THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Case No. 2007-CP-38-807

Deutsche Bank National Trust Company as Trustee for the Holders of New Century Home Equity Loan Trust, Series 2005-A, Asset Backed Pass-Through Certificates, ... Respondent,

v.

Laura Toney, LaSalle Bank National Association, as Trustee for the registered holders of Structured Asset Securities Corporation, Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 and LaSalle Bank National Association, Trustee for Lehman Brothers Structured Asset Investment Loan Trust Sail 2005-2 of whom Laura Toney is, ... Appellant.

RESPONDENT DEUTSCHE BANK'S FINAL BRIEF

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STATEMENT OF THE CASE

The statement of the case in appellant's brief does not present an objective summary of the case and states as fact matters that are either in dispute or at odds with the record. The statement of the case in respondent's brief shall only state those matters that are not in dispute and provides a citation for the documents referenced.

This is an action for foreclosure as to property in Orangeburg County. (R.pp. 148 - 158). The appellant Laura Toney obtained a loan from New Century Mortgage Corporation to refinance a prior mortgage encumbering the property. (R.pp. 73 - 75, 107 - 127). The appellant also directly obtained cash proceeds in the amount of $11,102.61 from the new loan. (R.pp. 93 – 96, 128, 107 - 108). The mortgage was filed on June 1, 2005 in Book 1587 at Page 104 in the Orangeburg County Register of Deeds. (R.pp. 109 - 127). The mortgage was subsequently assigned to respondent by assignment filed November 2, 2005 in Book 1641 at Page 51 in the Orangeburg County Register of Deeds. (R.pp. 91 – 91).

This case was commenced with the lis pendens, summons and complaint filed on June 26, 2007. (R.pp. 148- 158). The appellant was personally served with the pleadings on July 14, 2007. (R.p. 92). No responsive pleading was filed by the appellant and an affidavit of default and order of reference were filed on December 17, 2007.

(R.pp. 6 – 7, 4 - 5). Hearing was held on January 9, 2008 and a Master's Order and Judgment of Foreclosure and Sale was filed on January 10, 2008. (R.pp. 34 - 40). The foreclosure sale was held on February 4, 2008 and respondent was the successful bidder. (R.pp. 355 - 359).

Appellant filed a Motion to Vacate Order of Foreclosure and Sale on January 30, 2008. (R.p.43). A hearing on the motion was held on March 11, 2008. Appellant's motion was denied by Order filed March 26, 2008. (R.pp. 18 - 19). Appellant subsequently filed a Motion for Relief from Judgment Pursuant to Rule 60 on April 14, 2008. (R.pp. 334 - 337). Respondent filed a Return to the motion on April 21, 2008. (R.pp. 342 - 346). Respondent also filed a Motion for Sanctions on April 21, 2008. (R.pp. 351 - 353).

Hearings on the pending motions were held on May 6, 2008 and August 27, 2008. By order filed September 4, 2008, the trial court granted leave to appellant to obtain and supplement the record with a report by a handwriting expert upon the condition that appellant post a bond of no less than $5,666.66 on or before September 4, 2008. (R.pp. 20 - 21). The appellant failed to post the bond required under the September 4, 2008 order but hearing was nevertheless held on September 16, 2008 and appellant was permitted to submit testimony from a handwriting expert. The appellant's motion was denied by order filed December 11, 2008. (R.pp. 24 - 31). The order also granted the respondent's motion for sanctions. The appellant filed a motion for reconsideration dated December 22, 2008. (R.pp. 54 - 56). Respondent filed a Return to the motion on December 31, 2008. (R.p. 45 - 47). A hearing was held on February 11, 2009. An additional hearing was held on February 8, 2011. The appellant's motion for

reconsideration was denied by order filed March 23, 2011. Appellant filed this appeal of the denial of the motion for reconsideration of the denial of her Rule 60(b) motion.

STANDARD OF REVIEW

"A mortgage foreclosure is an action in equity." U.S. Bank Trust Nat. Ass'n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). In an appeal from an action in equity, tried by a judge alone, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Id.* In this case, the foreclosure decree was not appealed and the order denying the Rule 60(b) motion was not appealed. The only order on appeal is the order denying appellant's motion for reconsideration of the order denying her motion for relief from judgment under Rule 60(b) SCRCP. The appellant did not cite any rule in her motion for reconsideration as the basis for the motion.

