THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Master in Equity

Case No. 2015-CP-46-03068

Apellate Case No. 2016-002161

The Bank of New York Mellon fka The Bank of New York, as Trustee (CWALT 2004-2CB),.....Respondent,

v.

Tara B. Barfield a/k/a Tara Burdiss Barfield, Samuel C. Barfield, SouthTrust Bank, N.A., Beneficial Financial I Inc., CACH, LLC, and The South Carolina Department of Revenue,.....Defendants,

Of whom Tara B. Barfield a/k/a Tara Burdiss Barfield is the.....Appellant.

FINAL BRIEF OF APPELLANT

Tara B. Barfield
5088 Mariana Court
Tega Cay, South Carolina 29708
(704) 293-0132
Appellant Pro Se

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Bank of New York Mellon fka The Bank of New York as Trustee (CWALT 2004-2CB) Respondent(s),

v.

Tara B. Barfield, Appellant.

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Supreme Court of the United States; Jesinoski Et UX. V. COUNTRYWIDE HOME LOANS, INC. ET AL (pages 1-5)

STATUTES

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S.C. Code §16-13-240 – Obtaining Signature or Property by false pretense

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Truth in Lending Act (TILA) - 15 U.S. Code § 1635 (a-g) Rescission

Truth in Lending Act (TILA) - 15 U.S. Code § 1641 section 131 (g) Transfer of Mortgage

STATEMENT OF ISSUES ON APPEAL

1) TILA Rescission – Did the lower court err in not recognizing that the subject loan in this case was rescinded under the Truth in Lending Act (hereinafter referred to as TILA) on October 13, 2015: and thus the subject Note & Mortgage were null & void before the hearing occurred and before the judgement was entered; and that the plaintiff should not have been granted relief on the basis of void instruments?

2) TILA Violation – Did the lower court err in not recognizing that the plaintiff did not provide the required Written Notice of Consumer Debt Assignment (Answer page 3) Section 131(g) of TILA and section 226.39 of Regulation Z require the new owner of a residential mortgage loan (purchaser, transferee, or assignee of a loan, not the transferring party) to provide a written disclosure to the borrower no later than 30 days after the date on which the loan is sold or otherwise transferred or assigned and therefore relief for the plaintiff should have been barred?

3) Fraud - Did the lower court err in not recognizing that the plaintiff is apparently trying to obtain property through fraudulent activity and therefore relief for the plaintiff should have been barred?

STATEMENT OF THE CASE

1) The Lis Pendens and Summons & Complaint were filed on October 9, 2015

2) Notice of Rescission - The subject loan was rescinded under the Truth in Lending Act (herein after referred to as TILA) on October 13, 2015. The rescission was effective upon mailing and thus the Note & Mortgage are null & void (Notice of Rescission, Proof of Mailing & Delivery, and Answer

& Defenses p. 4, Supreme Court of the United States; Jesinoski Et UX. V. COUNTRYWIDE HOME LOANS, INC. ET AL,page 5)

3) The Notice of Rescission was received by the lender (also the Plaintiff in this case) on October 16, 2015.

4) The Lis Pendens and Summons & Complaint were served on me on October 21, 2015

5) The 20 day period to comply with TILA regarding the rescission expired on November 5, 2015 with no action taken by the lender (also the Plaintiff in this case) to comply with the requirements of TILA or to undo the rescission.

6) Order referring Case to Master or Special Referee on March 4, 2016

7) The Answer and Defenses were filed and served on the Plaintiff by me on March 9, 2016 in which the Plaintiff's allegations were denied and many pertinent defenses were raised

8) A Real Estate Settlement Procedures Act (RESPA) Qualified Written Request (QWR) was filed and served on the Plaintiff March 9, 2016

9) The second Real Estate Settlement Procedures Act (RESPA) Qualified Written Request (QWR) was filed and served on the Plaintiff April 27, 2016

10) The Motion for Summary Judgement was filed and served on me by the Plaintiff on August 4, 2016

11) The third Real Estate Settlement Procedures Act (RESPA) Qualified Written Request (QWR) was filed and served on the Plaintiff August 10, 2016

12) The Motion for Summary Judgement Hearing was held on August 23, 2016

13) The Judgement of Foreclosure and Sale was entered on September 14, 2016 in the amount of $246,913.08.

14) I filed and served the Plaintiff the Notice of Appeal on October 24, 2016

ARGUMENTS

TILA Rescission

The subject loan was rescinded under the Truth in Lending Act (herein after referred to as TILA) on October 13, 2015 and thus the subject Note

& Mortgage were null & void before the hearing was held and before the (judgement) was entered. Therefore, the plaintiff should not have been granted relief on the basis of void instruments {Notice of Rescission (R. p. 111), Proof of Mailing & Delivery (R. p. 112), and Answer & Defenses (R. p. 65, number 47)}. Please note that the recent Supreme Court of the United States; Larry D. Jesinoski Et UX., Petitioners, V. COUNTRYWIDE HOME LOANS, INC. ET AL (R. p. 118, lines 4-9) decision makes it clear that the rescission under TILA is effective upon mailing the Notice of Rescission and requires no further action on the part of any party. Thus it is effective by operation of law such that it would take another operation of law to overturn; however; no such lawsuits were ever filed by any party. The statute allows 20 days from receipt of notice to comply and the lender did not comply to the requirements of the statute as set forth in the Truth in Lending Act (TILA) - 15 U.S. Code § 1635 (a-g) Rescission within that time frame. Therefore; the rescission is permanent.

