

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2017-CP-26-05357

Habitat for Humanity of Horry County, Inc., )  
 )  
Plaintiff, )

vs. )

Candice A. Simmons; Waccamaw )  
Regional Council of Governments d/b/a )  
Waccamaw Home Consortium; Village of )  
Dreams Homeowners Association, Inc.; SC )  
Housing Corp.; and Bank of North Carolina, )  
 )  
Defendants. )

**RECEIVED**  
AUG 27 2018  
SC Court of Appeals

**ORDER DENYING DEFENDANT SIMMONS'**  
**MOTION TO RECONSIDER**

This matter was before the Court pursuant to Defendant Simmons' Motion to Reconsider Order Denying Defendant Simmons' Motion for Relief from Writ of Assistance, filed on July 13, 2018. Defendant Simmons' Motion is DENIED for the reasons below. Defendant Simmons ("Defendant") did not ask for a hearing on its Motion.

As to the grounds raised by Defendant in her Motion:

1. No response is necessary. Defendant generically alleges she was correct and the Court should have ruled in its favor, without any specificity.
2. Although SCRPC Rule 7(b)(1) in theory discusses oral motions, Defendant cites no authority whatsoever that requires the Court to entertain or rule upon an oral motion, when another party does not consent to the oral motion being heard. Doing so would cause extreme prejudice to the non-moving parties, who have not had time to prepare for, or consider, the additional grounds. Defendant clearly knows how to file and

serve written Motions, and offered no explanation why the grounds in her “oral motion” were not included in her earlier Rule 60(b) written motion, which is what was approved by the Court of Appeals.

Also, it is important to note Defendant only copied the Court and Plaintiff on its June 17, 2018 email—she did not copy all parties. Even to this date, no written Motion has been made as to the grounds in Defendant’s oral motion. Thus, the other parties have never had an opportunity to even consider Defendant’s argument.

Rule 6(d) expressly states a motion must be filed and served not later than ten days before a hearing. Defendant cites no authority for her proposition that she can unilaterally send an email to one party less than 24 hours prior to a hearing, and that she is entitled to be heard on those issues, and the Court must issue a ruling binding on all parties. Doing so would render the Rules of Civil Procedure superfluous and a nullity.

In addition, Defendant did not ask leave from the Court of Appeals to raise additional grounds, nor has she, even to this date, reduced the grounds to a written, filed motion. *See, e.g., Hundley ex rel. Hundley v. Rite Aid of South Carolina, Inc.* (S.C. Ct. App. 2000). Also, Defendant did not ask this Court or the Court of Appeals to delay the hearing to allow Defendant time to properly raise these issues.

Finally, Defendant has not provided any facts or arguments to show she would prevail on her oral motion, or how it could lead to a defense in the underlying action. As this Court previously stated, “whatever doesn’t make any difference, doesn’t matter.” *See, e.g., McCall v. Finley*, 362 S.E.2d 26 (S.C. Ct. App. 1987). At no point has Defendant made an attempt to: (1) proffer a defense to the underlying foreclosure

action; (2) dispute Plaintiff undertook incredible mitigation efforts to try to resolve this matter, all to no avail because of Defendant's complete unwillingness to work with Plaintiff; or (3) attempted to show what Plaintiff should have done in the alternative.

In addition, Defendant's argument is patently incorrect. Paragraph 4 of the Complaint states "That the Administrative Order of the Supreme Court of South Carolina dated May 2, 2011 (2011-05-02-01) does not apply in this case because the Plaintiff, Habitat for Humanity of Horry County, Inc. ("Plaintiff,") is a private entity." Defendant was in default, and never raised the grounds in her oral motion until well after she had already been evicted after the foreclosure sale—that is a clear waiver.

Defendant also did not address that HAMP ended in December, 2016, before this action was ever filed, or that the Administrative Order expressly only applies to certain lenders (those that participate in HAMP, not all lenders, nor any private entities). Defendant simply alleges that somehow Plaintiff did not comply with Order 2011-05-02-01, with no specifics. But Defendant has not shown that Order 2011-05-02-01 applies to Plaintiff, or that the S.C. Supreme Court required private entities such as Plaintiff to comply with the same mitigation requirements as federally-insured institutions that participate in the programs referenced in Order 2011-05-02-01.

Further, and more importantly, Plaintiff undertook extreme mitigation efforts with Defendant (whether required or not), and that evidence is uncontested by Defendant. Defendant completely ignores the multiple mitigation offers Plaintiff made to Defendant before, during, and after the foreclosure hearing. All of those efforts involved offers to modify Defendant's loan, meet with Plaintiff's Board of Directors,

allow her to make payments, etc. *See Affidavits of Blakely Roof and Carla Scheussler.* Instead of contradicting any portion of those Affidavits, Defendant filed a short memo saying those Affidavits are not relevant. Thus, at the same time Defendant argues she was not offered any mitigation, she tries to argue evidence of that mitigation is not relevant.

Hence, there is over-whelming evidence of Plaintiff's substantial mitigation efforts, while there is not a shred of evidence to show: (1) Defendant was willing to meet or work with Plaintiff; (2) Defendant was willing to provide her financial records as repeatedly requested by Plaintiff; or (3) Defendant was ready, willing, and able to comply with Plaintiff's mitigation offers to resolve this matter or cure her admitted default, even after the foreclosure hearing. Defendant's unclean hands, in light of Plaintiff's substantial mitigation efforts (again, whether required or not), prevents her from recovery in this equitable action.

3. South Carolina law is clear that a party in possession, and anyone in possession through that party, whose rights have been determined, is not entitled to an additional hearing before a writ of assistance is issued. The allegations in Plaintiff's Complaint, and findings in this Court's orders are clear. This also addresses the issues raised in Defendant's Motion Paragraphs 5, 6, 7, 9, 13, 16, 18, and possible others.
- 14 & 15. The Court of Appeals' Orders are clear, and expressly informed Defendant what she needed to do to obtain a stay of the writ of assistance. Defendant ignored the Court of Appeals, for whatever reason, nor did she take other steps that were available to her to avoid a writ of assistance.

20. The July 11, 2017 Order from Chief Justice Beatty, appointing the undersigned as Special Referee in Horry County, was provided to Defendant.

The remainder of Defendant's arguments are without merit, or were waived at the hearing.

For the reasons stated above, Defendant Simmons' Motion to Reconsider is denied.

IT IS SO ORDERED.



Horry Common Pleas

**Case Caption:** Habitat For Humanity Of Horry County Inc VS Candice A Simmons ,  
defendant, et al  
**Case Number:** 2017CP2605357  
**Type:** Order/Other

So Ordered

s/Ralph P. Stroman, 2098, Special Referee for  
Horry County