

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

THE HOMESTEAD PROPERTY OWNERS ASSOCIATION, INC., )  
 )  
 )

Civil Action No. 2017-CP-40-06634

Plaintiff, )  
 )

v. )

WANDA J. MILLER & ORLANDO F. MILLER, )  
 )  
 )

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANTS' COUNTERCLAIMS AND DENYING PLAINTIFF'S CLAIM FOR FORECLOSURE**

Defendants. )  
 )  
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This matter was before the Court on July 30, 2018 for on Plaintiff Homestead Property Owners Association, Inc.'s ("Plaintiff") Motion for Summary Judgment to allow foreclosure and to dismiss the Millers' Counterclaims filed on July 20, 2018, and Wanda J. Miller and Orlando F. Miller's ("Millers") Rule 60(a) and Rule 60(b) Motion for Relief from Judgment filed on July 27, 2018.

At the hearing, Plaintiff was represented by Stephanie C. Trotter and George C. James, III, and the Millers were represented by Brian C. Gambrell.

After considering the arguments of counsel, review of the parties' written submissions, and examination of the governing law as applied to the facts of this case, the Court grants the Plaintiff's motion for summary judgment as to the Millers' counterclaims, and other than the vacation of this Court's June 4, 2018 Order Granting Judgment of Foreclosure and Sale, the Millers' Motion for Relief from Judgment is denied as moot.

**RECEIVED**  
AUG 28 2018  
SC Court of Appeals

### FACTS/PROCEDURAL HISTORY

The factual recitations set forth herein are in the light most favorable to the Millers, the non-moving party. The Millers are the owners of the real property located at 261 Kenmore Park Drive ("Property") in The Homestead Subdivision in Richland County. Plaintiff is the homeowners' association for the subdivision.

On May 4, 2016, Plaintiff recorded a Notice of Lien against the Property for unpaid homeowners' association assessments. On October 30, 2017 Plaintiff filed this suit seeking foreclosure of its lien. The Millers were served on November 8, 2017. On January 23, 2018, Plaintiff filed an Affidavit of Default and the action was referred to the Master in Equity.

The initial foreclosure hearing was scheduled for May 14, 2018. At this hearing, the Millers appeared for the first time, with counsel, and the hearing was continued until July 30, 2018. At the May 14, 2018 hearing, the Court *sua sponte* stated the Millers, by and through their counsel, were free to file an answer; however, the entry of default was never set aside pursuant to Rule 55(c).<sup>1</sup>

Thereafter, the Millers filed and served an answer and counterclaim alleging claims for abuse of process and breach of contract against Plaintiff. Specifically, the Millers allege Plaintiff filed the instant action for the ulterior purpose of collecting a non-existent debt and refused and returned the Millers' payments to illegally generate a lawsuit and attorney's fees.

Following the May 14, 2018 hearing, this Court signed an Order Granting Judgment of Foreclosure and Sale that was filed on June 4, 2018. This order was signed as a result of a clerical error. The parties consented to a vacation of this order at the July 30, 2018 hearing.

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<sup>1</sup> While the Millers question whether or not the Court's *sua sponte* statement lifted the entry of default, the Court's holding to grant Plaintiff's Motion for Summary Judgment as to the Millers' counterclaims is based solely on the merits and its jurisdiction to hear matters of law under Rule 53(c) SCRCP; therefore, the Millers possibly being in default is irrelevant to the Court's findings in this Order.

### STANDARD OF REVIEW

Summary judgment is proper when there is “no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. “In deciding a motion for summary judgment, the evidence and all of its inferences must be viewed in the light most favorable to the non-moving party.” *Wade v. Berkeley County*, 330 S.C. 311, 317, 498 S.E.2d 684, 687 (Ct. App. 1998) (citations omitted). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 240, 355, 559 S.E.2d 327, 336 (Ct. App. 2001).