Respondent's brief will recite the relevant law pertaining to a motion under Rule 60(b) SCRCP as that was the rule cited by appellant in her previous post-trial motions. Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the trial court. Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). Therefore, the standard of review is limited to determining whether there was an abuse of discretion by the trial judge. Raby Const., L.L.P. v. Orr, 358 S.C. 10, 594 S.E.2d 478, 482 (2004). An abuse of discretion arises when the order was controlled by an error of law or when the order is based on factual conclusions that are without evidentiary support. Tri-County Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).

ARGUMENTS

I THE DENIAL OF APPELLANT'S MOTION FOR RECONSIDERATION OF THE DENIAL OF HER RULE 60(B) MOTION BY THE TRIAL COURT WAS NOT AN ABUSE OF DISCRETION

A. THE APPELLANT WAS NOT PREJUDICED BY THE TRIAL JUDGE'S USE OF DISCRETION

The appellant filed several post-trial motions in this case, with each successive motion making more exaggerated claims against respondent and its counsel than the previous motion. The evidence in this case as well as related cases established that the appellant's numerous motions were without merit and the trial judge correctly denied the motions. The appellant has not made a showing of any prejudice against her in this matter. To the contrary, the record reflects that the trial judge repeatedly exercised his discretion to the direct benefit of the appellant and appellant was shown wide latitude in being permitted to make arguments and submit evidence. The frivolous nature of the motions in this case and other matters will be discussed in greater detail in other arguments of this brief. This portion of respondent's brief will discuss the two (2) instances of alleged abuse of judicial discretion set forth in appellant's brief.

In her brief, appellant alleges the trial judge abused his discretion by ordering her to pay interest "on a mortgage that was already sold to a third party" and not giving the appellant an opportunity to present new evidence. (Appellant's Initial Brief p. 6). The record shows that both of these arguments by appellant are untrue and are based upon either appellant's mischaracterization of the trial judge's ruling or based upon patently false statements by appellant in her brief.

The trial judge never ordered appellant to pay interest "on a mortgage that was already sold to a third party" (Appellant's Initial Brief p. 6) as claimed in appellant's

brief. Rather, the trial judge ordered that appellant was required to post a bond with the court if she wished to present evidence of alleged forgery. (R.pp. 20 - 21, p. 235, line 20 - p. 243, line 5). This requirement was entirely appropriate given the appellant's numerous frivolous motions in this matter and related cases. Appellant also conveniently omits the fact that the calculation of the amount of the bond based upon the interim interest and anticipated attorney fees was at the suggestion of her own attorney. (R.p. 241, line 3 - line 8). The frivolous nature of this motion and appellant's other post-trial motions fully justified the requirement of a bond (which appellant failed to post) and the subsequent sanctions imposed on her.

The initial motion by appellant was filed on January 30, 2008 and alleged that she was not provided notice of the hearing. (R.p. 43). A hearing on the motion was held on March 11, 2008, with appellant being represented by counsel. The appellant confirmed that she had been personally served with the pleadings and was in default. Appellant withdrew her motion and the motion as denied by order filed March 26, 2008. (R.pp. 18 - 19).

Appellant filed a second motion on April 14, 2008 claiming that the foreclosure should be vacated due and an alleged failure to serve her with a lis pendens. Appellant also alleged that the closing documents were prepared by an out of state entity and not a lawyer licensed in South Carolina and therefore in violation of South Carolina law. (R.pp. 334 - 337). Respondent filed a Return to appellant's Rule 60 motion and filed a motion for sanctions alleging that the appellant's motion was frivolous on its face. (R.pp. 342 - 346). An initial hearing on the appellant's motion was held on May 6, 2008 and appellant appeared with different counsel. Respondent's counsel conceded that the

alleged failure to serve a lis pendens was not a valid basis for contesting the foreclosure. (R.p. 303, lines 14 – 19). The trial judge then permitted appellant to testify over the objections of respondent's counsel. In her testimony, the appellant Laura Toney claimed that the disbursement of funds she received from the subject loan was made by the mortgage broker rather than the closing attorney:

Q: Ms. Toney, I know you are going to be asked this question. Did you get $11,102.61 as a result of this closing?
A: I recall getting a check. I don't recall the exact amount.
Q: Did you get it from the attorney or from someone else?
A: I received the broker, I got it from the broker.

