

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Lisa Lee Smith, Special Referee

Case No. 11-CP-32-03945.

RECEIVED

SEP 17 2018


SC Court of Appeals

Albert J. Sanders, Jr.....Appellant,

v.

Wells Fargo Bank, NA, Ultimate Successor to First Union Bank.....Respondent,

INITIAL BRIEF OF APPELLANT



W. Wesley Johnson, Jr.
S.C. Bar # 15946
1031 Center Street
West Columbia, SC 29169
(803) 796-7260; (803) 796-1055 (fax)
Attorney for Appellant

September 13, 2018

TABLE OF CONTENTS

Table of Authorities	i
Statement of Issues on Appeal	ii
Statement of the Case	1
Standard of Review	2
Argument	2
Conclusion	3

TABLE OF AUTHORITIES

Cases

Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010)

Administrative Orders

SOUTH CAROLINA SUPREME COURT ADMINISTRATIVE ORDER 2009-05-22-01

STATEMENTS OF ISSUES ON APPEALS

- I. THE FINDING THAT PLAINTIFF COMPLIED WITH THE SOUTH CAROLINA SUPREME COURT ADMINISTRATIVE ORDER 2009-05-22-01 (hereinafter, "the Administrative Order") WAS IN ERROR AS DEFENDANT PROVIDED AMPLE PROOF THAT PLAINTIFF DID NOT COMPLY DESPITE NUMEROUS REQUESTS BY DEFENDANT.

- II. THE ORDER GRANTING JUDGMENT TO THE PLAINTIFF WAS IN ERROR AS DEFENDANT'S TESTIMONY AND EVIDENCE SUBMITTED SHOWED PLAINTIFF ACTED WITH "UNCLEAN HANDS" IN THIS MATTER AND WAS NOT ENTITLED TO JUDGMENT.

STATEMENT OF THE CASE

This matter was filed on October 19, 2011 by Plaintiff, seeking foreclosure of real property owned by Defendant involving the construction of the home. The Defendant timely answered on November 18, 2011 denying the allegations of the complaint and raising numerous defenses including failure of the Plaintiff to comply with the Administrative Order and Unclean Hands. A final hearing was held in front of the Honorable Lisa Lee Smith on March 15, 2018. By an Order filed May 15, 2018, Plaintiff was granted the relief requested in the form of an Order of Foreclosure and Sale. Pursuant to the issuance of that Order, a timely appeal was filed to this court on June 13, 2018.

STANDARD OF REVIEW

This matter involves a Foreclosure heard by a Special Referee with direct appeal to the Court of Appeals. In equitable actions, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010).

ARGUMENTS

The court erred in finding the Plaintiff complied with the Administrative Order as there was no evidence presented by Plaintiff showing such compliance while Defendant testified adamantly that he made continued efforts to obtain loan modification. The Court found that Plaintiff complied with the Administrative Order. Order Page 2 para.9.

The Defendant testified he sought loan modification numerous times, even contacting Plaintiff's attorney, but had received no response Tran. P.49 Lines 13-22. He further testified he received no documentation from the Plaintiff at any time regarding possible modification. Transcript P 50 Lines 14-16.

In response, Plaintiff presented correspondence it purported was sent from the lender to Defendant dated November 15, 2011. Tran. P.69 Lines 23-25. Tran. P.70 Lines 1-17.

The record suggests this correspondence was an application for assistance send by Plaintiff to Defendant. Tran. P.70 Line 25 and Tran. P.71 Line 1. Though the Plaintiff initially entered this document into evidence as Plaintiff's Exhibit 11, it was later withdrawn. Tran. P.73 Lines 12-16. Tran. P.75 Lines 17-21.

With the withdrawal of this Exhibit, Plaintiff presented no evidence that they had even attempted to comply with the Administrative Order and the testimony of the Defendant was not refuted in any manner. As the Defendant presented unrefuted evidence of his attempts to have the loan considered for modification as required by the Administrative Order, the Court erred in finding compliance on behalf of the Plaintiff. The failure of the Plaintiff to follow the Administrative Order is one of the basis for Defendant's defense of Unclean Hands as alleged in his Answer. In *Straight v. Goss*, 383 S.C. 180, 678 S.E.2d 443, 457-58 (Ct. App. 2009) (citations omitted), the Court stated as follows:

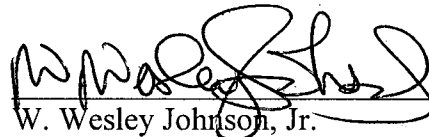
The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.

