THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Case No. 2010-CP-23-1622

JPMorgan Chase Bank, National Association, ...Respondent,

v.

Brian Adrian Tucker, Jessica C. Tucker, and
Half Mile Lake Homeowner's Association, Inc. ..... Defendants,

Of whom Brian Adrian Tucker and Jessica C. Tucker are ..... Appellants

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BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Chase Home Finance LLC filed this action on March 1, 2010, for the purpose of foreclosing the mortgage securing a residential loan in the principal amount of $155,000.00 to Brian Adrian Tucker and Jessica C. Tucker (the "Tuckers"), the Appellants in this appeal. (R. pp. 33-39.) The Complaint alleged that payments due on the loan on and after October 1, 2008, had not been paid. (R. p. 37, ¶ 12.) While the action was pending in the trial court, Chase Home Finance LLC merged with JPMorgan Chase Bank, N.A., and JPMorgan Chase Bank, N.A. was substituted in place of Chase Home Finance LLC as Plaintiff in the action. (R. p. 27.)[1]

A process server served the Summons and the Complaint on the Tuckers at their residence, 103 Half Mile Place, Greenville, South Carolina, on March 9, 2010. (R. pp. 138-39.) The Tuckers failed to answer the Complaint or otherwise appear in the action, and on April 9, 2010, one of Chase's attorneys signed an Affidavit of Default and an Affidavit of Non-Military Service. (R. pp. 140-42.) On April 20, 2010, the Clerk of Court signed an order referring the action to the Master in Equity for Greenville County. (R. p. 32.)

By letter dated June 21, 2010, Chase gave the Tuckers notice that a foreclosure hearing would be held before the Master in Equity on July 7, 2010. (R. p. 143.) Despite this notice, the Tuckers failed to appear at the hearing, and, accordingly, the Master in Equity found that the Tuckers failed to make payments due on their loan and were indebted to Chase in the total amount of $184,118.93, including attorney's fees of $3,825.00. (R. pp. 17-26.) The Master also ordered that if the Tuckers failed to pay the

[1] For the sake of consistency and simplicity, Plaintiff will be referred to as "Chase" throughout this brief.

debt, the mortgaged property would be sold and the proceeds of sale would be applied to payment of the debt. (R. p. 23.)

The property was sold on September 7, 2010, and purchased by Chase for $148,955.70. (R. p. 29.) Chase assigned its bid to "Fannie Mae a/k/a Federal National Mortgage Association" (R. p. 152), and the Master executed a deed dated November 29, 2010, conveying the mortgaged property to Fannie Mae (R. pp. 14-15).

By order of the Master dated January 28, 2011, the Sheriff was directed to remove the Tuckers from the property. (R. pp. 12-13.) An officer of the Sheriff's Department served the order on Mrs. Tucker on March 22, 2011. (R. p. 154, ¶ 2.) After receiving the order, the Tuckers consulted an attorney. (R. p. 54, lines 15-24.)

The Tuckers, through their attorney, filed the following successive motions:

- Emergency Motion to Stay Ejectment From Home, dated April 8, 2011 (R. pp. 87-88);
- Motion to Set Aside and Vacate Default, dated May 5, 2011 (R. pp. 89-90); and
- Motion to Set Aside for Lack of Personal Jurisdiction, etc., dated June 16, 2011 (R. 91-93).

In support of their motions, the Tuckers executed and filed affidavits dated March 28, 2011, and June 16, 2011, respectively. (R. pp. 94-103, 153-54.) In response to the Tuckers' first two motions, Chase submitted a memorandum accompanied by certain exhibits (R. pp. 123-37) and an affidavit executed by a vice president of Chase (R. pp. 155-56).

The Master in Equity conducted a hearing on the Tuckers' motions on August 9, 2011. The Tuckers appeared at the hearing and testified in support of their motions. (R.

pp. 43-74.) In rebuttal, Chase called as a witness the process server who had served the Summons and the Complaint on the Tuckers. (R. pp. 76-82.)

