

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable James B. Jackson
Master In Equity

Appellate Case No. 2018-001303
Circuit Court Case No. 2008-CP-38-1024

RECEIVED
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SC Court of Appeals

Wells Fargo Bank, N.A.,..... Respondent,

v.

Dorothy Sistrunk,..... Appellant.

BRIEF OF RESPONDENT

WOMBLE BOND DICKINSON (US) LLP

S. Sterling Laney, III
550 South Main Street, Suite 400
Greenville, South Carolina 29601
(864) 255-5400

M. Todd Carroll
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for Respondent

January 28, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE..... 2

STANDARD OF REVIEW 4

ARGUMENTS AND AUTHORITIES..... 4

 I. Ms. Sistrunk has not preserved any issues for appeal because this Court has already rejected her arguments about the merits of this case, and she did not appeal the foreclosure judgment. 4

 II. Judge Jackson did not abuse his discretion in denying Ms. Sistrunk’s futile, untimely post-judgment motion. 7

CONCLUSION 10

TABLE OF AUTHORITIES

Cases

<i>Ail. Coast Builders & Contractors, LLC v. Lewis</i> , 398 S.C. 323, 730 S.E.2d 282 (2012)	3
<i>Barth v. Barth</i> , 293 S.C. 305, 360 S.E.2d 309 (1987)	6
<i>Charleston Lumber Co. v. Miller Hous. Corp.</i> , 338 S.C. 171, 525 S.E.2d 869 (2000)	5
<i>Coleman v. Dunlap</i> , 306 S.C. 491, 413 S.E.2d 15 (1992)	7
<i>Dreher v. S.C. DHEC</i> , 412 S.C. 244, 772 S.E.2d 505 (2015)	7
<i>Eadie v. Krause</i> , 381 S.C. 55, 671 S.E.2d 389 (Ct. App. 2008)	7
<i>Ex parte Morris</i> , 367 S.C. 56, 624 S.E.2d 649 (2006)	7
<i>Hilton Head Ctr. of S.C., Inc. v. S.C. PSC</i> , 294 S.C. 9, 362 S.E.2d 176 (1987)	9
<i>Huggins v. Winn-Dixie Greenville, Inc.</i> , 252 S.C. 353, 166 S.E.2d 297 (1969)	5
<i>Judy v. Martin</i> , 381 S.C. 455, 674 S.E.2d 151 (2009)	5, 8
<i>Mitchell Supply Co v. Gaffney</i> , 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988)	9
<i>Raby Constr., LLP v. Orr</i> , 358 S.C. 10, 594 S.E.2d 478 (2004)	4, 9
<i>Robert E. Lee & Co. v. Comm'n of Pub. Works</i> , 250 S.C. 394, 158 S.E.2d 185 (1967)	5
<i>Tench v. S.C. Dep't of Educ.</i> , 347 S.C. 117, 553 S.E.2d 451 (2001)	8
<i>Wells Fargo Bank, N.A. v. Sistrunk</i> , Op. No. 2016-UP-472 (S.C. Ct. App. Nov. 9, 2016)....	2, 5, 9

Rules

Rule 203(d)(1)(B)(ii), SCACR	6
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STATEMENT OF ISSUES ON APPEAL

This appeal is frivolous. The issue presented asks whether the Master In Equity abused his discretion in denying the appellant's "Motion to End the Foreclosure Sale in Accordance with Federal Rule of Civil Procedure 60(b)(6)," which was filed four months after entry of an unappealed summary judgment and foreclosure order, and which contained only arguments that this Court has already rejected from a prior appeal in this same case?

STATEMENT OF THE CASE

The Court should not be misled by Ms. Sistrunk's voluminous opening brief and designation of reams of materials for inclusion in the appellate record. The Court has already addressed all of the substantive issues of this case with its summary decision in *Wells Fargo Bank, N.A. v. Sistrunk*, Op. No. 2016-UP-472 (S.C. Ct. App. Nov. 9, 2016), which resolved an appeal that was initiated in 2014. (R. p. ____.)