(R.p. 396, lines 11 –17)

These allegations were not set forth anywhere in appellant's motion and were raised for the first time in her testimony. Due to the serious nature of these allegations, the court scheduled the matter for a subsequent hearing so that the closing attorney's appearance and testimony could be subpoenaed.

A second hearing on the appellant's motion was held on August 27, 2008. Prior to hearing, respondent's counsel submitted an affidavit from the closing attorney Michael May confirming that he had discharged all of the duties required of him as a closing attorney under the State v. Buyers Serv. Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987) and Doe v. McMaster, 335 S.C. 306, 585 S.E.2d 773 (2003) line of cases. Specifically, the affidavit included a copy of the cancelled disbursement checks confirming that the loan disbursements were made by the closing attorney from his attorney trust account and not by the mortgage broker. (R.pp. 93 - 130). Respondent's counsel also submitted an affidavit from the closing attorney's paralegal Tracey Kirkpatrick that confirmed she witnessed the respondent execute the loan documents and that attorney May's office had

made the loan disbursements. (R.pp. 135 - 136). Attorney May and Tracey Kirkpatrick also testified at the hearing. (R.pp. 176, line 21 – p. 213, line 13).

Appellant's counsel subpoenaed the testimony and any loan file in the possession of the mortgage broker, Daniel Green. Respondent's counsel objected to the testimony of the mortgage broker on the basis that respondent's counsel was not served with a copy of the subpoena prior to trial as required by Rule 45(b)(1) S.C.R.C.P. (R.p. 170, line 16 – p. 172, line 21). Despite the failure to provide respondent's counsel notice of the subpoena as required under the South Carolina Rules of Civil Procedure, the court permitted the mortgage broker to testify. Mr. Green testified that he attended the loan closing and that he did not see any irregularities to the loan closing. (R.p. 173, line 15 – p. 175, line 14).

Respondent was forced to incur the time and expense of obtaining and serving affidavits from the closing attorney and his paralegal showing the loan closing was in conformity with South Carolina law in general and specifically with the requirement that a South Carolina licensed attorney conduct the closing and make the disbursements. Despite the clear documentation presented in advance of the hearing, respondent was still required to subpoena the closing attorney and the paralegal to provide testimony to disprove appellant's claim that the loan was a "witness only" closing. This is not an instance where the appellant's testimony was misinterpreted. Appellant and her counsel expressly alleged that the subject loan was a "witness only" closing. (R.p. 304, line 1 – p. 305, line 9). After the closing attorney's trust fund checks were produced and sworn testimony was presented by affidavit and in court, the appellant attempted to explain that the mortgage broker merely handed her the check. (R.p. 221, line 23 – p. 225, line 20).

This excuse is not credible given the specifics of this case as well as the numerous instances of other bad faith litigation by the appellant.

Also at the August 27, 2008 hearing, the trial judge again permitted appellant to testify over the objections of respondent's counsel. In her testimony, the appellant claimed that she had not signed the promissory note or the loan application. These allegations were not raised in her filed motion or in her previous testimony. Appellant's counsel requested leave to obtain and submit a handwriting analysis of respondent's signature on the two documents. (R.p. 214, line 1 – p. 218, line 23; p. 227, line 25 – p. 243, line 21). By Order dated September 3, 2008 and filed September 4, 2008, the Defendant Laura Toney was granted leave of court to obtain and submit a handwriting analysis as to the two documents and required to post a bond of no less than $5,666.66 on or before September 4, 2008. The order further stated that upon any failure of the Defendant Laura Toney to post the required bond, the court would forgo any further consideration of her request to obtain a handwriting analysis as to the two (2) specified documents. (R.pp. 20 - 21). By letter dated September 3, 2008, appellant's counsel submitted a handwriting analysis. The appellant did not post the bond as required by the bench ruling of August 27, 2008 and the accompanying September 4, 2008 Order.