By an order dated April 30, 2012, the Master denied the Tuckers' motions and directed the Sheriff of Greenville County to place Fannie Mae in peaceful possession of the mortgaged property if the Tuckers failed to vacate the property within 45 days after the order was served on their attorney. (R. pp. 1-9.) The Master gave the following reasons for his delay in issuing the order:

> Subsequent to [the] hearing, on August 26, 2011, this court held a telephone status conference with the parties' counsel. At this conference, the court notified the parties that it was taking this matter under advisement, but ordered Chase to consider the Tuckers for all available foreclosure alternatives and for the Tuckers to promptly apply for any programs for which they may be eligible.
>
> Over the next several months, the parties proceeded down this path with this court's supervision. Ultimately, the court held two more status conferences with the parties, one of which included a representative from SC Help 4. The fundamental problem, which the Tuckers could not overcome, was the combination of their limited income and an arrearage dating back to October 2008 which exceeds $65,000.

(R. pp. 3-4, footnote omitted.)

After receiving a copy of the order denying their motions, the Tuckers filed a motion asking the Master to reconsider and to alter and amend his order dated April 30, 2012, denying their earlier motions. (R. pp. 104-08.) The Master denied the motion to reconsider by an order dated June 27, 2012. (R. pp. 10-11.) The Tuckers served their Notice of Appeal on June 30, 2012. Sometime after they appealed, the Tuckers voluntarily vacated the mortgaged property.

ARGUMENT

I. THE MASTER IN EQUITY DID NOT ABUSE HIS DISCRETION IN DENYING THE TUCKERS' RULE 60(b) MOTIONS.

A. The decision whether to grant relief from a default judgment pursuant to Rule 60(b is within the sound discretion of the trial judge and will not be reversed on appeal in the absence of a clear abuse of discretion.

South Carolina law governing the granting of relief from default judgments is well settled and has been stated as follows:

> The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.

Sundown Operating Co. v. Intedge Industries, Inc., 383 S.C. 601, 606-07, 681 S.E.2d 885, 888 (Ct. App. 2009) (citations omitted).

B. Relief from a default judgment should not be lightly granted.

Default judgments are accorded a greater degree of finality than are simple defaults prior to judgment.

> Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c). Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or "other misconduct of an adverse party." Rule 60(b), SCRCP. The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default.

Id. at 608, 681 S.E.2d at 888-89 (citation omitted).

C. The Master in Equity twice found that the Summons and the Complaint had been served on the Tuckers, and his findings are supported by substantial evidence.

In his Order and Judgment of Foreclosure and Sale, the Master in Equity found as a matter of fact that the Summons and the Complaint had been served on all Defendants, including the Tuckers. (R. p. 18, ¶ 2.) This finding is supported by the affidavits of service Chase filed in the action. (R. pp. 138-39.)

In his order denying the Tuckers' Rule 60(b) motion, the Master's also stated, "Personal service of the Lis Pendens, Summons and Complaint was made on Brian Tucker on March 9, 2010[,] and service on Jessica Tucker was made on the same date through Brian Tucker." (R. p. 2, footnote omitted.) The Master further stated in the same order that "the Tuckers were served with the Summons and Complaint." (R. p. 5.)

These findings are amply supported by the testimony of James Terry Moore, the process server, given at the hearing on the Tuckers' Rule 60(b) motions. Mr. Moore testified that he had been serving process for 40 years, and he gave detailed testimony about serving the Summons and the Complaint on Mr. Tucker. (R. pp. 76-80.) Mr. Moore identified Mr. Tucker in the courtroom as the individual he served, and he concluded his testimony by stating that there was no doubt in his mind that he had served the Summons and the Complaint on Mr. Tucker. (R. pp. 79-81.)

In opposition to Mr. Moore's clear and convincing testimony, the Tuckers offered testimony that was inconsistent and unpersuasive. Mrs. Tucker testified that another street near the Tuckers' home is named Half Mile Way and that they frequently receive mail and packages addressed to Half Mile Way. (R. p. 45, lines 5-18.) On cross-examination, however, Mrs. Tucker admitted that there is no 103 Half Mile Way (R. p. 59, lines 7-11), so

the Tuckers' suggestion that the process server mistakenly served someone else at 103 Half Mile Way rather than the Tuckers at 103 Half Mile Place is unfounded.

