THE STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Dale E. Van Slambrook, Master in Equity

Civil Action No.: 2016-CP-08-00591

Appellate Case No.: 2018-000539

Federal National Mortgage
Association ("Fannie Mae") Respondent(s)

v.

Richard C. Ivey a/k/a Richard Curtis Ivey;
Crowfield Plantation Community Services
Association, Inc.; Unifund CCR Partners
Assignee of Palisades, a General Partnership;
and CIT Bank, National Association, Defendants

Of whom Richard C. Ivey a/ka/
Richard Curtis Ivey is the Appellant.....Appellant(s)

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. **DID THE MASTER ABUSE HIS DISCRETION IN DENYING APPELLANT'S MOTION FOR SANCTIONS UNDER THE SUPREME COURT'S 2011 ADMINISTRATIVE ORDER CONCERNING FORECLOSURES AND UNDER RULE 11 SCRCP WHEN THERE IS AMPLE EVIDENTIARY SUPPORT SHOWING THE RESPONDENT ACTED IN GOOD FAITH AND IN COMPLIANCE WITH THE 2011 ORDER- EVEN THOUGH THE 2011 ORDER DID NOT APPLY TO APPELLANT?**

2. **DID THE MASTER ERR BY NOT INCLUDING IN HIS ORDER ALL OF THE FACTS DESIRED BY THE APPELLANT, WHEN THE MASTER ADEQUATELY STATED THE BASIS FOR HIS DECISION?**

STATEMENT OF THE CASE

Respondent Federal National Mortgage Association ("Fannie Mae" or "Plaintiff") commenced this foreclosure action in Berkeley County against the Appellant Richard C. Ivey a/k/a Richard Curtis Ivey ("Ivey" or "Defendant") and others on March 9, 2016. Marion K. Ivey executed a promissory note on August 18, 2006 ("Note"), and Marion K. Ivey and Frank R. Ivey executed a mortgage on August 18, 2006 ("Mortgage"), which Note and Mortgage are the subject of this law suit.

Frank K. Ivey passed away on September 19, 2008, and Marion K. Ivey passed away on January 13, 2009. Ivey is the owner of the subject real property as a surviving joint tenant with Marion Ivey and is not a signatory of the Note nor the Mortgage. Ivey apparently started making payments on the Mortgage at some time, but Ivey did not sign a written assumption agreement at that time.

As alleged in the complaint, installments of principal and interest after December 1, 2014, were not paid. Ivey was served with process on March 12, 2016. Ivey defaulted and on May 3, 2016, Fannie Mae filed a Certification and Service of Default as well as a form motion and Order of Reference to refer the case to the master.

On October 27, 2016, Ivey's counsel filed Notice of Appearance and Request for Foreclosure Intervention. On November 23, 2016, Fannie Mae's servicer, Seterus mailed a Mortgage Trial Modification Offer (aka Trial Payment Plan or "TPP") to Marion K. Ivey at the property address. This offer called for a response by December 1, 2016, and expressly provided that if a response was not received by then, the offer was revoked. On December 5, 2016, Seterus mailed another letter to Marion K. Ivey at the property address, noting the former TPP offer had expired but stating that if a certain trial payment amount was received by January 31, 2017, the loan would be reevaluated to see if the mortgagor was eligible for a trial plan. These letters were forwarded to Ivey's counsel by Fannie Mae's counsel on February 7, 2017, and filed with the court on February 10, 2017, as evidence of Plaintiff's Good Faith Loss Mitigation review.

On May 19, 2017, Seterus sent a third Mortgage Trial Modification Offer to Marion K. Ivey at the property address. This offer called for a response by June 02, 2017, or the offer would be revoked. On June 20, 2017, Fannie Mae filed a motion for summary judgment. On June 26, 2017, Ivey executed acceptance of the Mortgage Trial Modification Offer and returned the signed acceptance to plaintiff by overnight mail.