To summarize, this case is a decade-old mortgage foreclosure action in which Ms. Sistrunk asserted a series of fraud-based counterclaims. In 2014, Judge Goodstein entered summary judgment in Wells Fargo's favor on all of those counterclaims. (R. p. ____; Order Granting Partial Summary Judgment (Mar. 31, 2014).) Ms. Sistrunk sought to vacate that ruling, a position that this Court promptly rejected. (R. p. ____; Op. No. 2016-UP-472 ¶¶ 1–2.) This Court then denied Ms. Sistrunk's petition for rehearing and for rehearing *en banc*, and it remitted the case back to the circuit court on March 10, 2017, to complete the foreclosure process. (R. p. ____; Letter Remitting Case to Circuit Court (Mar. 10, 2017).)

Critically, Ms. Sistrunk did not seek certiorari review in the Supreme Court of this Court's decision, but instead wrote a defiant letter on this point:

After experiencing the courts' failures and since the Lower Court and the Appeals Court have failed to uphold federal and state laws, I will not be filing a Petition for a Writ of Certiorari. This must be done by the courts under their authority to correct errors of law. There is no federal or state law or statute that can force me to participate in an illegal contract or mortgage loan based on falsified documents. There is also no constitutional authority for the courts in the State of South Carolina or members of the Bar to ignore a federal or state law or statute. Therefore, based on these facts, it is up to the courts to correct their errors of law and failures of professional conduct, not me. . . .

(R. p. ____; Letter from Ms. Sistrunk to the Court of Appeals in Appellate Case 2014-001683 (filed Feb. 18, 2017).) This appeal picks up where that one left off.

Following remittitur, Wells Fargo filed a motion for summary judgment to complete the foreclosure process, which Judge Jackson granted on February 14, 2018. (R. p. ___; Wells Fargo’s Motion for Summary Judgment (Nov. 22, 2017); R. p. ___; Certificate of Compliance with Administrative Order 05-02-01; R. p. ___; Order Granting Wells Fargo’s Motion for Summary Judgment (Feb. 14, 2018).)

Ms. Sistrunk did not appeal that foreclosure order. Nor did she file any type of post-judgment motion. Accordingly, Judge Jackson’s foreclosure judgment is now the law of the case. *See, e.g., Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (reiterating that “an unappealed ruling, right or wrong, is the law of the case”).

The rest of the case should have flowed naturally from that unappealed judgment. The property was sold through a judicial sale on June 4, 2018. (R. p. ___; Report on Sale and Disbursements and Order Confirming Sale (June 18, 2018).) One week after the sale, though, Ms. Sistrunk filed a twenty-page “Emergency Motion to End the Foreclosure Sale in Accordance with Federal Rule of Civil Procedure 60(b)(6),” in which she recycled the same fraud-based arguments that this Court previously rejected. (R. p. ___; Emergency Motion to End the Foreclosure Sale in Accordance with Federal Rule of Civil Procedure 60(b)(6) (June 11, 2018).)

Without discussion, Judge Jackson promptly denied that “emergency motion” through entry of a Form 4 Order. (R. p. ___; Form 4 Order Denying Emergency Motion (June 18, 2018).) On July 5, 2018, he amended the Form 4 Order to correct a typographical error regarding when Ms. Sistrunk filed her “emergency motion.” (R. p. ___; Corrected Form 4 Order Denying Emergency Motion (July 5, 2018).)

This appeal followed. Ms. Sistrunk attached Judge Jackson’s report of the results of the judicial sale and the Form 4 Orders denying her “emergency motion” to the notice of appeal. (R.

p. ___; Notice of Appeal.) In her opening brief, though, Ms. Sistrunk confirms that she is only appealing the denial of her post-judgment “emergency motion.” (Sistrunk Br. at 13.) That order should be summarily affirmed, and the Court should not permit Ms. Sistrunk to continue abusing the legal process and dragging out this now-decade old case by filing repetitive, futile motions and then appealing once they are predictably denied.

STANDARD OF REVIEW

A trial judge’s decision regarding motions made under Rule 60 are reviewed for an abuse of discretion. *Raby Constr., LLP v. Orr*, 358 S.C. 10, 17–18, 594 S.E.2d 478, 482 (2004).

