

STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM LAURENS COUNTY COURT OF COMMON PLEAS

The Honorable W. Reid Cox, Jr., Special Referee

Case No. 2018-002059

TM Properties, LLC..... Respondent,

v.

Anthony Bernard Burnside..... Appellant.

INITIAL BRIEF OF RESPONDENT

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FEB 19 2019

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

- I. SHOULD THE SPECIAL REFEREES ORDER OF FORECLOSURE DATED OCTOBER 9, 2018 BE REVERSED BECAUSE APPELLANT WAS NOT ALLOWED TO PRESENT HIS CASE AND/OR EVIDENCE AT THE NOVEMBER 8, 2018 HEARING?

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STATEMENT OF CASE

Respondent by Deed dated December 6, 2013 conveyed Appellant a parcel of real estate, namely, 10367 Highway 101 South, Gray Court, South Carolina 29645 located in Laurens County, South Carolina, hereinafter referred to as "Property", the Deed was recorded in the Office of the Clerk of Court for Laurens County, South Carolina (Clerk's Office) on September 10, 2013 in Book D1132 at Pages 172-175. (Record Page ___)

Respondent financed the entire purchase price of Property, namely, \$47,000.00 and in connection therewith Appellant executed and delivered to Respondent a Promissory Note and Purchase Money Mortgage dated September 6, 2013 and the Mortgage was recorded in the Clerk's Office on September 10, 2013 in Book M2114 at Pages 237-239. (Record Page ___)

Respondent failed to pay the Promissory Note according to its terms and Respondent mailed a "Cure" letter to Appellant on or about June 26, 2018 addressed to 10367 Highway 101 South, Gray Court, South Carolina 29645. The "Cure" letter stated, *inter alia*, that Appellant could bring the subject account current by paying \$6,465.09 by July 27, 2018.

Appellant at some point prior to August of 2018 vacated or leased Property to a third party and Respondent was informed that Appellant had moved in to a residence owned by his mother with an address of 369 Westcliff Drive, Laurens, South Carolina.

Appellant did not respond to the Cure letter and consequently Respondent filed a foreclosure action on or about August 6, 2018 consisting of a Lis Pendens, Summons and Complaint (pleadings) and a copy of the pleadings was served on Appellant August 13, 2018 pursuant to Rule 4(d) SCRPC.

Appellant timely filed and served a Return to Respondent's pleadings. (Record Page ___)

The matter was referred to W. Reid Cox, Jr., Esquire as Special Referee pursuant to Rule 53(b) SCRPC by Order dated and filed October 12, 2018. (Record Page ___)

Appellant was advised in writing of the day, time and place of the hearing before the Special Referee by letters addressed to Appellant at 369 Westcliff Drive, Laurens, South Carolina and 10367 Highway 101 South, Gray Court, South Carolina.

The matter came on to be heard by the Special Referee on November 8, 2018 at Laurens, South Carolina. The hearing was attended by Appellant and Respondent's attorney.

The Special Referee considered Appellant's Return, which raised three (3) arguments, namely, 1. He suffered a prejudice by not being served with the pleadings at the property address; 2. He was not accorded a thirty day grace period; and 3. He did not receive Appellant's Cure letter.

Appellants initial point, he was not served at the Property address, was understood by the Special Referee to be a challenge to the Court's in personam jurisdiction over the person of the Appellant.

After the jurisdiction point was raised by Appellant and his Return, Respondent moved to dismiss this challenge because Appellant made a general appearance and did not make a special appearance to contest the Court's in personam jurisdiction.

The Court granted Appellant's motion.

Thereafter the Special Referee reviewed the record which consisted of Respondent's Pleadings, Appellant's Return, Affidavit of Service, Respondent's Affidavit of Testimony, Respondent's Affidavit of Non-military service, Respondent's Affidavit for Attorney's fees, Promissory Note and Mortgage dated September 6, 2013. (Record Page ___)

Thereafter the Special Referee issued an Order of Foreclosure dated October (sic) 9, 2018, Notice of Sale dated October (sic) 9, 2018 and an Amended Notice of Sale dated November 11, 2018. (Record Page ___)

Appellant filed a Notice of Intent to Appeal with the lower Court on or about December 27, 2018.

Appellant filed and serviced a Notice of Intention to Appeal with this Court on or about November 16, 2018 and December 27, 2018.

Appellant filed and served his Initial Brief with this Court on December 13, 2018 and December 27, 2018.

Appellant filed and served his Designation of Matter to be included in the Record on Appeal with this Court on or about January 22, 2019.

- I. SHOULD THE SPECIAL REFEREES ORDER OF FORECLOSURE DATED OCTOBER 9, 2018 BE REVERSED BECAUSE APPELLANT WAS NOT ALLOWED TO PRESENT HIS CASE AND/OR EVIDENCE AT THE NOVEMBER 8, 2018 HEARING?

ARGUMENT

Appellant asserts the Special Referee incorrectly entered an Order of Foreclosure based on a ten (10) minute hearing without hearing the full facts of the matter from the Appellant.

The record on Appeal fails to disclose the length of the hearing and fails to contain any evidence that the Appellant was prohibited from presenting his case to the Special Referee and/or the arguments as set forth in his Return.