Pursuant to the Mortgage Trial Modification Offer, Ivey made three trial payments of $1,018.11 to Plaintiff on July 1, 2017, August 1, 2017, and September 1, 2017, respectively. On July 17, 2017 the Plaintiff's counsel confirmed to Fannie Mae's counsel by email that Ivey had been approved for the trial payment plan, that the first payment due July 1, 2017, had been made, and that the summary judgment hearing scheduled for July 20, 2017, would be cancelled. Fannie Mae's counsel also confirmed to Ivey's counsel by email dated September 18, 2017, that all three payments were received by Seterus, Fannie Mae's servicer.

On October 11, 2017, Suzanne Albert, a/k/a Suzanne Burckhalter, on behalf of the court, informed Fannie Mae's counsel by email that the pending foreclosure case would be dismissed for failure to prosecute if the plaintiff was unable to proceed by October 31, 2017. Fannie Mae's counsel did not want to dismiss the action because a permanent loan modification had not been generated, sent to the Ivey's counsel and/or executed by Ivey, so Fannie Mae's counsel consulted with Ivey's counsel about striking the matter from the active docket pursuant to Rule 40(j) SCRCP. Ivey's counsel refused.

On October 31, 2017, Fannie Mae filed a motion to strike the foreclosure case from the active docket pursuant to Rule 40(j). The Motion Cover Sheet mistakenly indicated that this was a form motion and proposed consent order. The body of the motion also provided that the motion was with the consent of all appearing parties of record; however, the Rule 11 certification expressly included in the motion, correctly noted that

opposing counsel was contacted in good faith to resolve this matter, and that it appeared a hearing would be required. The master was unaware that the Rule 40(j) dismissal was not by consent, so he signed the form order.

On November 7, 2017, Ivey filed an objection to the Rule 40(j) and a motion to dismiss and for sanctions pursuant to Rule 11 SCRCP. An initial hearing was held before the master on November 15, 2017, on the Rule 40(j) motion on the motion to dismiss and for sanctions. The transcript from that hearing is part of the record. The parties also filed a Joint Stipulation of Facts. Prior to the hearing, Fannie Mae's counsel received a copy of the permanent modification and forwarded it to Ivey's counsel. At that hearing, the court vacated the Rule 40(j) as not being with the consent of all the parties but continued the hearing on the motion to dismiss and for sanctions for at least 30 days to allow time for the permanent loan modification to be fully executed and for the previous Mortgage Trial Modification offer also to be signed.

The continued hearing was rescheduled for January 9, 2018. Prior to that hearing, the parties executed the permanent loan modification.

The court held a hearing on the Ivey's motion for sanctions on January 9, 2018. At that hearing, Fannie Mae consented to the dismissal of the foreclosure case and the court asked both parties to submit proposed orders on the issue of sanctions. On February 22, 2018, the court entered an Order Denying Defendant's Motion for Sanctions and Dismissing Case Without Prejudice. This appeal followed.

STANDARD OF REVIEW

The decision of whether to impose sanctions is generally entrusted to the sound discretion of the trial court. *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). This court will not interfere with a trial court's exercise of its discretion with respect to the imposition of sanctions unless an abuse of discretion has occurred. *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997). The party appealing the order has the burden of establishing that the trial court abused its discretion. *Id.* "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

ARGUMENT

I. THE MASTER DID NOT ABUSE HIS DISCRETION IN DENYING SANCTIONS BECAUSE THERE IS AMPLE EVIDENTIARY SUPPORT SHOWING THE PLAINTIFF ACTED IN GOOD FAITH AND IN COMPLIANCE WITH THE ADMINISTRATIVE ORDER.

The Supreme Court's May 2, 2011, order ("2011 Order" or "Administrative Order") provides in relevant part as follows:

> The Court having jurisdiction over the foreclosure action shall hear and determine any dispute concerning any party's compliance with this order, including without limitation, the failure of any party to act in good faith in complying with the terms of this order. In the event the Court determines that any party to the foreclosure action, or their acting agent, has failed to comply with the terms of this order, or has not attempted to reach an agreement for foreclosure intervention in good faith, the Court **may**, in its discretion, impose such sanctions as it determines to be reasonable and just

under the circumstances, including without limitation, the assessment of reasonable attorneys' fees and costs against the culpable party. (Emphasis added.)

