Lower Court Case No. 2011CP4300167
Appellate Case No. 2016-001526

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Charles Taylor
Benjamin Rush Smith, III, Esquire
Sarah Beth Nielsen, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The Bank of New York Mellon f/k/a The Bank of New
York, as Trustee for the benefit of Certificateholders of
Popular ABS, Inc. Mortgage Pass-Through Certificates
Series 2006-E, Respondent,

v.

Charles Taylor, Burgess Brogdon Bldg. Supply, Palmetto
Health Alliance, Defendants,

of Whom Charles Taylor is the Appellant.

Appellate Case No. 2016-001526

Appeal From Sumter County
Michael G. Nettles, Circuit Court Judge

Unpublished Opinion No. 2018-UP-200
Submitted April 1, 2018 – Filed May 9, 2018

AFFIRMED

Charles Taylor, pro se.

Benjamin Rush Smith, III and Sarah Beth Nielsen, both
of Nelson Mullins Riley & Scarborough, LLP, of
Columbia, for Respondent.

3. As to whether the circuit court erred in denying Taylor's motion to dismiss the Bank's foreclosure suit: *Edge v. State Farm Mut. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005) (holding the denial of a motion to dismiss may be considered if there is an appealable issue before the court); *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010) ("In reviewing [a motion for] dismissal of an action pursuant to Rule 12(b)(6), SCRCF, the appellate court applies the same standard of review as the [circuit] court."); *id.* ("In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the [circuit] court must base its ruling solely on allegations set forth in the complaint."); *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 219, 746 S.E.2d 478, 480 (Ct. App. 2013) (omissions by court) ("Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." (quoting *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008))); *Ballou v. Young*, 42 S.C. 170, 176, 20 S.E. 84, 85 (1894) ("The transfer of a note carries with it a mortgage given to secure payment of such note."); *Draper*, 405 S.C. at 220-21, 746 S.E.2d at 481 ("A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." (quoting *U.S. Bank Tr. Nat'l Ass'n v. Bell*, 385 S.C. 364, 374 684 S.E.2d 199, 204 (Ct. App. 2009))); *id.* at 220, 746 S.E.2d at 481 ("An assignee stands in the shoes of its assignor."); S.C. Code Ann. § 36-3-301 (Supp. 2017) (providing that a holder of an instrument is entitled to enforce the instrument); S.C. Code Ann. § 36-1-201(b)(21)(A) (Supp. 2017) (providing that a holder is "the person in possession of a negotiable instrument that is payable . . . to . . . an identified person that is the person in possession").

4. As to whether the circuit court erred in denying Taylor's motion to amend his pleadings: Rule 15(a), SCRCF ("A party may amend his pleading once as a matter of course at any time before or within [thirty] days after a responsive pleading is served . . . [o]therwise a party may amend his pleading *only by leave of court or by written consent of the adverse party.*" (emphasis added)); *Hale v. Finn*, 388 S.C. 79, 87-88, 694 S.E.2d 51, 56 (Ct. App. 2010) ("Courts have wide latitude in amending pleadings and, while this power should not be exercised indiscriminately or to surprise or prejudice an opposing party, the matter of allowing amendments is left to the sound discretion of the [circuit court]." (quoting *Mylin v. Allen-White Pontiac*, 281 S.C. 174, 180, 314 S.E.2d 354, 357 (Ct. App. 1984))); *Wachovia Bank Nat'l Ass'n v. Beane*, 397 S.C. 612, 619, 725 S.E.2d 715, 719 (Ct. App. 2012) ("[Circuit] courts have wide discretion to grant or deny motions to amend [the pleadings], particularly after . . . a significant delay.").