For the two following arguments, the Appellant wishes to demonstrate that there were genuine issues of fact that were brought up in this case that should have precluded the entry of a judgement in this case. Especially considering that "...the evidence and the inferences that can be drawn therefrom should be viewed in the light most favorable to the nonmoving party." *Gilmer v. Martin* S.C. 154, 156, 473, S.E.2d 812. 813 (ct. App.1996). In addition, "...in cases applying the preponderance of evidence burden of proof, the nonmoving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgement." *Hancock v. Mid-South Management Co., Inc.,* 381 S.C. 326, 673 S.E.2d 440, (Ct. App. 2004).

TILA VIOLATION(s)

Defendant(s) asserts that the plaintiff did not provide the required Written Notice of Consumer Debt Assignment (Answer page 3). Section 131(g) of TILA and section 226.39 of Regulation Z require the new owner of a residential mortgage loan (purchaser, transferee, or assignee of a loan, not the transferring party) to provide a written disclosure to the borrower no later than 30 days after the date on which the loan is sold or otherwise transferred or assigned. There are two violations of this rule as there was no written notice sent to me as required after the assignment of the Mortgage dated May 29, 2012 (recorded June 5, 2012) or the assignment dated of the Mortgage dated April 16,2015 (recorded April 22, 2015) and therefore relief should have been barred.

1) This issue was raised with the court and the Plaintiff repeatedly and was never addressed. The issue was raised in my Answer & Defenses (p. 3) and in three separate Real Estate

Settlement Procedure Act (RESPA) Qualified Written Requests (QWR(s)) - with dates listed below;

a. March 22, 2016 (R. p. 120)
b. May 10, 2016 (R. p. 137)
c. August 17, 2016 (R. p. 142)

2) The Plaintiff has never answered the question as to why these notices that are required by TILA were not sent and is still in violation of TILA.

FRAUD

Defendant(s) asserts the allegation of fraud. Upon information and belief that the plaintiff is trying to obtain property through fraudulent activity and therefore relief should have been barred. Please note that each Assignment of Mortgage that is recorded for this property was executed and recorded a few months before the same Plaintiff (as this case) began foreclosure litigation which seems to be soley for the purpose of attempting to make litigation legitimate:

1) Two Assignments of Mortgage before 2009-CP-46-1735
2) One Assignment of Mortgage before 2012-CP-46-3440
3) One Assignment of Mortgage before 2015-CP-46-3068

All of these Assignments of Mortgage transfer the mortgage to the same plaintiff – Bank of New York Mellon et al – and all of these assignments appear to have been prepared by either the servicer (agent of the plaintiff), the counsel retained by the plaintiff (agent of the plaintiff) or both together. The officers that signed these assignments are clearly employees of the servicer(s). Thus these assignments show that the Plaintiff is effectively attempting to assign the mortgage to itself through its agents. Therefore the Plaintiff may be in violation of several South Carolina Codes of Law including (but not limited to):

1) Code §16-13-240 – Obtaining Signature or Property by false pretense
2) Code §16-13-260 – Obtaining Property under false tokens and letters
3) Code §16-13-10 - Forgery

There are four assignments of the of Mortgage into the same exact REMIC Trust (the Plaintiff) with no intervening assignments to other entities. How can any party assign something that has already been assigned?

1) Assignment of Mortgage dated March 12, 2009– MERS to BoNY (R. p. 53)

2) Assignment of Mortgage dated May 19, 2009 - Countrywide Home Loans to BONY (R. p. 113)
3) Assignment of Mortgage dated May 29, 2012 - MERS to BoNY (R. p. 54)
4) Assignment of Mortgage dated April 16, 2015 - BoNY to BoNY (how & why would BoNY assign the mortgage to itself) (R. p. 55)

Where is the intervening assignment that show that the mortgage was assigned from BoNY to Countrywide so that Countrywide could then assign the mortgage back to BoNY? And then where is the intervening assignment from BoNY to MERS so that MERS could then assign the mortgage back to BoNY? And then where is the intervening assignment from BoNY to BoNY so that BoNY could then assign the mortgage back to BoNY (assign it to itself from itself)? This makes no sense.

1) How can Countrywide assign the mortgage to BoNY again when MERS already assigned the Mortgage to BoNY? 2nd time
2) How can MERS assign the mortgage to BoNY again when MERS (and Countrywide) already assigned the Mortgage to BoNY? 3rd time
3) How can BoNY assign the mortgage to BoNY again when MERS (and Countrywide & MERS) already assigned the Mortgage to BoNY? 4th time
4) How can they assign that which has already been given to someone else? How can they assign that which they do not own?

Furthermore; it is also unclear who the owner of the loan actually is because I have received several different answers from the plaintiff.

1) Plaintiff's response to three separate Real Estate Settlement Procedure Act (RESPA) Qualified Written Requests (QWR(s)) - with dates listed below = all state that CWALT et al BoNY Mellon trustee is the owner, Bank of America is the Master Servicer and Bayview Loan Servicing is the servicer
   a. March 22, 2016
   b. May 10, 2016 (R. p. 138)
   c. August 17, 2016
2) The Plaintiff pleads in the Summons & Complaint that it is the owner of the Note (& Mortgage) thru transfer but the Affidavit in support of Motion for Summary Judgement states that Bank of America is and always has been the owner and

that the assignments merely reflect a transfer to a trustee, Bank of New York Mellon, as a holder.

CONCLUSION

For the reasons stated, this court should reverse the decision of the lower court.

Respectfully submitted,

April 24, 2018

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