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SC Court of Appeals

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. 2010-CP-46-4307

HSBC Mortgage Services, Inc.,

Respondent,

vs.

James L. Dennis, Enid Dennis and Stonewood Homeowners Association of York County, Inc.,

Defendants,

Of whom James L. Dennis and Enid Dennis are the

Appellants.

AMENDED FINAL BRIEF ON APPEAL

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Preliminary Statement

The Respondent makes many statements that confuse the issues. In point of fact, the Appellants had many viable defenses on the merits which the Master in Equity refused to hear. This Reply is necessary to set the matter straight, so that any fair-minded person will see that the Appellants were denied due process by the Master in Equity.

Reply

A. The Right to Self-Representation

Respondent engages in the same confusion as the Master in Equity ("Master"), by saying that Appellants were essentially not in court because they claimed that they were representing an estate and could not represent an estate unless they were admitted attorneys. **(R. p 108 line 5 -16, 21-23)**.

James Dennis and Enid Dennis (Imin and Akasha El Bey) have lawful name corrections under the U.N Declaration of the Rights of Indigenous Peoples (UN 61/195). The Appellants reclaimed their nationality and corrected their names. In essence, all Appellants did is use their ancestral names, as they were no doubt entitled to do **(R. p 21, 23, 24, 37).**

This has been done throughout history. Boxer Muhammad Ali was born

Cassius Marcellus Clay, Jr., and changed to his ancestral name. See http://en.wikipedia.org/wiki/Muhammad_Ali. Samuel Langhorne Clemens used the name Mark Twain in his famous writings. http://en.wikipedia.org/wiki/Mark_Twain. Thus, the New York Court of Appeals stated that so long as there is no intent to defraud "generally it is not illegal per se to adopt an alias or a nom de plume. . . ." *People v. Briggins*, 50 N.Y.2d 302, 307, 406 N.E.2d 766, 428 N.Y.S.2d 909 (1980); *cf. Doe v. Howe*, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2005).

Although it is true that, under South Carolina law there is no such thing as an estate of a living person, *see In re Mears' Estate*, 75 S.C. 482, 485, 56 S.E. 7, (1906) ("letters of administration on the estate of a living person [are] absolutely void"), the Master never inquired further. Had he done so he would have learned that the real property had been placed into an irrevocable living Trust. See S.C. Code Ann. § 62-7-401(c). Since it is only the name on the deed that is at issue, and it is recorded and cannot be changed, this Court can take judicial notice of it. *Cf. Masters v. Rodgers Dev. Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984).

Because the property was in an Irrevocable Trust, the Appellants believed that they were acting for an "estate," as the Probate Code itself uses the phrase "trust estate." S.C. Code Ann. § 62-1-109 **(R. p 42,45, 50-54)**.

In short, the Master committed serious error in not permitting the Appellants to represent themselves.

B. The Federal Court Litigation

Respondent talks about the federal court litigation. This Court can take judicial notice that it was dismissed *without prejudice* **(R. p 41)**.

In any event, Respondent has now opened up this issue and it is proper to set forth that the Respondent *admitted* in that litigation, in response to interrogatories, that they did not have the original mortgage. They did not furnish a copy of the original note, simply stating that Appellants could "see it" at Respondent's attorneys' office. They did not answer specific questions concerning the assignment and securitization of the loan, which would show that they did not own the loan **(R. p 32, 33)**.

C. The Evidence Shows a Viable Defense

There is strong evidence relevant to proving the respondent did not have a security interest in the property and were not the holders of the note or mortgage that has not been fairly considered.

On April 30, 2012 Appellants served a verified motion for an ex parte temporary restraining order and permanent injunction with the securitization audit as supporting evidence to the clerk of courts and hand delivered a stamped copy to

the Master and delivered same to the respondent's attorney by process server on May 1, 2012. **(R. p 61-64).**

The Appellants went to the sale on May 7th to verify the property had been 'removed from the sale prior to the start of the auction, as Appellants were not served with an order on the motion prior to the sale date. Appellants were told that case folders could not be opened the day of the sale, and the property was included in the sale. On May 8th, appellant Enid Dennis, ex rel (Akasha El Bey) went to the clerk of court to inquire about the ruling on the temporary restraining order and was told that it was denied *after the sale* on May 7th at 4:23 p.m. The sale took place 11:00 a.m. **(R. p 65)**.

The order was signed May 1st but the Appellants were not properly served with the order. The Master, the respondents and the defaulted party, Stonewood HOA had an ex parte communication regarding the case **(R. p 65-66)**.

On May 8, 2012, appellant Enid Dennis, ex rel (Akasha El Bey) went to the clerk of the Master to review the case file, she was given the folder and stapled to the inside left of the folder were various emails between the respondent, Stonewood and the Master in Equity. One such email concerned the hearing of March 6, 2012, at which the parties discussed having the York County Sheriffs Department at the hearing due to the "responses given by the defendants in the

case".

