

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

Ellis B. Drew, Jr., Master in Equity

Case No.: 2010-CP-04-03548

Green Tree Servicing, LLC, etcRespondent,

Corrie A. Martin.....Appellant.

BRIEF OF APPELLANT

Corrie A. Martin
Post Office Box 14042
Anderson, SC 29624
Telephone # 864-716-9926
Appellant

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DEC 27 2012

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

A MISTAKE OCCURS WHEN THE COURT RELIES UPON AN ORDER WHICH IS VACATED BY A SUBSEQUENT ORDER IN THE SAME CASE.
(Issue 1)

HAS A PARTY MAKING A MOTION PURSUANT TO RULE 60 (b) FILED THE MOTION WITHIN A REASONABLE TIME IF THE EXPLANATION FOR THE DELAY IS THAT THE PARTY WAS UNAWARE OF THE LAWSUIT GIVING RISE TO THE JUDGMENT? (Issue 2)

STATEMENT OF THE CASE

The Complaint sought the foreclosure of a mortgage covering the doublewide mobile home of Defendant Corrie A. Martin. An Affidavit of Service recites that a copy of the Summons and Complaint were personally served upon the Defendant on October 7, 2010; however, Defendant Martin denies that the Summons and Complaint were served upon her.

The case was referred to the Honorable Ellis B. Drew, Jr., Master in Equity for Anderson County, who held a reference on January 24, 2011. The Court issued its order finding that Green Tree Servicing, LLC was entitled to foreclose its mortgage and directed that the property be sold by the Court. The order recited that Corrie Martin had notice of the reference and attended the hearing. (In fact she did not receive any notice of the reference and was not present at the hearing.)

Defendant's property was sold on March 1, 2010 pursuant to the order of Ellis B. Drew, Jr., Master in Equity. Green Tree Servicing, LLC was the high bidder and obtained a deficiency judgment against Corrie Martin. Subsequently, Green Tree caused the Sheriff of Anderson County to serve a Writ of Assistance upon Defendant Corrie A. Martin on June 13, 2011. The Writ directed Martin to vacate the mortgaged premises within thirty days.

Defendant Martin consulted Attorney Robert P. Lusk during June, 2011 for the purpose of taking action to set aside the mortgage foreclosure. Attorney Lusk did not inform Ms. Martin of any action taken by him to set aside the mortgage foreclosure. About September 1st, 2012, Defendant Martin retained Attorney Andrew Gaines.

About January 6, 2012 Attorney Andrew Gaines in behalf of Ms. Martin served a Motion for Relief from Judgment under the authority of SCRCP 60 (b).

The Motion came on for hearing before The Honorable Ellis B. Drew, Jr., Master in Equity for Anderson County, who issued his Order denying the Motion for Relief from Judgment on the ground that the Defendant waited too long before filing the Motion. Subsequently, the verbal order was confirmed by the written order of Master in Equity by Ellis B. Drew, Jr., dated March 8, 2012.

Defendant Corrie A. Martin filed an appeal from the verbal order of the Court delivered at the hearing on January 24, 2012 and also the written order issued by Master in Equity, Ellis B. Drew, Jr., dated March 8, 2012.

FACTS

Corrie A. Martin ("Martin") signed a note and mortgage in the amount of \$58,687.52 in favor of Green Tree Servicing Corporation ("Green Tree") on March 18, 1997. The note and mortgage were duly recorded in Anderson County in Mortgage Book 2574 at beginning at Page 189. The proceeds of the note and mortgage financed the purchase of a double wide mobile home together with a lot described as 112 Canter Lane, Anderson, South Carolina.

In 2008 Martin developed health problems and lost her job. Her mortgage payments went into arrears. Green Tree filed a foreclosure action in the Court of Common Pleas, Anderson County, assigned C/A # 2008-CP-04-04162. After the Court issued a Judgment of Foreclosure and Order for Sale entered on March 31, 2009 in which the Court awarded costs and attorney fees of \$3500.00 to Green Tree, Martin used funds from a Social Security claim to bring the mortgage current. The settlement included all amounts owed to Green Tree. Ellis B. Drew, Jr., Master in Equity for Anderson County issued an Order of Dismissal and vacated the prior order entered on March 31, 2009.