This court should glean several points from the language used in the Administrative Order which are emphasized above and are applicable to this case and the court's decision to deny sanctions. First, the bedrock of the order is for the party to act in good faith. More specifically, the crucial question is whether a party attempted to reach an agreement for foreclosure intervention in good faith. In this case, there is ample evidence in the record to support that Fannie Mae not only acted in good faith but also reached and entered into a permanent loan modification with Ivey.

GOOD FAITH

Fannie Mae's servicer sent several trial mortgage modification offers to Ivey, even though Ivey had not made a payment for almost two years and was in default. Fannie Mae's counsel forwarded these offers to Defendant's counsel on February 7, 2017, but Ivey still failed to respond. Fannie Mae's servicer sent a third trial mortgage modification offer on May 19, 2017, with a deadline of June 2, 2017. When Ivey again failed to meet this third trial mortgage modification offer deadline (and was still not making any mortgage payments) Fannie Mae filed for summary judgment. Only then did Ivey belatedly sign the trial modification offer on June 26, 2017 (well after the deadline), and make the July 1, 2017, trial payment.

Despite the delay and the acceptance being beyond the deadline, Fannie Mae still approved Ivey for the trial payment plan and confirmed this by email dated July 17, 2017, to Ivey's counsel along with notice that the Fannie Mae was cancelling the scheduled summary judgment hearing. After all three trial payments were made, Fannie Mae's counsel confirmed this by email to Ivey's counsel on September 18, 2017.

Normally, after a successful trial payment plan is completed, a final loan modification is prepared and sent to the Defendant; however, in this case there was an additional delay of Ivey's own making. Despite having acquired his interest in the property on January 13, 2009, Ivey never applied to assume the Note or Mortgage or go through an assumption review process. Ivey's counsel was specifically notified by email dated September 25, 2017, that the final modification was on hold pending preparation and execution of an assumption agreement, and that once the agreement was returned to Fannie Mae, a final modification will be generated. By email dated October 24, 2017, Ivey's counsel indicated, "I am under the impression that my client has signed and returned the assumption agreement, so the ball is in your client's court."

A couple of weeks prior to this, the master informed Fannie Mae's counsel by email that the pending foreclosure case would be dismissed for failure to prosecute if the plaintiff was unable to proceed by October 31, 2017. Fannie Mae's counsel did not want to dismiss the action before a permanent loan modification was signed so he approached Ivey's counsel about striking the matter from the active docket pursuant to Rule 40(j)

SCRCP. Ivey's counsel refused. Of course, a few months earlier, Fannie Mae could have avoided this dilemma by rejecting Ivey's trial payment plan as untimely and proceeding to summary judgment with Ivey already in default, but it chose to honor the goals of the 2011 Order to "reach an agreement for foreclosure intervention in good faith." The court should ask itself, "Which party was proceeding in good faith?"

Rather than consent to the 40(j) dismissal, Ivey instead chose to file a motion to dismiss and for sanctions on November 7, 2017, based on the erroneous allegations that Fannie Mae did not act in good faith or comply with the 2011 Supreme Court Order. Compliance with the 2011 Order will be addressed in the next section.

A 40(j) dismissal would not have prejudiced the Ivey. Within two weeks from the entry of the 40(j) order, Ivey received the permanent loan modification. As noted by Fannie Mae's counsel in the subsequent hearing on January 9, 2018, once its servicer received the executed loan modification back from Ivey, Fannie Mae would have and did dismiss the case. Thus, the motions and hearings which took place after October 31, 2017 were solely at Ivey's insistence and were entirely unnecessary.

This court should conclude that there is ample evidentiary support that Fannie Mae acted in good faith in seeking a foreclosure intervention agreement.

COMPLIANCE

Ivey next argues that Fannie Mae failed to comply with the 2011 Order in two ways. First, Ivey contends that Fannie Mae "violated that portion of the 2011

Administrative Order which requires that '[i]n the event that the Mortgagor and Mortgagee agree on any loan modification or other loss mitigation plan ("Agreement"), such Agreement shall be reduced to writing, executed by the Mortgagor and Mortgagee, and served on all parties in the case.'" Ivey contends that Fannie Mae failed to timely return a signed copy of his Trial Payment Plan before his motion for sanctions was filed. This argument lacks merit for several reasons.