CONCLUSION

The Court's Order in this matter finds that Plaintiff complied with the Administrative Order regarding required attempts at loan modification though Plaintiff presented no evidence showing an attempt at compliance. This failure to comply with the Administrative Order despite Defendant's repeated entreaties for assistance constitutes Unclean Hands on behalf of the Plaintiff. Both of these contentions support a finding for the Defendant that Plaintiff is not entitled to an Order of Foreclosure and Sale in this matter.

Therefore, we respectfully ask this court to reverse the judgment in this case and to find for the Defendant, dismissing the Complaint of the Plaintiff with prejudice.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read 'W. Wesley Johnson, Jr.', written over a horizontal line.

W. Wesley Johnson, Jr.
S.C. Bar # 15946
1031 Center Street
West Columbia, SC 29169
(803) 796-7260; (803) 796-1055 (fax)
Attorney for Appellant

September 13, 2018

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

Lisa Lee Smith, Special Referee

Case No. 11-CP-32-03945

RECEIVED

SEP 17 2018

SC Court of Appeals

Albert J. Sanders, Jr.....Appellant,

v.

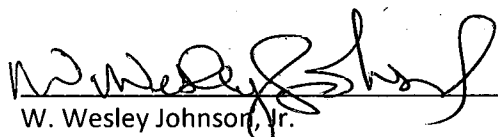
Wells Fargo Bank, NA, Ultimate Successor to First Union Bank.....Respondent,

CERTIFICATE OF MAILING

The undersigned certifies he served the foregoing Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on Counsel of record for the Respondent via U.S. Mail, first-class postage, prepaid, this 14th day of September, 2018 to the following addresses:

Chad W. Burgess
Brock & Scott, PLLC
3800 Fernandina Rd., Ste. 110
Columbia, SC 29210
Attorney for Respondent Wells Fargo Bank NA

Alan M. Stewart
PO Box 8237
Columbia, SC 29202-8237
Attorney for Respondent Wells Fargo Bank NA



W. Wesley Johnson, Jr.

OSWALD & BURNSIDE, LLC
ATTORNEYS AND COUNSELORS AT LAW

Billy R. Oswald
Kelly Burnside
W. Wesley Johnson, Jr.

1031 Center Street
West Columbia, S.C. 29169
Telephone: (803) 796-7260
Fax: (803) 796-1055
Sender's e-mail: attorneywwj@windstream.net

September 14, 2018

RECEIVED
SEP 17 2018
SC Court of Appeals

South Carolina Court of Appeals
Clerk of Court of Appeals
Post Office Box 11629
Columbia, SC 29211

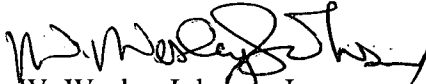
Re: Appeal from Lexington County Common Pleas Case No. 11-CP-32-03945
Albert J. Sanders, Jr., Appellant v. Wells Fargo Bank, NA, Ultimate Successor to
First Union Bank, Respondent,

Dear Clerk of Court of Appeals

Enclosed please find the Appellant's Initial Brief in this matter along with the Designation of Matter to be Included in the Record on Appeal. Please return a clocked-in-copy via the SASE enclosed.

Thank you for your consideration.

Very truly yours,


W. Wesley Johnson Jr.

Cc: Chad W. Burgess, Esq.
Alan M. Stewart, Esq.

OSWALD & BURNSIDE, LLC

ATTORNEYS AND COUNSELORS AT LAW

1031 CENTER STREET
W. COLUMBIA, SOUTH CAROLINA 29169

RECEIVED

SEP 17 2018

SC Court of Appeals

South Carolina Court of Appeals
Clerk of Court of Appeals
1220 Senate St.
Columbia, SC 29201