D. The Tuckers failed to establish grounds for relief from the judgment against them.

The Tuckers argue that they were entitled to relief from the judgment against them under Rule 60(b)(1) and (3), SCRCP, which provide that the court may relieve a party from a final judgment, order, or proceeding for the following reasons: "(1) mistake, inadvertence, surprise, or excusable neglect;" or "(3) fraud, misrepresentation, or other misconduct of an adverse party." The Tuckers failed to establish any of these grounds for relief.

To support their motions for relief from the judgment, the Tuckers rely solely on statements that representatives of Chase allegedly made to them. The earliest such statement the Tuckers have identified with any specificity was allegedly made on August 23, 2010, in response to a telephone call that Mrs. Tucker placed to Chase. During that call, Mrs. Tucker was allegedly assured that the Tuckers' house was not in foreclosure and was not going to be sold. (R. p. p. 97, ¶ 16; R. p. 102, ¶ 15.)

The statements that were allegedly made to Mrs. Tucker on August 23, 2010, clearly did not induce the Tuckers to refrain from appearing in and defending the foreclosure action because the order and judgment of foreclosure had been entered against them approximately six weeks earlier. (R. pp. 17-26.) Thus, the statements on which the Tuckers rely do not explain why the Tuckers failed to respond to the Complaint or otherwise appear in this action.

E. The Master in Equity considered the proper factors in deciding whether to grant the Tuckers relief from the judgment against them.

The Master ruled that in determining whether to grant the Tuckers relief under Rule 60(b)(1) or (3), he should consider (1) the promptness with which relief was sought, (2)

the reasons for the Tuckers' failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to Chase. (R. p. 4.) These four factors are the proper factors for a trial court to consider in ruling on a Rule 60(b) motion. *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001). The Master correctly applied these four factors to the facts of this case.

1. The Tuckers did not act promptly.

The Tuckers argue that they acted promptly because they consulted an attorney shortly after they were served with the order for eviction on March 22, 2011, and that they could not have acted earlier because they were not previously aware of this action. The Master found as a matter of fact, however, that the Summons and the Complaint were served on the Tuckers personally on March 9, 2010, more than a year before they consulted an attorney. In addition, the record of this case indicates that a letter notifying the Tuckers of the date of the foreclosure hearing was mailed to them at their home address on June 21, 2010. (R. p. 143.)

2. The Tuckers have failed to provide a satisfactory explanation for their failure to act promptly.

To explain why they failed to act earlier, the Tuckers have asserted merely that they were not aware of this action until they were served with the order for eviction. However, the Master found against them on the factual issue of whether the Summons and the Complaint were served on them. In addition, the Tuckers have failed to explain why they did not respond to the letter notifying them of the foreclosure hearing.

The Tuckers argue that they were misled by repeated assurances by Chase that they would receive a modification of their loan. The Tuckers thus argue on the one hand that they had no notice that this action was pending against them and on the other hand that if

they did receive notice of this action, the assurances they received from Chase caused them to ignore the action. Parties to litigation are, of course, entitled to argue alternative and inconsistent legal theories, but they are not entitled to argue alternative and inconsistent statements of facts within their own knowledge. The Tuckers thus impeach their own credibility by taking two inconsistent factual positions in this case.

3. The Tuckers have failed to demonstrate that they have a meritorious defense.

As grounds for relief from the judgment, the Tuckers argue that Chase repeatedly promised them a modification of their loan. The Tuckers could not, however, qualify for a modification of their loan even after the Master gave them a second chance to do so. As the Master stated in his order denying the Tuckers' motions, he ordered that "Chase process a new application by the Tuckers, which Chase did[,] and the Tuckers still could not qualify for foreclosure relief, even after applying $20,000 in funds from the SC Help program. The Tuckers' current income is too low and their mortgage arrearage too high for them to qualify." (R. p. 6.)

In response to the Master's order, the Tuckers argue that they are in fact eligible for a modification of their loan. This argument misses the point, which is not whether the Tuckers are *eligible* for a modification but whether they can *qualify* for a modification. The Master gave the Tuckers another opportunity to apply for a modification, Chase processed their new application, and the Tuckers failed to qualify. Whether the Tuckers are eligible for a modification is thus a moot issue, and no legitimate purpose would be served by providing the Tuckers yet another opportunity to apply for a modification when they have offered no evidence that their most recent application for a modification was wrongfully rejected or that their financial circumstances have improved.

