

APPEAL FROM ORDERS AND JUDGMENT IN A CIVIL CASE

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APPELLANT'S [AMENDED¹] INITIAL BRIEF

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

BEAUFORT COUNTY
COURT OF COMMON PLEAS

R. THAYER RIVERS JR. / SPECIAL REFEREE

CASE No(s). 2016-CP-07-02261
[No. 2016-LP-07-00637]

Gateway Mortgage Group LLC

Respondent

Vs.

L.E. Pauli Coffey

Appellant

¹ Amended to include page numbers

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STATEMENT OF ISSUES ON APPEAL

1. No borrowers were included in Respondent's illegal suit against Appellant for an illegal mortgage reformation.
2. Mortgage Reformation cannot include only one party to a mortgage.
3. Mortgage companies and lenders saying and/or writing anything they want in order to secure front end money on a loan instrument that may or may not be complete or accurate and then expecting a Court to change any or all documentation to suit the mortgage companies on any given day and for any reason which benefits the mortgage company or lender.
4. Respondent did, in bad faith, blatantly and intentionally mischaracterize truth and fact.
5. On January 6th, 2017, Appellant filed an Affirmative Defense to Respondent's Initial Motion for Summary Judgment that was ignored and quashed for ten (10) months.
6. On Aug 17, 2017, Respondent did successfully petition the 14th Judicial Circuit to appoint its' own counsel, R. Thayer Rivers Jr., as Special Referee.
7. The Special Referee who issued the Judgment and Orders, R. Thayer Rivers Jr., is counsel for Respondent.
8. The sale of Appellant's home.
9. Violation of Appellant's privacy.

STATEMENT OF THE CASE

On January 7th, 2016, the date of Chris A. Smock's death, there was no lien on Appellant's home and her home did not secure a mortgage, as a matter of law. As of February 3, 2016, Ms. Coffey has been the sole and exclusive owner of her home as a matter of law. On October 25, 2016, Respondent illegally filed a Lis Pendens /Foreclosure suit in pursuit of a mortgage reformation against Appellant. Respondent did never file suit against Chris A. Smock or Mr. Smock's estate. (RE: *Smock* 2016-ES-07-0124)

Respondent, using deception and the lie (there is no other word which is more accurate) under oath stated that it had served an already deceased person with a slew of documentation and had initially served a second person, Appellant, who, despite Respondent's deceptive narration, is NOT a borrower on any loan, to justify its' illegal suit. Respondent chose to initially serve Appellant at her previous address in a state in which she did not live, in order to cast the appearance that Appellant was not a resident of the state of South Carolina for the purpose of excluding Appellant from the Rights, Protections and Guarantees of the laws of South Carolina and to cast Appellant as an outsider and undesirable person.

Respondent wrongfully filed its' case and received a same day reference to the MIE Court in Beaufort County, South Carolina as evidence by the record of the case.

On October 28, 2016, Appellant timely filed a response evidencing that she did not owe Respondent money or her home, as a matter of law, which is correct. Between October 28, 2016 and January 6, 2017; Appellant also correctly filed a Motion to Dismiss Lis Pendens and an Affirmative Defense in response to respondent's Motion for Summary Judgment. During this same time, Respondent filed a Notice of Non-Compliance with the Court stating that the borrower(s) refused to comply with the Rights made available to them by Respondent through Foreclosure Intervention and, based on that "refusal", filed its' Motion for Summary Judgment. There were no true borrowers

listed in any of Respondent's pleadings to include but not limited to Summons and Complaint, Notice of Foreclosure, Certificate of Exemption from ADR, and the Certificate of Non-Compliance. Respondent had a goal and "drew the picture" that best served its' goal. At no point did the truth have any part in Respondent's picture or goals.

During the brief period that Appellant did have an attorney, from March until April of 2017, she was made aware that there were informational inaccuracies within the mortgage. Example: respondent originally claimed that it prepared the mortgage in question on May 22, 2014, and then suddenly changed its' story when Appellant could prove that she and her husband were nowhere near Beaufort, South Carolina on May 22, 2014. Respondent's story then changed, again, when Appellant produced independent, third party evidence which, again, disproved Respondent's story about where and when the alleged mortgage was prepared. By the time it May, 2017, came around, it appeared as though no one associated with Respondent was quite sure on which day the alleged mortgage was created, but everyone knew it was incomplete and inaccurate.