ARGUMENTS AND AUTHORITIES

I. Ms. Sistrunk has not preserved any issues for appeal because this Court has already rejected her arguments about the merits of this case, and she did not appeal the foreclosure judgment.

Ms. Sistrunk’s 44-page opening brief fails to present a single issue that has been preserved for appellate review. In that filing, Ms. Sistrunk exhaustively argues that she should be relieved of her mortgage debt because of an alleged fraud perpetrated on her through a series of incorrect appraisals, forgeries, oral misrepresentations, and falsified documents. She is indiscriminate as to whom she attributes the fraud:

- On Pages 2 through 23 of her brief, Ms. Sistrunk accuses the following people of participating in a scheme against her: (1) an appraiser, (2) the person who sold her the mortgaged property, (3) the mortgage broker, (4) the closing attorneys, and (5) various Wells Fargo employees.
- On Pages 23 through 26, she accuses (6) the current foreclosure counsel from Rogers Townsend of being part of the fraud.
- On Pages 27 through 33, she adds (7) the prior foreclosure counsel from Nelson Mullins to the list of alleged schemers.
- And on Page 34, Ms. Sistrunk alleges that (8) Judge Goodstein treated her unreasonably by limiting the amount of time she would be allotted to argue a frivolous motion back in 2012.

Fortunately, the Court does not need to address any of this wild (and false) hyperbole because none of it is properly before the Court. This is so for at least two reasons: first, the Court has already considered and rejected Ms. Sistrunk's arguments; and second, she failed to appeal the circuit court's foreclosure order disposing of this case. Each is addressed below in turn.

Law of the Case from Prior Appeal: Ms. Sistrunk previously asserted these same allegations and arguments to this Court in her 2014 appeal. The Court summarily rejected them with a *per curiam* order. *Wells Fargo Bank, N.A. v. Sistrunk*, Op. No. 2016-UP-472 (S.C. Ct. App. Nov. 9, 2016) (R. p. ____).

The Court's earlier rejection of Ms. Sistrunk's arguments is binding on this appeal. *See, e.g., Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court."); *Huggins v. Winn-Dixie Greenville, Inc.*, 252 S.C. 353, 357, 166 S.E.2d 297, 299 (1969) ("It is well settled in this jurisdiction that a decision of this court on a former appeal is the law of the case."); *Robert E. Lee & Co. v. Comm'n of Pub. Works*, 250 S.C. 394, 399, 158 S.E.2d 185, 188 (1967) ("This contention has been urged by the defendant from the inception of the litigation and is foreclosed by our decision on the prior appeal, which is binding upon the parties both as precedent and as law of the case.").

This is especially true in this case because of Ms. Sistrunk's dramatic refusal to seek a writ of certiorari of this Court's earlier decision. *See, e.g., Charleston Lumber Co. v. Miller Hous. Corp.*, 338 S.C. 171, 175, 525 S.E.2d 869, 871-72 (2000) (holding that both the plaintiff and the subsequent appellate court were bound by an appellate court's earlier rulings when the plaintiff failed to seek a writ of certiorari from the South Carolina Supreme Court); *Barth v.*

Barth, 293 S.C. 305, 308, 360 S.E.2d 309, 310 (1987) (“Ordinarily, the disposition of a case in the Court of Appeals when certiorari is not applied for nor granted becomes the law of the case.”).

Because this Court has already considered and rejected Ms. Sistrunk’s outrageous allegations—allegations which she has used to make this case last more than ten years—the law-of-the-case doctrine bars her from re-raising them in this appeal.

Unappealed Foreclosure Order: Not only does this Court’s prior decision bar Ms. Sistrunk from re-raising her arguments, she is also prevented from re-raising them because she failed to appeal Judge Jackson’s foreclosure order that was entered after remittitur.

In that order, Judge Jackson specifically held that Ms. Sistrunk “admitted that she only made two payments on the loan and has not made any additional payments since early 2009.” (R. p. ___; Order Granting Wells Fargo’s Motion for Summary Judgment at 6 (Feb. 14, 2018).) He further explained that she “has admitted to signing the loan documents and acknowledges that she is not interested in working with Wells Fargo to resolve the default through loss mitigation or other foreclosure intervention alternatives.” (*Id.*) Finally, Judge Jackson held that Wells Fargo had complied with the Supreme Court’s administrative order that governs residential foreclosures. (*Id.* at 8.)