Martin then paid each month her monthly installment of \$440.15 from March 2009 through January 2012.

On June 13, 2011 Ms. Martin found a Writ of Assistance taped to her screen door. She learned that the Writ was placed on her door by a Deputy Sheriff. The facts describing the activities of Martin prior to retaining Attorney Andrew Gaines were not presented at the hearing on January 23, 2011 upon the Motion. Therefore, Martin's

efforts to develop information concerning the foreclosure and to set aside the foreclosure are not described here.

On September 1, 2011 Ms. Martin retained Attorney Andrew Gaines. She called Attorney Gaines several times to find out what action was being taken. He advised her that she needed to attend a hearing on January 23, 2012. Ms. Martin attended this hearing. At the hearing she heard Mr. Gaines talk about a Motion for Relief from Judgment. She heard Judge Drew say that the Motion was denied. She wanted to appeal the decision of Judge Drew denying the motion for Relief. During February 2012 Ms. Martin obtained her files from Mr. Gaines. She filed her own appeal.

The first notice that Ms. Martin had of the mortgage foreclosure commenced by Green Tree and that her house was sold at public auction was the Writ of Assistance delivered to her residence of the Sheriff of Anderson County on June 13, 2011.

The Motion for Relief from Judgment pursuant to SCRPC Rule 60(b) was filed on January 6, 2012 about seven months after Martin became aware of the foreclosure suit on June 13, 2011. The Order and Decree of Ellis B. Drew, Jr., Master in Equity, entered on January 24, 2011 directed that the Martin property be sold at public auction on March 1, 2011.

The order entered on January 24, 2011 recites that Martin received notice of the hearing and was present in the courtroom. Martin says she received no notice of a hearing and was not in the courtroom. Martin would also say that she did not receive a copy of the Summons and Complaint prior to the foreclosure. During the hearing held

on January 23, 2012 there was no evidence presented from Martin concerning the lack of service or the lack of notice of any of the proceedings. The facts concerning notice and lack of notice are not in the record and were not considered by the Master in Equity when ruling upon the Motion for Relief from Judgment pursuant to SCRCR Rule 60(b). Lack of service of the summons and complaint together with facts surrounding notice of proceedings are issues being presented in a separate action now pending in the Court of Common Pleas in Anderson County.

Following the verbal dismissal of Martin's Motion for Relief from Judgment at the hearing on January 23, 2012 Master in Equity Ellis B. Drew, Jr., issued his Supplemental Order under date of March 8, 2012. The Supplemental Order

"finds as a matter of fact that the Defendant has failed to make this motion within a reasonable time as the hearing in this matter, of which the Defendant was provided notice, was on January 24, 2011. The Defendant waited almost a year to file this motion. Defendant offered no explanation for this delay."

Since details concerning notice of the hearing and activities of Martin prior to the Motion for Relief from Judgment are not in the record Appellant can refer only to the mention in the Supplemental Order of Attorney Robert Lusk acting in behalf of the Appellant contacted Plaintiff's attorney by letter dated June 27, 2011. The letter advised "that there were outstanding issues that needed to be addressed***" Whatever the letter said (and it is not in the record) the information prompted Plaintiff's attorney to cancel a lock-out that had been scheduled with the Anderson County Sheriff's Office.

During the hearing on January 23, 2012 Plaintiff's counsel referred to an award of attorney fees in the amount of \$3000.00 made by the Court during the 2008 foreclosure action (C/A 2008-CP-04-04162) in the Judgment of Foreclosure and Order for Sale entered on March 31, 2009. (R.p. 7, line 4)

Plaintiff's counsel did not call the attention of the Master in Equity to a subsequent order in that same case, entered on August 10, 2009, which recited that the prior Judgment of Foreclosure and Order for Sale were vacated due to the Plaintiff (Green Tree) and mortgagor (Martin) having reached a settlement. Therefore, the attorney fees previously awarded in the prior order dated March 31, 2009 were no longer owed by Martin separate and apart from the amount paid by her in settlement of the foreclosure. (Appendix)

The Supplemental Order does not refer to the August 10, 2009 Order of Dismissal which vacated the earlier order awarding attorney fees. This was a mistake for the Court to disregard the Order of Dismissal, Cancellation of Lis Pendens and Order to Vacate Judgment.