First, as will be discussed in more detail in response to Ivey's second argument, the "Agreement" contemplated by the 2011 Order is a loan modification or loss mitigation plan and not a temporary trial payment plan used to help determine if a debtor can make the payments under a possible loan modification. Second, the language of the 2011 Order does not specify a time limit to sign and serve the agreement, even if applicable to a Trial Payment Plan. Furthermore, Fannie Mae did sign and serve the Trial Payment Plan on Ivey on November 26, 2017, prior to the continued hearing. The court should note the irony of Ivey claiming Fannie Mae breached an implied time limit for returning the signed Trial Payment Plan when Ivey failed to sign and return the Trial Payment Plan by the express time limit specified in the third trial offer, he received.

Finally, there is no prejudice to Ivey. After he made his first payment, Fannie Mae's counsel confirmed by email to Ivey's counsel that Ivey was approved for the Trial Payment Plan the same month Ivey made his first payment. Also, once Ivey completed his payments, this was also confirmed by Fannie Mae's counsel within a few weeks of his

last payment. Finally, since Ivey received a permanent loan modification, the receipt of a signed Trial Payment Plan is moot. Appellate courts recognize -- or at least they should recognize -- an overriding rule of civil procedure which says: whatever doesn't make any difference, doesn't matter. E.g., *Cox v. Cox*, 290 S.C. 245, 349 S.E. (2d) 92 (Ct. App. 1986) (appellant has the burden of showing that an error was prejudicial). *McCall v. Finley*, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987). "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Rule 61 SCRCP, *Harmless Error*.

Ivey's second argument is that Fannie Mae should have dismissed the foreclosure without prejudice after Ivey completed his last trial plan payment on September 1, 2017. This argument also lacks merit. The 2011 Order does not impose any specific requirements on the Mortgagee when the parties have merely entered a temporary payment plan. Instead, the 2011 Order only sets forth certain required procedures if the parties agree to a loan modification or loss mitigation plan as follows:

> In the event that the Mortgagor and Mortgagee agree on any **loan modification or other loss mitigation plan** ("Agreement"), such Agreement shall be reduced to writing, executed by the Mortgagor and Mortgagee, and served on all parties in the case. Any pending case shall be stayed, and no hearing or foreclosure sale held for 90 days following the entry of any Agreement, unless the Mortgagor shall not comply with the terms of the Agreement. [emphasis added].
>
> . . .
>
> **If the Mortgagor shall be in compliance with the terms of the Agreement after 90 days, the Mortgagee's attorney shall *promptly* file a notice of**

dismissal of the action without prejudice, and the case will be dismissed. (emphasis added).

In this case, the parties did not agree to any "loan modification or loss mitigation plan" as contemplated by the Administrative Order until after November 14, 2017, when Fannie Mae sent the permanent loan modification to Ivey prior to the November 15, 2017 hearing. The trial payment plan was merely temporary, with the express provision that if Ivey were to default under the trial payment plan, Ivey would be not be eligible for a permanent loan modification.

By the time of the January 9, 2018, hearing, the parties had signed a permanent loan modification. At that hearing, Fannie Mae's counsel represented to the court it would dismiss the case without prejudice. Thus, less than sixty (60) days after the loan modification, Fannie Mae asked the court through its counsel to dismiss the action[1].

Additionally, the master's findings of compliance are supported by the language used in the Administrative Order requiring a delay of 90 days before requiring the Plaintiff to "promptly" seek dismissal of the case without prejudice. This 90-day period furthers the goals of judicial economy (by ensuring the Plaintiff would not have to file an entire new action in the event of an early default under a loan modification), mitigation

[1] The court should also note that even if the Trial Payment Plan qualified as an "Agreement" requiring the case to be dismissed in 90 days, which is denied, Fannie Mae was prepared to dismiss by December 1, 2017 (within 90 days from September 1, 2017) because the agreement for a permanent loan modification and the only reason the case continued was because Ivey wanted to prosecute his motion for sanctions.

of legal costs for Plaintiff and Defendant, and mitigation of potential substantial delay that would result if the case were dismissed and required to be refiled due to Defendant's early default under any loan modification.

Based on the foregoing, this court should conclude that master did not abuse his discretion, because there is ample evidentiary support to show that the Fannie Mae complied with all terms of the Administrative Order.