Appellant further asserts the hearing was based on erroneous facts presented by the Respondent's attorney and that the hearing was not in compliance with the provisions of SCRCP.

Appellant fails to identify any alleged erroneous facts presented by the Respondent nor does Appellant point with any specificity as to a violation of the SCRCP rules.

Appellant asserts he was not allowed to address any of the issues and was barred from presenting a defense in the hearing before the Special Referee.

The Record on Appeal fails to disclose that Appellant was not allowed to address any of the

issues and/or he was barred from presenting a defense.

Appellant also asserts that the hearing before the Special Referee was bias and its result predetermined based on a letter from Respondent's attorney to Appellant.

Record on Appeal fails to disclose that the hearing in any way was bias in favor of either party or one sided.

Further the letter referred to by the Appellant was a form letter sent by Respondent's attorney to Appellant and was not made a part of the record in the lower Court.

Appellant further asserts that the Order of Reference was ignored and violated in that no testimony was taken and does not reflect any testimony from the Defendant.

Record on Appeal fails to disclose any evidence that the Order of Reference was ignored or violated and further the Order of Foreclosure reflects that the Court took testimony from both parties, and there is nothing in the Record on Appeal to the contrary.

Appellant further asserts that there were no affidavit's submitted at the hearing.

Respondent would direct the Court to view the Record on Appeal wherein there are three (3) Affidavits. (Record Page ___)

Appellant's final assertion is there was no valid hearing in the matter.

Respondent assumes that Appellant is questioning the Court's jurisdiction by this last assignment or error.

It is elementary that a voluntary appearance by Defendant (Appellant) with nothing more is equivalent to person service. Rule 4(d) SCRCP.

A review of the Affidavit of Service unequivocally indicates Appellant was served with the pleadings pursuant to Rule 4(d)(I) SCRCP. (Record Page ___)

Further, if Appellant objected to the Court's lack of jurisdiction over his person due to improper service of process, same was waived. Rule 12(h) SCRCP.

Our Courts have held that a Court obtain personal jurisdiction by the service of the Summons and Complaint, it may also obtain personal jurisdiction if the Appellant makes a voluntary appearance. Ex Parte Cannon 385 S.C. 643, 685 S.C.2d 814 (App. 2009).

See Matter of Estate of Kay 418 S.C. 400, 792 S.C.2d 907 (App. 2016) where the following language is found ***We hold any purported defects in notice were waived at the hearing when the parties acknowledged the issues before the court and proceeded with the hearing.*** (“A general appearance constitutes the voluntary submission to the jurisdiction of the Court and waives any defects and any irregularities in the service of process”). See also Connell v. Connell 249 S.C 162, 153 S.C.2d 396.

Respondent in its Designation of Matter to be included in the record on Appeal has presented the Court with Respondent’s pleadings, Appellant’s Return, Respondent’s submissions to the Special Referee, and the Special Referee’s Order of Foreclosure and Notices of Sale and same support the lower Court’s Order and refute the arguments of Appellant. (Record Page ___)

Respondent requests the Court affirm the lower Courts Order pursuant to Rule 220(c) SCACR for the reasons set forth below.

Respondent asserts that the within Appeal should be summarily dismissed as the Appellant failed to comply with Rule 207(a)(I) SCACR, as this Court without a Transcript or Return has no record to determine whether or not the lower Court erred.

Respondent further seeks summary dismissal of the within Appeal as Appellant’s Brief violates Rule 208(b)(I)(B) SCACR.

See also collection of cases 15 SCD 2d Section 497(1).

CONCLUSION

For the reasons stated, the Court should affirm the Judgement of the Special Referee.

Respectfully submitted,



Thomas J. Thompson
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Laurens, South Carolina
February 14th, 2019

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
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The Honorable W. Reid Cox, Jr., Special Referee

Case No. 2018-002059

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v.

Anthony Bernard Burnside..... Appellant.

PROOF OF SERVICE

I certify that I have served the INITIAL BRIEF OF RESPONDENT AND RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED ON THE RECORD ON APPEAL on Appellant, by depositing a copy of same in the United States Mail, postage prepaid, addressed on February 12, 2019 address to Mr. Burnside, who is appearing Pro' Se, at 10367 Highway 101 South, Gray Court, South Carolina 29645.

February 14th, 2019

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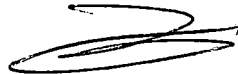
Ms. V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: **TM Properties, LLC. V. Anthony Bernard Burnside**
Appellate Case # 2018-002059

Dear Ms. Allen:

You will find enclosed Respondent's Initial Brief, Designation of Matter to be included in the Record on Appeal, and Proof of Service in connection with the above matter.

Sincerely,



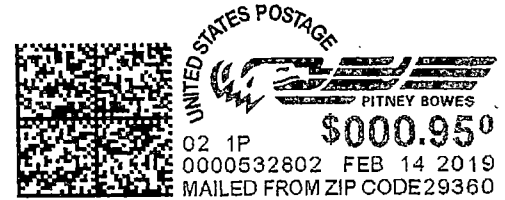
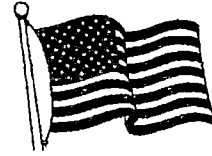
Thomas J. Thompson

TJT/cav

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