### LAW/ANALYSIS

#### **I. The Millers’ Abuse of Process Counterclaim Fails as a Matter of Law.**

“The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding.” *Häiner v. American Medical Intern., Inc.*, 328 S.C. 128, 137, 492 S.E.2d 103, 107 (1997). “There is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.” *Id.*

The Millers allege Plaintiff filed this suit for “the ulterior purpose of collecting a non-existent debt.” The Millers further allege that Plaintiff “returned Defendants’ assessment payments inside (sic) of accepting them for the purposes of generating this lawsuit.” However, given the Millers’ own deposition testimony, the Millers’ abuse of process claim fails as a matter of law.

The Millers’ deposition testimony established they have not submitted any payments to Plaintiff since 2014; therefore, Plaintiff, having received no payments, could not have possibly returned any payments.

During the Millers' depositions, the only evidence offered to support the allegation that Plaintiff refused their payments was in the context of Plaintiff's refusal to accept payment plans the Millers proposed. The Millers' deposition testimony directly contradicts the allegations in their abuse of process counterclaim and does not create any genuine issue of fact that Plaintiff has prosecuted this foreclosure action for any ulterior or improper purpose.

Taken in the light most favorable to the Millers, the evidence in the record establishes only that Plaintiff has refused to settle this case under the terms the Millers requested. Plaintiff's refusal to accept less than the balance due under the contract cannot form the basis for an abuse of process claim. Further, the contract specifically empowers Plaintiff to seek foreclosure of its lien for assessments not paid within thirty days. Plaintiff is entitled to judgment as a matter of law on this cause of action.

## **II. The Millers' Breach of Contract Counterclaim Fails as a Matter of Law.<sup>2</sup>**

As they allege in their counterclaim for abuse of process, the Millers allege in their breach of contract counterclaim that Plaintiff has breached its contract with the Millers by failing to accept the Millers' payments and "filing a lien in order to justify higher fees, costs, and attorney's fees." However, as discussed above, both Mr. and Mrs. Miller testified they did not submit any payments to Plaintiff. Again, Plaintiff could not possibly refuse to accept payments the Millers admit that they did not make. Both Mr. and Mrs. Miller admit they owe Plaintiff for

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<sup>2</sup> The Millers testified that Plaintiff was in breach of contract by failing to maintain the common areas within the neighborhood. However, the Millers did not make this allegation in their counterclaim. Even if they had, Plaintiff would still be entitled to summary judgment. The Association owns approximately sixteen acres of unimproved property at the rear of the subdivision. This area is shown as "Common Area" on the bonded plat of The Homestead Subdivision recorded in the Richland County Register of Deeds in Book 1163 at Page 2534. The Common Area is comprised of almost fifteen acres of wetlands. Therefore, Plaintiff is prevented from developing this area. Additionally, the Millers have presented no evidence or argument that Plaintiff is contractually required to develop this area.

assessments that are more than thirty days past due. The restrictive covenants specifically empower the Plaintiff to file a lien to secure charges more than thirty days past due.

Accordingly, Plaintiff is entitled to judgment as a matter of law on the Millers' counterclaim for breach of contract.

**III. Plaintiff's Claim for Foreclosure is Denied at this time.**

The Millers contest the exact amount of assessments and other charges they owe Plaintiff. Because there is a genuine issue of material fact regarding the total balance due, summary judgment on Plaintiff's claim for foreclosure is inappropriate at this stage.

**CONCLUSION**

After considering the arguments of counsel, review of the parties' written submissions, and examination of the governing law as applied to the facts of this case, the Court **GRANTS** the Plaintiff's motion for summary judgment as to the Millers' counterclaims. The Court **DENIES** Plaintiff's motion for summary judgment on its claim for foreclosure. Because the Court has dismissed Defendants' counterclaims, Defendants' Motion for Relief from Judgment/Order of Reference is moot; therefore, other than the vacation of the June 4, 2018 Order, the motion is **DENIED**. This Order does not end the case, it only dismisses the Millers' counterclaims asserted against Plaintiff with prejudice.

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Richland Common Pleas

**Case Caption:** Homestead Property Owners Association Inc vs Wanda J Miller ,  
defendant, et al  
**Case Number:** 2017CP4006634  
**Type:** Order/Summary Judgment

It is so Ordered

s/Joseph M. Strickland, 3055