ARGUMENTS

DID THE MASTER IN EQUITY MAKE A MISTAKE WHEN THE MASTER OVERLOOKED AN ORDER THAT VACATED A PRIOR ORDER AWARDING ATTORNEY FEES ? (Issue 1)

The Honorable Ellis B. Drew, Jr., Master in Equity for Anderson County, entered on August 10, 2009 an Order for Dismissal, Cancellation of Lis Pendens and Order to Vacate Judgment in which he directed that the Judgment of Foreclosure and Order for Sale entered on March 31, 2009 be vacated. (Appendix)

According to Plaintiff's counsel—stated by him at the January 23, 2012 hearing on the Motion for Relief-- the foreclosure commencing in 2010 (the instant case) was based upon Martin's failure to pay attorney fees of \$3500.00 from the foreclosure commencing in 2008 (C/A 2008-CP-04-04162). (R.p. 7, line 4) Plaintiff's counsel presented the March 31, 2009 Order awarding attorney fees to the Master in Equity. He said nothing to the Court about the March 31, 2009 order being vacated. This failure to call the attention of the Court to this later order induced the Court to make the mistake of not considering the subsequent order.

A circuit court may relieve a party from final judgment pursuant to Rule 60 (b) of the SCRCP where a party shows the "judgment or order was induced by mistake, inadvertence, surprise, or excusable neglect." Deidun v Deidun, 362 S.C. 47, 606 S.E. 2d 489 (Ct. App.2004); Raby Construction, LLP vs Orr, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004)

Did the Master in Equity abuse his discretion in denying the Motion for Relief from Judgment pursuant to Rule 60(b). Yes, he abused his discretion by being induced to

make a mistake by Plaintiff's counsel who invited the Master's attention to one order awarding attorney fees, but not to the order which vacated the prior order.

**WAS THE MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO
RULE 60 (B) MADE WITHIN A REASONABLE TIME?**

The Motion was filed on January 6, 2012 which was less than a year after the Judgment was issued on January 24, 2011. The record is silent concerning the activities of Martin to set aside the judgment prior to the motion being filed. Martin was not standing by doing nothing since we know from the statements of Plaintiff's counsel during the January 23rd hearing that he received a letter from Attorney Robert Lusk which contained sufficient information to induce Plaintiff's counsel to call of a lock out of Martin's house by the Sheriff. Under the circumstances the time transpiring before the Motion for Relief from Judgment was filed should be considered a reasonable time within which to file the motion.

CONCLUSION

For the reasons stated, the dismissal of the Appellant's Motion for Relief from Judgment under Rule 60 (b) of the SCRCP should be reversed and the judgment of Green Tree should be set aside.

December 19, 2012

Respectfully Submitted,

Corrie A. Martin

Corrie A. Martin
Post Office Box 14042
Anderson, SC 29624
Telephone # 864-716-9926
Appellant

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

CORRIE A. MARTIN)

Plaintiff,)

vs.)

GREEN TREE SERVICING, LLC, as)
Successor in Interest to Green Tree)
Financial Serving Corporation,)

Defendant.)

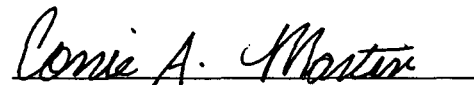
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. # 2010-CP-04-03548

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), of the
South Carolina Court Rules, SCA.

December 19, 2012



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Post Office Box 14042
Anderson, SC 29624
Telephone # 864-716-9926
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CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2012, I served Theodore von Keller, Esquire, Attorney for the Respondent, with a copy of the Brief of the Appellant by placing a copy thereof in an envelope which I deposited in the United States Mail on December 31, 2012, with proper postage attached thereto, addressed to

Theodore von Keller, Esquire
Crawford & von Keller, LLC
Post Office Box 4216
Columbia, SC 29240

Corrie A. Martin

Corrie A. Martin
Appellant
Post Office Box 14042
Anderson, SC 29624
864-716-9926