4. Chase would be prejudiced if the Tuckers' default were set aside.

Chase had essentially completed the foreclosure process when the Tuckers made their first appearance in the action. Granting the Tuckers relief from the judgment against them would impose on Chase the expense and delay of another foreclosure process and would thus unduly prejudice Chase.

II. THE TUCKERS ARE NOT ENTITLED TO RELIEF FROM THE ORDER FOR EJECTMENT.

A. The order for ejectment is moot because the Tuckers have voluntarily vacated the mortgaged property.

During the pendency of this appeal and before the Tuckers filed their Initial Brief, the Tuckers voluntarily vacated the mortgaged property. Consequently, the order for ejectment is moot, and there is no basis for this Court to review it.

B. The order for ejectment did not violate the Tuckers' right to due process.

The Tuckers argue that the order for ejectment violated their due process rights because the Master in Equity issued the order without giving the Tuckers prior notice and without conducting a hearing. The order expressly provided, however, that the Tuckers could not be removed from the mortgaged property until 21 days had elapsed since the service of the order upon them and that the Tuckers could contest the right to possession by filing a motion with the clerk of court. (R. p. 13.) As previously discussed, the Tuckers contested the right to possession by filing a total of three motions on which the Master thereafter held a hearing before ruling against the Tuckers. (R. pp. 1-, 9, 40-86.) The Tuckers were thus afforded their full due-process rights.

The procedure that the Master followed in this case is permitted in a number of counties. Susan B. Berkowitz, *et al.*, *South Carolina Foreclosure Law Manual* 53 (2d ed.

2009) ("Some counties will allow the Writ of Assistance without a Petition and Rule to Show Cause."). The procedure that the Master followed also conforms to the South Carolina statute governing the summary ejectment of trespassers from real property. The statute authorizes a magistrate to issue a notice to the trespasser to quit the premises without first notifying the trespasser or holding a hearing, and if the trespasser fails to quit the premises after five days following the service of the notice, the magistrate may issue a warrant of ejectment directing the sheriff to eject the trespasser, using force if necessary. S.C. Code § 15-67-610. The statute further provides, however, that if the trespasser appears before the magistrate within five days following service of the notice, contests possession of the premises, and gives appropriate security, the magistrate may not issue a warrant of ejectment. S.C. Code § 15-67-620.

The Master did not violate the principles of due process by issuing the order for ejectment in this case. "Procedural due process requirements are not technical; no particular form of procedure is necessary." *Sloan v. S.C. Bd. of Physical Therapy Examiners*, 370 S.C. 452, 485, 636 S.E.2d 598, 615 (2006). The requirements of due process are satisfied if a party is given "(1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Moore v. Moore*, 376 S.C. 467, 473, 657 S.E.2d 743, 746 (2008) (quoting *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007)). The requirements of due process were clearly satisfied in this case because the order for ejectment gave the Tuckers notice that they could contest the order and demand a hearing at any time within 21 days after the order was served on them.

III. HAMP DOES NOT PROVIDE THE TUCKERS A DEFENSE TO THIS ACTION.

A. The Tuckers are not entitled to assert affirmative defenses or counterclaims because they are in default.

By defaulting, the Tuckers admitted Chase's allegations and conceded liability, and they do not have the right to assert affirmative defenses to Plaintiff's claim.

> It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability. Though a defaulting party may be entitled to notice of the damages hearing, that party is limited to cross-examining witnesses and objecting to evidence.

Roche v. Young Bros. Inc., 332 S.C. 75, 81-82, 504 S.E.2d 311, 314 (1998) (citations omitted). The Tuckers thus cannot assert any affirmative defense or counterclaim based on HAMP.