The court held a third and final hearing on appellant's Rule 60 Motion on September 16, 2008. A handwriting analyst testified at hearing that he performed an analysis of the two documents by comparing the signatures on those documents to other signatures of appellant that he used as control examples. Based upon his analysis, he offered an opinion that "suggested" the signatures on the two documents could be non-authentic. However, cross-examination of the analyst by respondent's counsel

established serious flaws in the analysis. First, the analyst admitted that a person's signature could be affected by the person's mental and physical condition at the time of writing. The analyst admitted that he did not question the appellant as to her mental or physical condition either at the time the documents would have been signed or at the time the control samples would have been written. The analyst further admitted that pens can have different writing qualities and he had not compared the signatures on the questioned documents to the signature made on other documents from the loan closing where the genuineness of appellant's signature is not disputed, such as appellant's endorsement of the check for the loan proceeds. Yet the most serious flaw in the analysis was that the writing samples used by the analyst as control samples were from documents provided to him by the appellant and he could not independently verify her signature on those documents used as his control samples. (R.p. 279, line 11 – p. 300, line 24). The trial court correctly ruled that the analysis offered by appellant lacked an appropriate foundation for reliability and was of no probative value.

Respondent would argue that any abuse of discretion by the trial judge was to the benefit of appellant and to the prejudice of respondent. Respondent was required to defend against appellant's initial motion, which was so meritless as to be withdrawn by appellant's counsel at hearing (R.pp. 18 - 19). Appellant then filed a Rule 60 motion which was frivolous on its face. Appellant was permitted to proceed with new counsel despite a failure to substitute new counsel as required by Rule 11(b) SCRCP. The trial judge then permitted appellant to testify to matters not set forth in her affidavit as required by Rule 6(d) SCRCP. Respondent's counsel presented affidavits with documentary evidence showing appellant's testimony claiming the disbursements for the

loan closing were done by the mortgage broker and not the closing attorney were patently false. The trial judge also permitted appellant to present testimony from the mortgage broker, who was subpoenaed to appear but with opposing counsel not provided a copy or notice of the subpoena as required by Rule 45(b)(1) SCRCP. When appellant was again permitted by the trial judge to testify over the objections of respondent's counsel, she then claimed her signature on the promissory note was forged. The appellant misrepresents the trial court's requirement that she post a bond to proceed with a further hearing on a handwriting analysis as ordering her to pay interest on the loan. This is an important distinction, although it is arguably irrelevant since appellant never posted the bond but was still permitted to present evidence and testimony on the analysis. Despite the South Carolina Rules of Civil Procedure and even the trial court's own orders being ignored for the benefit of appellant, the evidence clearly established that her post-trial motions had no merit. And all of this transpired in a case where appellant was admittedly served with the pleadings and in default.

B. APPELLANT LACKED A MERITORIUS DEFENSE

In this case, the trial judge properly exercised his discretion in denying the appellant's post-trial motions based in part on the appellant's prior statements and filings in her bankruptcy filings. The appellant repeatedly filed serial bankruptcy petitions prior to and during the pendency of this foreclosure action. As part of the required declaration of assets in the bankruptcy cases, the appellant was required to affirmatively state her assets and liabilities in her schedules. In Schedule B of her third Bankruptcy petition (Case No.06-05381-dd), the appellant affirmatively stated that she possessed no

"contingent and unliquidated claims of every nature, including tax refunds, ***counterclaims of the debtor, and rights to setoff claims***" (R.p. 322). (emphasis added). Upon the filing of the Chapter 13 Bankruptcy petition, all the legal and equitable interests of the debtor become the property the bankruptcy estate. See Section 541 U.S. Bankruptcy Code. The bankruptcy petition submitted by this debtor, as with all bankruptcy debtors, is submitted under oath and under penalty of perjury. The trial court made a finding that the doctrine of judicial estoppel barred the appellant from asserting claims and defenses in the foreclosure that were not declared as assets in her bankruptcy.

Judicial estoppel precludes a party from adopting a position in conflict with one taken in the same or related litigation. See Colleton Reg. Hosp. V. MRS Med. Rev. Syst., 866 F. Supp 896 (D.S.C. 1994). The purpose or function of the doctrine is to protect the integrity of the judicial process or the integrity of the courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries. 31 C.J.S. *Estoppel & Waiver* Section 139, at 593 (1996). See also Zimmerman v. Central Union Bank, 194 S.C. 518, 532, 8 S.E.2d 359, 365 (1940)("Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position."). See also Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E.2d 472 (1997)("Although parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him").