II. THE MASTER CORRECTLY HELD THAT THE PROVISIONS OF THE 2011 ADMINISTRATIVE ORDER CONCERNING FORECLOSURES DID NOT APPLY TO IVEY WHO WAS NOT A MORTGAGOR, AND, THEREFORE, THE PLAINTIFF COULD NOT BE SANCTIONED FOR ANY ALLEGED VIOLATIONS OF THE ORDER.

In Ivey's Motion, he alleges that Plaintiff is in contempt of the South Carolina Supreme Court's May 2, 2011 Administrative Order, and, thus, Ivey is entitled to sanctions against Fannie Mae or its counsel. This argument is without merit, however, because as the master concluded in his order, the provisions of the 2011 Order do not apply to Ivey who was not a "Mortgagor" as defined as a party involved in the mortgage transaction in question.[2]

The Administrative Order expressly and solely applies to the "Mortgagor," which is defined in the Administrative Order as, "every owner, mortgagor, and debtor **under**

[2] To be clear, Fannie Mae's guidelines and policies do provide loss mitigation options for persons who inherit property just like those that were offered in this case; however, these are independent of the provisions of the 2011 Order. Once Ivey executed the assumption agreement the provisions of the 2011 Order would apply to Ivey as a party to the mortgage transaction.

the note and mortgage at issue." [emphasis added]. In this case, Ivey was not a party to the original, underlying "note and mortgage at issue." Rather, Marion K. Ivey and Frank R. Ivey (Ivey's deceased parents) (collectively, "Mortgagors") were the only "owners, mortgagors, and debtors" who executed and delivered the note and mortgage to Fannie Mae's predecessor in interest. Ivey did not acquire his inherited interest in the subject property until well after his parents, the Mortgagors, closed on the underlying note and mortgage transaction. Accordingly, a plain reading of the Administrative Order shows that its provisions do not apply to Ivey.

As additional support for the master's finding and conclusion that the Administrative Order does not apply to Ivey, the master considered the South Carolina Court Administration's formal letter of explanation dated June 7, 2011 ("Admin Explanation Letter"), which interprets and explains the intent, scope, and application of the 2011 Admin. Order.

Pursuant to the Admin Explanation Letter:

> In paragraph A(1), concerning who is entitled to participate in foreclosure intervention, the definition of "Mortgagor," read in context **includes only parties involved in the mortgage transaction in question**." [emphasis added].

Admin Explanation Letter, Page 2.

In this case, Ivey was not a "party involved in the mortgage transaction in question," as the mortgage transaction was between the Mortgagors and Fannie Mae's predecessor in interest, only. As stated above, Ivey merely obtained an inherited interest in the

mortgaged property, subject to Fannie Mae's first-priority mortgage lien, *after* the Note and Mortgage transaction/closing was completed between the Borrowers/Mortgagors and Fannie Mae's predecessor.

Therefore, the master correctly held the 2011 Order did not apply to Ivey, and that Ivey's motion for sanctions based upon an alleged violation of the Administrative Order fails as a matter of law.[3]

III. THE MASTER DID NOT ABUSE HIS DISCRETION IN DENYING SANCTIONS UNDER RULE 11 SCRCP, BECAUSE THERE IS AMPLE EVIDENTIARY SUPPORT SHOWING THE PLAINTIFF'S COUNSEL ACTED IN GOOD FAITH AND IN COMPLIANCE WITH RULE 11 SCRCP.

Under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether there is good ground to support it. *Ex parte Gregory*. 378 S.C. 430, 663 S.E.2d 46 (2008). "Rule 11 requires '[a]ll motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in

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[3] It is not clear if Ivey challenged this ruling on appeal as it is not listed in the statement of issues on appeal and does not appear to be directly argued in his brief. See *First Sav. Bank*, 314 S.C. at 363, 444 S.E.2d at 514 (noting an issue which is not argued in the brief is deemed abandoned and precludes consideration on appeal), *cited* in *Taylor v. Medenica*, 331 S.C. 575, 582 n.7, 503 S.E.2d 458, 462 n.7 (1998); see also *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999) (noting that conclusory arguments may be treated as abandoned); Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." (formerly Rule 207(b)(1)(B), SCACR)). *Leventis v. S.C. Dep't of Health & Envtl. Control*, 340 S.C. 118, 137 n.10, 530 S.E.2d 643, 653 (Ct. App. 2000).