On August 1st, 2017, Judge Marvin Dukes filed Orders recusing himself and the MIE Court from the above listed matters for conflict, because he knew a mortgage reformation could not happen, and vacated all Orders and Judgments.

On August 17th, 2017, respondent did, in violation of the law, successfully petition the 14th Judicial Circuit to have its' own counsel appointed as adjudicator/Special Referee in the above captioned cases. Respondent signed the proposed Order and the Clerk of the 14th Judicial Circuit signed the final Order appointing Counsel for Respondent, R. Thayer Rivers Jr., as Special Referee. No Judge was involved in the decision, as evidenced in the Court record.

Beginning August 22, 2017, Appellant did file multiple Motions to Strike the Order of Reference to the Special Referee and in declination of the Special Referee because Appellant did not consent to the Special Referee as she had no knowledge that a

Motion to appoint a Special Referee had ever been filed. Additionally, Appellant filed multiple Motions for a jury trial that were ignored.

On October 12, 2017, Appellant did file a yet another Demand that her Affirmative Defense Response, filed on January 6, 2017, in response to Respondent's original Motion for Summary Judgment, be uploaded to the CMS. Prior to October 12, 2017, the Clerk's office of Beaufort County and the 14th Judicial Circuit had refused to upload the Affirmative Defense document it marked as received on January 6, 2017. Appellant's Affirmative defense to Respondent's Motion for Summary Judgment sat in limbo for more than ten (10) months. This was not the only filing of Appellant's that the Clerk's Office refused to upload to CMS.

On October 17, 2017, in the Magistrates Court, Respondent's attorney, R. Thayer Rivers Jr., illegally presided over a hearing regarding his client's desire to obtain an illegal mortgage reformation in order to illegally take Appellant's home from her. The hearing was moot as Mr. Rivers Jr. is, and was, Respondent's counsel.

On or about October 30, 2017, Appellant received a call from an appraisal company asking to speak with "Mrs. Smock" reference her foreclosed home and an inspection of her foreclosed home. Appellant has never had the last name of Smock and does realize that the only way Respondent could get an appraisal company to contact Appellant is through even more lies. This contact, and the use of her dead husband's name, was for the purpose of harassing, intimidating and terrorizing Appellant in her home and for gaining illegal entry into Appellant's home.

On Feb 1, 2018, Appellant began numbering her Demands for Due Process with demand number sixteen (16). Appellant realized when her Affirmative Defense Motion took more than ten (10) months to be uploaded to CMS, that any hope for Civil or Constitutional Rights in the Beaufort County Court or the 14th Judicial Circuit was most likely a waste of time, but Appellant is the person who will always believe that the law is most important. Appellant's final demand for due Process was number thirty three (33)

and was filed on September 7th, 2018, also to no avail. Her thirty third (33rd) Demand for Due Process included photographic evidence of Appellant bleeding from her ears from lack of proper medical care. Appellant was also bleeding from her nose and mouth but did not wish to display her entire face for the court record.

After three hundred and eighty nine (389) days, counsel for Respondent did erroneously issue, despite no additional parties being available to agree to a mutual mistake on a mortgage and despite all the case law, state law and evidence cited by Appellant clearly showing Appellant was the sole and exclusive owner of her home as a matter of law and that no mortgage had ever been secured by her home, a Mortgage Reformation and Order of Sale of Appellant's home for an incomplete, improperly prepared and improperly filed "mortgage" listed as having a value of \$106,000.00. Upon written notice of counsel's decision, Appellant filed an initial Notice of Intent to file an Appeal.

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STANDARD OF REVIEW

Mortgage Reformation

The legal definition of a Mortgage Reformation is the agreement between all parties to a lending instrument that a mutual mistake was made and must be corrected. (Dodd Frank Wall Street Reform and Consumer Protection Act/ HAMP Manual 2017)

Lenders cannot seek a Mortgage Reformation without the inclusion of all parties to a lending instrument. Wells Fargo, and all lenders, would be dancing in the streets if they could simply decide to reform a mortgage to whatever best suited them, without the knowledge or consent of a borrower. It's a scary thought.