The trial court correctly ruled that the appellant's statements under oath in her

bankruptcy case expressly confirming that no setoffs or counterclaims existed to declare as assets acted as a bar to her assuming a contrary position in the foreclosure. Therefore, the appellant lacked a meritorious defense to the foreclosure, not only due to her failure to timely respond to the complaint, but more importantly due to her sworn statements in her bankruptcy cases that she had no counterclaims or setoffs to declare as assets. It is anathema to the principles of equity for the appellant to make a sworn statement under penalty of perjury to the United States Bankruptcy Court for the purpose of obtaining the jurisdiction and protection of the United States Bankruptcy Court and then attempt to disavow such statements and avoid the consequences of such sworn statements in the foreclosure action. The granting of this appeal would encourage perjury and severely denigrate the integrity of the judicial system for the benefit of a litigant who has been repeatedly found by various courts to have acted in bad faith.

Appellant would also be barred from disavowing her responsibility under the promissory note under the case of Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). The Schmauch case has similar facts to the present case. The appellant denied her signature on a collateral agreement was genuine, although she admitted that it was her intent to sign such an agreement and that she had made payments on the agreement. The South Carolina Court of Appeals concluded that the appellant intended to pledge the collateral and based upon the appellant's stated intent and course of conduct, the trial court correctly ruled that she signed the document. In this case, the appellant admitted that she intended to sign a promissory note but denies the genuineness of her signature on the document. (R.p. 301, line 7 – 14). She admits signing the mortgage, admits that the loan proceeds were used to pay off a prior lien and that she

made payments upon the note. (R.p. 214, line 1 – 11; p. 226, line 5 – line 16; p. 219, line 10 – p. 220, line 3; p. 301, line 4 – line 6). It should be noted that there was also express testimony, both by affidavit and in person, of the closing attorney that he personally witnessed the appellant sign the note. The trial judge weighed the credibility and probative value of the evidence presented and correctly determined that the appellant's allegations of forgery were without merit.

II THE APPELLANT WAS PROPERLY SANCTIONED BY THE TRIAL COURT FOR FRIVOLOUS LITIGATION PURSUANT TO §15-36-10

A. THE APPELLANT HAS A PRIOR PATTERN AND PRACTICE OF BAD FAITH LITIGATION

Appellant has a well established history of engaging in bad faith litigation in other matters. During a prior foreclosure action, appellant filed a Chapter 13 petition in the United States Bankruptcy Court for the District of South Carolina as Case No. 2006-3028. That case was was dismissed due to appellant's failure to appear at the first meeting of creditors. (R.p. 325). Appellant's next Chapter 13 petition, Case No. 2006-4333, was dismissed due to appellant's failure to file the required statements and schedules. (R.p. 326). Appellant's third Chapter 13 petition, Case No. 2006-5381 was also dismissed due to her failure to file all the required statements and schedules. (R.p. 327). Schedule B from appellant's third Chapter 13 case contained a statement made under oath that respondent had no "contingent and unliquidated counterclaims claims of every nature, including ... counterclaims of the debtor and rights to setoff claims". (R.p. 322). This sworn statement by the appellant in prior litigation would clearly act as judicial estoppel from her adopting a contrary position in the present case. Appellant's fourth Chapter 13, Case No. 2007-234, was dismissed with a specific finding

by the United States Bankruptcy Court that the appellant filed the fourth bankruptcy in bad faith. (R.pp. 309 - 319). Appellant filed a fifth bankruptcy case as a Chapter 7, Case 2007-1978, that was also dismissed with a finding that the case was filed in bad faith. (R.pp. 320 - 321). These orders with findings of bad faith entered by the United States Bankruptcy Court are unappealed and clearly establish a pattern of bad faith in prior litigation in the United States Bankruptcy Court for the purpose of delaying a pending foreclosure action.

In a Return to one of the appellant's many post-trial motions, respondent's counsel submitted a copy of an Order dissolving Temporary Restraining Order filed April 2, 2007 in Case No.2007-CP-31-66. (R.pp. 342 - 350; p. 307, line 2 - p.3083, line 6). That case was an action by appellant for an injunction as to an earlier foreclosure action based upon appellant's allegations that respondent's counsel had knowingly violated an automatic stay of the U.S. Bankruptcy Court. The order noted that a prior judicial determination had been made that no bankruptcy stay was in effect. The order further noted that the injunction case was improperly filed as a previously filed action had sole subject matter jurisdiction over the case. Perhaps most applicable to the present case, the prior order made a finding that appellant had failed to comply with the requirements of Rule 11 as to substitution of counsel. Although the appellant's later attorney in this matter may have been unaware of a prior attorney's previous appearance and participation in the present litigation as counsel for the appellant, the prior order clearly establishes that appellant was aware of the requirements of Rule 11 as to substitution of counsel but chose to ignore the rule.