The circuit court entered that dispositive order on February 14, 2018, but Ms. Sistrunk did not appeal that decision. *Compare* Rule 203(d)(1)(B)(ii), SCACR (requiring an appellant to attach “a copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing” to the notice of appeal), *with* R. p. ___, Notice of Appeal (appealing only the circuit court’s denial of Ms. Sistrunk’s post-judgment motion).

Accordingly, Judge Jackson’s foreclosure order is the law of the case, and Ms. Sistrunk’s appellate arguments are barred for this additional reason. *See, e.g., Dreher v. S.C. DHEC*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015) (“Thus, should the appealing party fail to raise all of the grounds upon which a lower court’s decision was based, those unappealed findings—whether correct or not—become the law of the case.”); *Ex parte Morris*, 367 S.C. 56, 66, 624 S.E.2d 649, 654 (2006) (“Although we find error, we affirm the order of the family court because Custodian failed to appeal the ruling which dismissed her from the case.”); *Eadie v. Krause*, 381 S.C. 55, 66, 671 S.E.2d 389, 394 (Ct. App. 2008) (“This ruling was not appealed; thus, it is the law of the case.”).

Because all of Ms. Sistrunk’s appellate arguments are prohibited by the law-of-the-case doctrine, the Court should readily affirm the circuit court’s rulings.

II. Judge Jackson did not abuse his discretion in denying Ms. Sistrunk’s futile, untimely post-judgment motion.

Ms. Sistrunk has only appealed Judge Jackson’s denial of her motion captioned “Emergency Motion to End the Foreclosure Sale in Accordance with Federal Rule of Civil Procedure 60(b)(6).” (R. p. ____.) Judge Jackson denied that motion without discussion through a Form 4 Order. (R. p. ____.) It cannot legitimately be contended that he abused his discretion in denying that motion, for several reasons. *See Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992) (“Whether to grant or deny a motion under SCRCF 60(b) is within the sound discretion of the judge.”).

Motion is Moot: Ms. Sistrunk’s motion asked that the circuit court “end the foreclosure sale” resulting from the foreclosure judgment. (R. p. ____.) But she filed this motion on June 11, 2018—one week *after* the sale. (R. p. ____.) Because it sought to stop an event that had already happened, the motion is moot, and Judge Jackson did not abuse his discretion in denying it.

Wrong Procedural Rules: Ms. Sistrunk’s motion purports to be made under Rule 60(b)(6) of the **Federal** Rules of Civil Procedure. (R. pp. ___–___.) Not only is the motion asserted under the wrong set of procedural rules, there is no Rule 60(b)(6) in the South Carolina Rules of Civil Procedure. Judge Jackson did not abuse his discretion in denying a motion that is not even recognized by the governing procedural rules.

Recycled Previously-Rejected Arguments: Ms. Sistrunk’s motion only repeated the same “fraud” arguments that were previously rejected by both the circuit court and this Court in her prior appeal, including her baseless (and outrageous) attacks on individual appraisers, brokers, lawyers, bankers, and even Judge Goodstein. (R. pp. ___–___.) Because of the law-of-the-case doctrine discussed above, Judge Jackson was required to reject Ms. Sistrunk’s arguments when they re-appeared in a post-judgment motion. *See Judy*, 381 S.C. at 458, 674 S.E.2d at 153 (explaining that “a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court”).¹

Untimely Post-Judgment Motion: Although she argued that foreclosure is improper in her post-judgment motion, Ms. Sistrunk filed that motion nearly four months after Judge Jackson entered the foreclosure order, and nearly three months after the time to appeal the foreclosure order had expired. Accordingly, her motion—even if treated as arising under Rule 60, SCRC—was untimely and cannot be considered on its merits. *See, e.g., Tench v. S.C. Dep’t of Educ.*, 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001) (“A party may not invoke this rule [*i.e.* Rule 60(b), SCRC] where it could have pursued the issue on appeal.”).