Appellant has never been party to a mortgage and, as stipulated to in Court and evidenced in her initials filings, Appellant had no working knowledge of a mortgage. Appellant knew, as evidenced in her filings and by all other county records, that her home did not secure a mortgage and no lien was ever placed on Appellant's home. Appellant cannot be party to a Mortgage Reformation or subject to its' outcome because she is not party to a mortgage. Additionally, for the sake of argument, Chris A. Smock is a deceased person who had no interest in Appellant's home at the time of Respondent's wrongful suit and cannot be party to a mortgage reformation due to death. It should be noted that at no time, despite its' deceptive markings of a "judgment against" Chris A. Smock on document Form 4 information for the Judgment Index, did Respondent EVER file any action against Chris A. Smock or his estate. Respondent decided to attack and destroy Appellant for it's own personal enrichment and with absolutely no cause to do so.

Neither Respondent nor Special Referee can attest to the knowledge of another person, as a matter of law.

Further, Special Referee, who is also counsel for Respondent, which violates Article 22 of the Constitution of the state of South Carolina, cannot, as a matter of law, execute a mortgage reformation when all parties are not available to agree to a mutual

mistake. Special Referee going so far as to write in his judgment, " Plaintiff alleges borrower broke HER contract.", is simply Special Referee carrying on the deceptive practices of his client, Respondent, under oath. Appellant has no contract with Respondent. (Dodd Frank/ HAMP Manual 2017), Article 22 of the Constitution of the state of South Carolina.

Respondent, who initially agreed to no home securing a lending instrument, as evidenced by all county records to include but not limited to the recording of the deed and as evidenced by the probate record, decided only after Mr. Smock's death to change its' mind about its' agreement in order to falsely, frivolously and maliciously pursue Appellant for an illegal mortgage reformation, based on Respondent's sudden declaration that it made many mistakes in a "mortgage". Respondent cannot simply change its' mind and change existing documentation and then blame someone else for its' mistakes. Respondent is prevented by case law, state law and the Doctrine of Estoppel from now demanding relief from its' own mistakes. *Liberty v. Mumford*, 322 S.E. 2d 17 (1984) (generally), *Wachovia v. Coffey*, 698 S.E. 2d 244 (S.C. Ct. App. 2010) (generally), *Jackson v. Bi-Lo Stores, Inc.*, 437 SE 2d 168 (S.C. Ct. App 1993) (generally) *Gateway v. Coffey*, 2016-CP-07-02261, pre-judgment, Plaintiff's initial filings)

Finally, through its' filings, and as reiterated in the wrongful Judgment and Orders of R. Thayer Rivers Jr., Respondent states that the mortgage instrument in question was an incomplete mortgage which was improperly prepared and improperly filed. Respondent admits there never was a real mortgage. If Respondent can attest that so many people, employed directly or through contract, by respondent refused to perform the jobs for which they were well paid, Respondent has the right to collect from its' Mortgage Banker Bond at any time under the dishonest employee/closing agent attorney clause and no litigation is required. Respondent could have been "made whole" in 2016 and, instead, decided to terrorize and injure Appellant for two (2) years rather than receive payment in full for its' newly perceived loss. If Respondent created such a mess and wishes to call it a mortgage, its' cannot paste liability for its' document disaster on a person who had no part in the disaster for the purpose of its' own enrichment or the

enrichment of anyone acting with Respondent or as its' agent. *Liberty v. Mumford*, 322 S.E. 2d 17 (1984) (generally), *Wachovia v. Coffey*, 698 S.E. 2d 244 (S.C. Ct. App. 2010) (generally), *Jackson v. Bi-Lo Stores, Inc.*, 437 SE 2d 168 (S.C. Ct. App 1993) (generally)

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STANDARD OF REVIEW

In its initial filing, Respondent did repeatedly and blatantly mischaracterize fact (lie) in order to justify its' illegal filing of a Lis Pendens against Appellant. Respondent swore under penalty of perjury that it served Notice of Foreclosure intervention on the borrower(s). The only borrower connected to the paperwork disaster Respondent called a mortgage passed away more than ten (10) months before suit was wrongfully filed against his widow who had no working knowledge of a mortgage and who was not a borrower. Respondent could not have served any Notices to the Afterlife and Respondent wrongfully listed appellant as a borrower for the purpose of filing its' suit.