writing, with opposing counsel and has attempted in good faith to resolve the matter ... unless the movant's counsel certifies that consultation would serve no useful purpose or could not be timely held.' The penalty for noncompliance is to strike the motion unless the attorney promptly amends the document to comply with the rule." *Jackson v. Speed,* 326 S.C. 289, 310 486 S.E.2d 750, 761 (1997). The determination whether to impose sanctions is at the discretion of the Judge and "sounds in equity rather than at law." *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 641, 760 S.E.2d 399, 410 (2014)

As recited in the facts, the master informed Fannie Mae's counsel by email that the pending foreclosure case would be dismissed for failure to prosecute if the plaintiff was unable to proceed by October 31, 2017. Shortly before this deadline, according to his counsel, Ivey had signed and mailed back the assumption agreement clearing the way for the final loan modification agreement to be signed. Fannie Mae's counsel was seeking a way to keep the case from being dismissed (in case Ivey refused to execute the loan modification) while also allowing enough time for the loan modification to be completed and signed. A Rule 40(j) SCRCP dismissal was the logical choice. The evidence shows that in accordance with Rule 11 *and prior to filing the motion,* Fannie Mae's counsel consulted with Ivey's counsel about the motion to dismiss under Rule 40(j), but Ivey's counsel refused to consent.

This consultation[4] is evidenced by the last paragraph of the filed Motion to Strike which states:

> Pursuant to Rule 11, SCRCP, the undersigned hereby certifies that prior to filing this motion, opposing counsel was contacted in good faith to resolve this matter and that it appears that a hearing will be required.

Counsel for Ivey incorrectly asserts that Fannie Mae "willfully" filed the motion to strike pursuant to Rule 40(j) without Ivey's consent, and as such, Fannie Mae's counsel allegedly violated Rule 11, SCRCP. Ivey's assertion is misplaced and without merit based on the foregoing. Although the filed motion to strike contained two scrivener's errors mistakenly indicating that Ivey consented to the Motion, the fact that the motion to strike expressly provided that the parties did not reach an agreement as to the motion to strike, and that a hearing was necessary, supersedes any prior scrivener's error and illustrates Fannie Mae's full compliance with Rule 11, SCRCP. The filed motion to strike clearly stated that a hearing on the matter would be required to provide Ivey a full and fair opportunity to dispute and/or argue against the motion to strike.

It is well settled that "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Rule 61, SCRCP. Any defect in Fannie Mae's motion to strike was a harmless

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[4] The court should also note that while a motion to dismiss is expressly exempt from the consultation requirements, it does not appear that motion for sanctions is exempt, and Ivey's motion for sanctions does not include a similar certification of consultation.

error which did not affect the substantial rights of the parties. Ivey completed his loan modification review, was approved and received a loan modification. Whether the case was stricken from the docket, or whether it was dismissed by consent, is now irrelevant since the loan is modified and Fannie Mae consented to the matter being dismissed.

Finally, Ivey claims that Fannie Mae filed the motion to strike merely for the purposes of delay and that such alleged improper motive is improper under Rule 11, SCRCP. Ivey has provided no evidence that supports this contention. Rather, Fannie Mae's true intent in seeking the motion to strike was to allow the parties sufficient time to execute a loan modification agreement that would be beneficial to both parties. Ivey has failed to show any prejudice to him resulting from the motion to strike, and Fannie Mae established good grounds to file such motion to strike.

For the foregoing reasons, this court should conclude that the master did not abuse his discretion in denying the motion for sanctions under Rule 11.

IV. THE MASTER ADEQUATELY STATED THE BASIS FOR HIS DECISION.

Ivey argues that the master failed to make accurate findings as to all the relevant facts. This argument lacks merit. Ivey is really arguing that the master did not view and recite the facts in the manner preferred by Ivey.