¹ Not surprisingly, the entire “abuse of discretion” discussion in Ms. Sistrunk’s appellate brief rehashes once more her “fraud” allegations. (Sistrunk Br. at 42–44.) For the reasons explained above, the law-of-the-case doctrine voids those arguments.

No Extrinsic Fraud: Rule 60(b), SCRCF, provides post-judgment relief only where the movant comes forward with evidence of extrinsic fraud involving the underlying proceedings. *Raby Construction*, 358 S.C. at 20–21, 594 S.E.2d at 483. “Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.” *Hilton Head Ctr. of S.C., Inc. v. S.C. PSC*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). Despite all of her inflammatory rhetoric, Ms. Sistrunk did not argue in her post-judgment motion that anyone committed any extrinsic fraud. Nor did she make any such argument in her appellate brief. Accordingly, Rule 60(b), SCRCF, cannot apply to this situation as a matter of law, just as the Court recognized when it affirmed Judge Goodstein’s denial of Ms. Sistrunk’s earlier Rule 60 motion. *Wells Fargo Bank, N.A. v. Sistrunk*, Op. No. 2016-UP-472, ¶ 2 (S.C. Ct. App. Nov. 9, 2016) (R. p. ____).

No Meritorious Defense: Finally, relief under Rule 60(b), SCRCF, requires the movant to come forward with a meritorious defense. *Mitchell Supply Co v. Gaffney*, 297 S.C. 160, 163, 375 S.E.2d 321, 324 (Ct. App. 1988). Ms. Sistrunk has not done so here, nor can she make any legitimate argument on this point. As Judge Jackson’s unappealed foreclosure judgment recognizes, Ms. Sistrunk admitted that she entered into the mortgage loan agreement with Wells Fargo, that she defaulted on that loan (and did so a decade ago without making any payments since), and that “she is not interested in working with Wells Fargo to resolve the default through loss mitigation or other foreclosure intervention alternatives.” (R. p. ____; Order Granting Wells Fargo’s Motion for Summary Judgment at 6 (Feb. 14, 2018).) In light of these admissions, there is no conceivable defense to Wells Fargo’s foreclosure action.

For all of these reasons, the Court should affirm Judge Jackson’s denial of Ms. Sistrunk’s post-judgment motion.

CONCLUSION

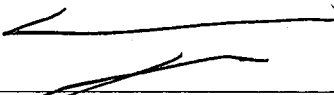
Ms. Sistrunk has abused the legal system to remain in a house for ten years without paying on her mortgage loan. Because this appeal does nothing but recycle bombastic allegations that have previously been rejected by this Court in a prior appeal, the law-of-the-case doctrine bars all of Ms. Sistrunk's arguments.

Just as it did during her first appeal, the Court should summarily affirm Judge Jackson's order denying Ms. Sistrunk's untimely post-judgment motion. Respectfully, Wells Fargo also encourages the Court to take steps to put an end to Ms. Sistrunk's tireless abuse of the Judiciary and ensure that this appeal is the final chapter of this case.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: _____


S. Sterling Laney, III
S.C. Bar No. 6933
550 South Main Street, Suite 400
Greenville, South Carolina 29601
(864) 255-5400
sterling.laney@wbd-us.com

M. Todd Carroll
S.C. Bar No. 74000
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-6504
todd.carroll@wbd-us.com

Attorneys for Respondent

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PROOF OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Respondent, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

Pleading: Brief of Respondent

Parties Served: Dorothy Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
Appellant



Edwin T. Mathis

January 28, 2019



M. Todd Carroll
Direct Dial: (803) 454.7730
E-mail: Todd.Carroll@wbd-us.com

Womble Bond Dickinson (US) LLP

1221 Main Street
Suite 1600
Columbia, SC 29201

January 28, 2019

t: 803.454.6504

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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JAN 29 2019
SC Court of Appeals

Re: Wells Fargo Bank, N.A. v. Dorothy Sistrunk
Appellate Case No.: 2018-001303

Dear Ms. Kitchings:

Enclosed for filing in the case cited above please find the Brief of Respondent and Respondent's Designation of Matter. Please file the original and return a clocked copy to us in the enclosed envelope.

With kind regards, I remain

Very truly yours,


M. Todd Carroll

Enclosures

cc: Dorothy Sistrunk