Respondent then swore under penalty of perjury that the borrower(s) refused to comply with the Notice of Foreclosure Intervention. Respondent, in person and through counsel, clearly believes it is ok to blatantly and malevolent mischaracterize fact in and to a Court of law. Further, counsel for respondent/Special Referee frequently refers to Appellant as a borrower when all sides stipulated in Court that Appellant was not a borrower. It was the desire of Special Referee to force Appellant into a position of debt in order to satisfy his client's goals through his deception and misrepresentation of Appellant. (*"I swear and affirm under penalty or perjury that the above listed facts be true"*, statement above every signature line in all court filings and assumed by all Courts. (*Gateway v. Coffey*, 2016-CP-07-02261, 2016-LP-07-00637)

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STANDARD OF REVIEW

Constitutional Rights

On January 6th, 2017, Appellant filed an Affirmative Defense to Respondent's Initial Motion for Summary Judgment and showed that because she is the sole owner of her home as a matter of law and because her home has never secured a mortgage, as evidenced by all documentation, that no material fact existed to justify Summary Judgment or even the illegal filing of a Lis Pendens. Appellant's Affirmative Defense was ignored by the Beaufort County MIE Court and, in fact, the Beaufort County Clerk's office accepted and stamped Appellant's pleading on January 6, 2017, but then refused to upload the pleading into CMS for ten (10) months. Judge Marvin Dukes, despite being hand served by Appellant on January 6, 2017, refused to consider Appellant's Affirmative Defense. Ultimately, Appellant had to file multiple Demands for Due Process to force the Clerk's Office to upload the document. (*Brown v. Board of Education*, 347 US 483 (1954)], *Article 3 of the Constitution of the state of South Carolina*, *Article 9 of the Constitution of the state of South Carolina*, *Article 23 of the Constitution of the state of South Carolina*, *14th Amendment to the US Constitution*.

Additionally, through the course of the above captioned, illegal cases, Appellant had just cause to file thirty three (33) different Demands for Due Process. Appellant even had her Right to Due Process challenged, in writing, by a member of the Clerk's Office staff who fully believed Appellant did not have the right to Due Process, "Unless a judge says so.", as evidenced by Court record. Appellant was speechless. *Brown v. Board of Education*, 347 US 483 (1954) generally, *Article 3 of the Constitution of the state of South Carolina*, *Article 9 of the Constitution of the state of South Carolina*, *Article 23 of the Constitution of the state of South Carolina*, , *14th Amendment to the US Constitution*, *5th Amendment to the US constitution*.

Also, Appellant did request a jury trial after Judge Marvin Dukes recused himself and the MIE Court from the above captioned illegal cases. Her requests were repeatedly ignored after Court Staff explained Appellant did not have the right to a jury trial. Every

defendant has the right to a jury trial. *Supremacy Clause of the US Constitution, Brown v. Board of Education, 347 US 483 1954 (generally), Article 3 of the Constitution of the state of South Carolina, 5th Amendment to the US Constitution, 7th Amendment to the US Constitution, 14th Amendment to the US Constitution and the Supremacy Clause of the US Constitution.*

As well, the 14th Judicial Circuit allowed Respondent to appoint its' own counsel as adjudicator. Respondent's attorney cannot legally be the adjudicator in his client's cases. R.Thayer Rivers Jr. did refuse to recuse himself as adjudicator in his client's case, to his own financial benefit and to the benefit of his client. Attorneys should not be able to destroy the lives of innocent people for the purpose of their client's enrichment or their own enrichment. (*Article 22 of the Constitution of the state of South Carolina*)