Sheriff Deputies were at the hearing March 6th as a form of intimidation and an attempt to subvert the Appellants properly defending their interest in the case.

In addition, Appellants have continued to find evidence that refutes the Respondent's claim that there is a default and that HSBC is the true party of interest.

On May 18, 2012, Appellants filed a complaint with the office of the Governor in the state of Florida against the notary. The notary violated Florida statutes by improperly authenticating, sealing and witnessing the document. The notary also was employed with Fidelity LPS, an assignment processing service that assists with "loan servicing" requirements.

It is well known that Fidelity LPS and companies like it robo-notarize and sign thousands of documents a month also the "VP" of MERS. Maria Vadney is a known robo signer that purports to work for MERS, HSBC and a company called Consuegra **(R. p 28)**.

In HSBC *Mortgage Services v. Murphy*, 2011 ME 59, 19 A.3d 815 (2011), the Maine Supreme Judicial Court held that an affidavit by Vadney was suspect as a matter of law and reversed summary judgment. Here is what the Court said

about her affidavits submitted in that case:

> In this case, the affidavits submitted by HSBC contain serious irregularities that make them inherently untrustworthy. The first Vadney affidavit, submitted by HSBC in conjunction with its second motion for summary judgment identifies Vadney as "a Vice President of HSBC Mortgage Services, Inc.," and was dated and notarized on August 24, 2009. It asserts, among other things, that HSBC is the holder of the note and mortgage deed by virtue of an assignment dated December 11, 2006, and a confirmatory assignment of the note and mortgage dated August 24, 2009. Copies of both assignments are attached to the affidavit. The affidavit states that the confirmatory assignment was recorded in the Androscoggin County Registry of Deeds in Book 7775, Page 346. The copy of the confirmatory assignment attached to the Vadney affidavit indicates that it was also dated and notarized on August 24, 2009, and then recorded at the Registry of Deeds on August 27, 2009, three days after the date Vadney signed the affidavit swearing that it had been recorded as of August 24, 2009.
>
> [*P13] In addition, the confirmatory assignment from MERS, as nominee for Calusa Investments, LLC, to HSBC was also signed by Vadney. It indicates that Vadney signed the confirmatory assignment on behalf of MERS in her capacity as its vice president. The summary judgment record is otherwise silent as to whether on August 24, 2009, Maria Vadney was simultaneously an officer of both MERS, the assignor, and HSBC, the assignee, as the affidavit and the confirmatory assignment suggest.
>
> [*P14] HSBC filed a second affidavit on October 1, 2009, signed by Maria Vadney on September 28, 2009, in support of its statement of supplemental facts filed in response to the Murphy's opposing statement of material facts. The affidavit contains a notary's jurat dated September 24, 2009, four days before Vadney signed the affidavit.
>
> [*P15] The Murphys, noting the discrepancies in the two Vadney

> affidavits and further observing that in both, the signature and jurat appear on a page separate from the body of the affidavit, urge us to infer that the texts of the affidavits submitted by HSBC were attached to the signature and jurat pages after those pages were executed. The Murphys further contend that if this inference is correct, "the potential for fraud is great with all these affidavits and near certain with the August 24th Vadney affidavit."

19 A.3d at 820-21.

In *Schafer v. CitiMortgage, Inc.* ((C.D. Calif.) 2011 U.S. Dist. LEXIS 64558, 2011 WL 2437267), the Court denied defendant's motion to dismiss a declaratory relief claim, which was based on alleged improper transfer due to alleged fraud in signing of documents, precisely the case here.

During the hearing on March 6th and presented into evidence prior to the hearing, this point was pressed. There are several other issues with the assignment such as the date it was filed (October 25th after the Lis Pendis was filed), the fact that there is no contract between the alleged original lender "Decision One Mtg" and MERS when assignment was done. Decision One dissolved business in the State of South Carolina on March 11, 2009. MERSCORP was dissolved January 8, 2004.

Finally, there is the issue of the Pooling and Service agreement. In *Johnson v. HSBC Bank USA* ((S.D.Cal.) 2012 U.S. Dist. LEXIS 36798, 2012 WL 928433), the borrower claimed that the assignment of a deed of trust to another creditor

(HSBC) "was fraudulent, in part because the assignment was executed after the closing date of the trust, which violates the Pooling and Servicing Agreement." Again, that is the same situation here. Once again, HSBC "has not sufficiently demonstrated that violations of law associated with the loan's securitization can go unchecked . . . ."

CONCLUSION

For the reasons stated in the initial brief and this reply, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

August 19, 2013

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PROOF OF SERVICE

We certify that We have served the original Amended Reply Brief on Appeal upon the South Carolina Court of Appeals via Hand delivery with copies sent to the Attorney of record for the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on the date set forth below, addressed to Riley, Pope & Laney, LLC 2838 Devine Street, Columbia SC 29205.

Dated: August 19, 2013

By: _____
james l. dennis, Appellant in propria persona

By: _____
enid dennis, Appellant in propria persona