B. The Master in Equity correctly ruled that HAMP does not create a private cause of action.

Federal courts have repeatedly held that HAMP does not create a private cause of action. *See, e.g., Chance v. Wells Fargo Bank, N.A.*, 2012 U.S. Dist. LEXIS 137507 at *9 (E.D. Va. 2012) ("[N]o private right of action exists under HAMP."); *Coulibaly v. JPMorgan Chase Bank, N.A.*, 2012 U.S. Dist. LEXIS 127728 at *22 n.6 (D. Md. 2012) ("[I]t is well established that there is no private cause of action under HAMP."); *Watkins v. Flagstar Bank, FSB*, 2012 U.S. Dist. LEXIS 57632, at *9 (D.S.C. 2012) ("HAMP does not appear to authorize a private cause of action."); *see also Nelson v. Bank of America, N.A.*, 446 Fed. Appx. 158, 159 (11th Cir. 2011) ("We agree with [a host of district courts], and with the district court in the present case, that nothing express or implied in HAMP gives borrowers a private cause of action."); *Nachar v. PNC Bank, N.A.*, 2012 U.S. Dist. LEXIS 144475 at *9 (N.D. Ohio 2012); *Goffney v. Bank of America, N.A.*,

2012 U.S. Dist. LEXIS 133112 at *13-15 (S.D. Tex. 2012); *Salinas De Michel v. Deutsche Bank Co.*, 2012 U.S. Dist. LEXIS 134949 at *26, 35 (E.D. Cal. 2012) (holding that there is no private cause of action under HAMP and further noting "lenders are not required to make loan modifications for borrowers that qualify under HAMP").

In support of their argument that HAMP provides them a remedy, the Tuckers cite cases from Illinois, Massachusetts, and New York. All of the cases the Tuckers cite are distinguishable from this case because they involved (1) agreements between lenders and borrowers that were enforceable as contracts under state law, (2) borrowers who were not even considered for a modification under HAMP, or (3) interpretations of state statutes.

In this case, the Master "ordered Chase to consider the Tuckers for all available foreclosure alternatives" (R. p. 3), but the Tuckers failed to qualify for a modification of their loan. Consequently, even if the Tuckers were not in default, they would not have no grounds to assert a counterclaim under HAMP.

C. The Tuckers have failed to demonstrate that they have a defense under HAMP.

Nowhere in their rather lengthy discussion of HAMP do the Tuckers explain how they might have a defense under HAMP. In particular, they have not explained how, if at all, Chase failed to comply with any requirement of HAMP or how any evidence in the record supports a defense under HAMP. The Tuckers' discussion of HAMP is thus purely academic.

D. The Master in Equity did not conclude that the Tuckers are not eligible for a loan modification under HAMP.

The Tuckers argue that the Master in Equity erred in concluding that they are ineligible for a loan modification under HAMP. The Master did not, in fact, reach any such conclusion. Instead, during a telephone conference with the parties held on August

26, 2011, the Master "ordered Chase to consider the Tuckers for all available foreclosure alternatives and for the Tuckers to promptly apply for any programs for which they may be eligible." (R. p. 3.) The Master thus gave the Tuckers an opportunity to apply for relief under any program for which they might be eligible.

E. Whether the Master in Equity correctly interpreted the criteria for obtaining a modification under HAMP is a moot issue.

As previously discussed, the Master in Equity permitted the Tuckers to submit another application for a modification of their loan and required Chase to process the application even though the Tuckers were in default. Chase processed the application, and the Tuckers failed to qualify for a modification. (R. p. 6.) Because Chase, not the Master, determined that the Tuckers did not qualify for a modification, whether the Master correctly interpreted the criteria for obtaining a modification under HAMP is completely moot.

F. The Tuckers have not demonstrated that Chase failed to process any application they submitted for a modification of their loan in accordance with HAMP guidelines.

The Tuckers argue that "a mortgagor/borrower foreclosure defendant has a right, enforceable by a court, to have the foreclosing plaintiff (or its applicable servicer) process his or her application in good faith, including in compliance with HAMP guidelines." (Initial Brief of Appellants p. 34.) The Tuckers have not demonstrated, however, that Chase failed to process any application they submitted for a loan modification in compliance with HAMP guidelines, and the Master found that Chase processed the new application that he allowed them to submit. (R. p. 6.)

G. Chase complied with the 2009 Administrative Order of the South Carolina Supreme Court.

The Tuckers argue that the Master's order improperly placed on them the burden of demonstrating that Chase failed to comply with the Administrative Orders of the South Carolina Supreme Court issued in 2009 and 2011, respectively. (Initial Brief of Appellants p. 34.) However, the Tuckers have not demonstrated that Chase failed to comply with either Administrative Order.