First, Ivey argues that the master failed to include the stipulation of facts in his order. Rule 52(a) SCRCP provides, "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as

provided in Rule 41(b)." Furthermore, Rule 52, "is directorial in nature so 'where a trial court substantially complies with Rule 52(a) and adequately states the basis for the result it reaches, the appellate court should not vacate the trial court's judgment for lack of an explicit or specific factual finding.'" *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 131, 568 S.E.2d 338, 342 (2002); *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 320, 698 S.E.2d 773, 784 (2010). The master's order states the basis for the result he reached and his order does not conflict with the parties' stipulation of facts.

Ivey argues the statement on page 6 of the order that, "The Motion to Strike expressly provided that the parties did not reach an agreement as to the Motion to Strike..." is false. That simply is not true. Ivey leaves off the remainder of that sentence which provides, "and that a hearing was necessary." While not verbatim, this sentence is an accurate summary of the facts and is consistent with Fannie Mae's counsel Rule 11 consultation and certification.

Likewise, Ivey argues that the court ignores his damages and the 40(j) order was not harmless. However, the facts show that within two weeks of the entry of that order Ivey had received a permanent loan modification and Fannie Mae was prepared to, and did, dismiss the action without prejudice. The post 40(j) actions were all based on the Ivey's unnecessary and unwarranted efforts to get sanctions. Any alleged damages for costs, missed time from work or attorney's fees were self-inflicted.

Ivey also alleges that the master erred by concluding that Ivey had produced no evidence to show that the motion to strike was filed for delay. Ivey points to the master's emailed deadline for dismissal as circumstantial evidence that the motion was filed for delay. As discussed above, while certainly the master's deadline was an important consideration for filing the motion to strike the case, it was not to delay the foreclosure but to preserve the action while the parties executed the loan modification agreement which would end the case. The type of delay contemplated by Rule 11 is the filing of frivolous motions to keep an action from going forward. In this case, the opposite was true - the motion was intended to allow the parties to successfully finish the case to the benefit of both parties. There was no error.

Finally, Ivey argues that the court erred by stating that the parties had agreed to a dismissal without prejudice of the action when Ivey actually argued it could be dismissed without prejudice under the administrative order or with prejudice as a sanction. This last argument is somewhat representative of this case and recalls Justice Sanders' recitation of the harmless error rule as cited previously herein, "whatever doesn't make any difference, doesn't matter."

CONCLUSION

The decision of whether to impose sanctions is generally entrusted to the sound discretion of the trial court. *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). This court will not interfere with a trial court's exercise of its discretion with

respect to the imposition of sanctions unless an abuse of discretion has occurred. *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997). Here, there is ample evidence to support the master's decision to deny sanctions because Fannie Mae acted in good faith in reaching a loan modification and in compliance with the 2011 Order, even though it was not applicable to Ivey. Also, there is ample evidence showing that Fannie Mae's counsel properly consulted with Defendant's counsel under Rule 11 prior to filing a Rule 40(j) motion to allow sufficient time for the parties to execute a loan modification, and that this certification was included in the motion. Finally, Ivey has suffered no prejudice from any of these actions as he received a loan modification within two weeks of the filing of the 40(j) order which was later vacated. The post 40(j) actions were all based on Ivey's unnecessary and unwarranted efforts to get sanctions. Any alleged damages for costs, missed time from work or attorney's fees were self-inflicted. For all these reasons, the reasons set forth in the master's order and in the record, this court should affirm the order of the master denying sanctions in this case.

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM BERKELEY COUNTY
Court Of Common Pleas

The Honorable Dale E. Van Slambrook, Master In Equity

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Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield Plantation Community Services Association, Inc.; Unifund CCR Partners Assignee of Palisades, a General Partnership; and CIT Bank, National Association, Defendants

Of whom Richard C. Ivey a/ka/
Richard Curtis Ivey is the Appellant.....Appellant(s)

v.

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Association ("Fannie Mae") .....Respondent

PROOF OF SERVICE

I certify that I have served the Respondent's Initial Brief and Respondent's Designation of Matter on the Appellant by depositing a copy of it in the United States Mail, postage prepaid, on November 7, 2018, addressed to his attorney of record, John R. Cantrell, Jr., Esquire, P.O. Box 1276, Goose Creek, SC 29445-1276.

(Signatures on the following page.)

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