Lastly, R. Thayer Rivers Jr. did refuse to render any ruling for three hundred and eighty nine (389) days, thereby denying Appellant the ability to have an income, health care and to live in peace and with security for those 389 days while he, R. Thayer Rivers Jr. earned financial enrichment off Appellant's back while simultaneously denying Appellant a speedy trial. *Article 9 Constitution of the state of South Carolina, 5th Amendment to the US Constitution, 14th amendment to the US Constitution.*

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STANDARD OF REVIEW

At the time that Respondent illegally filed its' Lis Pendens action, Appellant was the sole and exclusive owner of her home as a matter of law. No other person had an interest in Appellant's home. Respondent cannot gain an interest in Appellant's home through illegal encroachment in the form of its' counsel/Special Referee, R. Thayer Rivers Jr., issuing a Judgment not founded in law for an illegal Mortgage Reformation, and call it a lien. Appellant's home has never secured a mortgage. RE: *Smock* 2016-ES-07-00124, *Gateway v. Coffey* 2016-CP-07-02261 pre-judgment, *Gateway v. Coffey*, 2016-LP-07-00637, pre-judgment.

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STANDARD OF REVIEW

Through its' illegal actions, respondent has denied Appellant her Right to Privacy. In its' deceptive actions and through its' counsel's Order and Judgment, Respondent, in person and through counsel, did repeatedly violate Appellant's Rights under South Carolina law to be secure in her person, house, papers and effects against unreasonable invasion of privacy. Appellant has had her person, house, home, papers and effects wrongfully and maliciously put on display by respondent and had her life shredded for two (2) years by respondent for the purpose of humiliating, harassing and harming Appellant. Respondent's Mortgage Banker Bond was always available to make Respondent whole without litigation. Respondent's invasion of Appellant's privacy has been successful. Appellant has had her home listed for sale for more than a year and cannot sell her home because of the illegal Lis Pendens action filed against her. Appellant wishes to leave South Carolina in pursuit of the employment she cannot gain in the small military town of Beaufort, South Carolina, because she appears to be a credit risk, as the direct result of Respondents malicious, deceptive, wrongful and illegal suit wrongfully filed against Appellant. (*Article 10* of the Constitution of the state of South Carolina guarantees every citizen the right to privacy.) (*Spokeo v. Robins*, 136 S. Ct. 1540 (2016) generally, citation(s) omitted.)

Further, The laws of the state of South Carolina, as repeatedly cited in her filings in the lower court, prevent Appellant from being forced to pay the debt of others. (SC§32-3-10 et al), (*Article(s) 3 and 23* of the Constitution of the state of South Carolina)

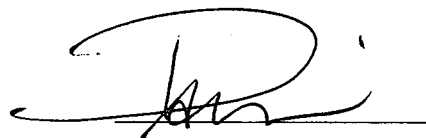
CONCLUSION

Respondent acted with intention, malice and deceit when it used flagrant and blatant mischaracterization of truth and fact in its' filings under oath to falsely, wantonly and recklessly pursue Appellant for a debt she did not owe in hopes of taking her home away from her.

It was Appellant's great misfortune to watch as her husband slowly drown in his own blood over the 81 hour period when stents, improperly implanted days earlier, closed up while no doctors, who had performed emergency surgery on Appellant's husband the day after Christmas 2015, could be bothered to return Appellant's calls for help and clarification as to her husband's condition. Appellant took her dying husband to the closest hospital for emergency care, but left alone after only a few hours. Out of no disrespect, Appellant does wish to convey that watching her husband die an agonizing death in front of her eyes was not Windfall. It was horrible and an experience Appellant wouldn't wish on her worst enemy. Appellant is dragged through her husband's death over and over again, every day, because of the above captioned, illegal matters.

Appellant asks the Court to reverse the Judgment and Orders AND to vacate the action(s) in the lower court because the Judgment and Orders have no basis in law, the action(s) in the lower court are based on outright lies under oath, from the onset, and because there will never be a time when there will be more than one party to the document disaster Respondent has dubbed a "mortgage". Appellant asks the Court to grant her all other relief, just and proper, given the depravity of the actions of Respondent.

October 3, 2018



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