The 2009 Administrative Order states in relevant part as follows:

> (1) Actions Filed After May 4, 2009. In all mortgage foreclosure actions filed after May 4, 2009, the complaint (or amended complaint) seeking foreclosure shall contain "a short and plain statement of the facts" regarding the applicability of the HMP to the matter. For mortgages involving commercial property, the complaint may simply allege that the property is commercial and that the HMP is inapplicable.
>
> For mortgages involving residential property, the complaint shall state if the mortgage loan is owned, securitized or guaranteed by Fannie Mae or Freddie Mac, or if the servicer is participating in the HMP. If so as to either, the complaint shall state the facts showing that the loan is not subject to modification under the HMP, or state the facts showing that the HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification. If these allegations are contested by the answer or the judge allows the issue to become contested at some later stage of the proceeding, any dispute regarding the eligibility of the mortgage loan for modification under the HMP or the satisfaction of the requirements of the HMP if it applies, shall be resolved like any other contested issue in a mortgage foreclosure case. Sections (3) and (4) of this order relate to the effect of the HMP determinations made by the judge.

Administrative Order No. 2009-05-22-01 (S.C Sup. Ct. May 22, 2009) (endnotes omitted).

Chase complied with the foregoing provisions of the 2009 Administrative Order by including the following statement in the Complaint:

> 3. The servicer of the mortgage described in this foreclosure action is participating in the Home Affordable Modification Program

> (HMP), but the HMP process as specified by the U.S. Treasury Department's Supplemental Directive 09-01 has been completed without resulting in a modification because the borrower(s) failed to respond to the servicer's inquiry within 30 days as set forth in the applicable guidelines.

(R. p. 35, ¶ 3.)

The Tuckers did not, of course, file an answer to the Complaint, and by defaulting in the action, the Tuckers admitted the truth of all allegations of the Complaint, including the allegations quoted above relating to completion of the HMP process. *Roche v. Young Bros. Inc.*, 332 S.C. at 81, 504 S.E.2d at 314. Having defaulted, the Tuckers did not thereafter have a right to contest the allegations relating to completion of the HMP process unless the Master allowed them to do so. He did not, but he did allow the Tuckers to submit a new application for a modification, which rendered moot the issue of whether the HMP process had previously been completed. The Tuckers thus received the full benefit of any remedy they might otherwise have had under the 2009 Administrative Order.

H. The 2011 Administrative Order of the South Carolina Supreme Court is not applicable to this case.

The 2011 Administrative Order of the South Carolina Supreme Court states in relevant part as follows:

> (1) Actions pending on May 9, 2011.
>
> In all mortgage foreclosure actions pending on May 9, 2011, before any merits hearing in the case, or if an order of foreclosure has been entered, before any foreclosure sale, the Mortgagee shall, through its attorney of record, file with the court and serve upon every Mortgagor a notice of the Mortgagor's right to foreclosure intervention. All proceedings in the foreclosure action shall be stayed until completion of such foreclosure intervention.

Administrative Order No. 2011-05-02-01 (S.C Sup. Ct. May 2, 2012).

In this case, the hearing on the merits, the entry of the order of foreclosure, and the foreclosure sale had all occurred by the time that the 2011 Administrative Order was entered. The 2011 Administrative Order thus did not apply to this action and could not have been applied to this action unless the Master granted the Tuckers relief from their default, which he did not do.

CONCLUSION

For the foregoing reasons, the orders of the Master in Equity should be affirmed.

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RESPONDENT'S CERTIFICATE OF COMPLIANCE WITH RULE 211(b), SCACR

I, the undersigned attorney for Respondent, certify that the Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, the undersigned attorney for Respondent, certify that I served the documents specified below on Appellants on the date specified below by causing one copy each thereof to be mailed by first-class mail, postage prepaid, to Appellants' attorney, Andrew S. Radeker, Esquire, at Harrison & Radeker, P.A., P.O. Box 50143, Columbia, SC 29250:

Document(s) Served: Brief of Respondent and Respondent's Certificate of Compliance with Rule 211(b), SCACR

Date Served: December 11, 2012

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