Perhaps the most egregious bad faith conduct by appellant in other litigation was

revealed on cross-examination of the appellant's handwriting analyst. One of the appellant's post-trial motions was scheduled for September 16, 2008 so that the handwriting analyst could appear before the same court on another foreclosure action with appellant, LaSalle Bank v. Laura Toney, et al., Case No. 2007-CP-38-686. The order denying the Rule 60 motion noted that appellant had submitted a handwriting analysis from an entirely different case in Lee County as a purported analysis of the handwriting in the other Orangeburg County case. (R.pp. 24 - 31; p. 296, line 14 - p. 297, line 8). Appellant claimed that this was merely an oversight on her part, but the appellant's attempt to mislead the trial court in that matter based upon false evidence coincides perfectly with appellant's repetitive frivolous filings and false testimony in the present case.

B. THE APPELLANT ENGAGED IN FRIVOLOUS LITIGATION IN THE CURRENT CASE

The trial court correctly ruled that the appellant engaged in acts of bad faith and dilatory tactics in the present case. The appellant's motion was frivolous on its face and the motion was never amended despite the serious allegations raised by the appellant in her testimony at each subsequent hearing. In particular, appellant's allegation of this loan being a "witness only" closing with the mortgage broker disbursing the loan proceeds was found to be wholly without merit. The trial court's bench ruling at the hearing of August 27, 2008 and subsequent Order filed September 4, 2008 were explicit that the appellant was required to post a bond of $5,666.66 on or before September 4, 2008 as an absolute prerequisite to any further hearings. (R.pp. 20 - 21; p. 235, line 20 - p. 243, line 5). This ruling and order were ignored by the appellant when she submitted the handwriting analysis to the trial court without posting the requisite bond. Furthermore,

the pattern of such bad faith litigation and dilatory tactics employed by the appellant in this action is clearly identical to the pattern and practice of bad faith litigation and dilatory tactics as set forth in the other litigation cited herein.

Pursuant to §15-36-10, S.C. Code of Laws, et seq., the trial court examined and applied the factors as set forth in the statute, including the length of time available to the appellant to examine the evidence submitted in opposition to her motion, the opportunity for her to amend her motion or withdraw it and her previous bad faith litigation. Respondent's counsel submitted an Attorney's Fee Affidavit reflecting fees and costs of $4,786.80 incurred in defending against the appellant's post trial motions prior to the hearing of August 27, 2008. The Order filed September 4, 2008 required the appellant to post a bond of no less than $5,666.66 with this court on or before September 4, 2008. The court trial court's award of additional fees and costs of $500.00 per each of the two (2) subsequent hearings was appropriate and well below the time incurred in actually preparing for and participating in the subsequent hearings. The sanction imposed by the court was reasonable and justified both in terms of the time and costs incurred by the respondent as well as the appellant's willful ignorance of the court's requirement to post a bond.

When appellant's allegations against respondent have been shown to be false, she has repeatedly resorted to personal attacks on the character of respondent's counsel. One such accusation by the appellant is that respondent's counsel stole her Motion for Reconsideration filed December 22, 2008 from the Orangeburg County Clerk of Court's office. This accusation is not only without any evidentiary support, it is patently absurd given the record in this case. Respondent's counsel drafted, filed and served a Return to

the appellant's motion for reconsideration. It is illogical to propose that any counsel would seek to delay or frustrate a motion by removing it from the clerk's office and yet file a detailed Return to the motion. Appellant then seeks to support this wild accusation by claiming the motion's absence from the clerk's file resulted in the lengthy delay in scheduling her reconsideration motion for hearing. The documentary evidence in this case shows that this is another false allegation by appellant and is conclusively disproven by the evidence.

Likewise, the appellant claims the respondent's counsel misled the court by failing to advise that the property had been sold by respondent. There is no evidence that respondent's counsel had any knowledge of the property sale as he was not the attorney who performed the closing. (R.p. 266, line 7 - p. 270, line 13). Nor could the respondent's counsel even have discovered the sale through a search of the public records since it was only filed late on the day prior to the hearing. Respondent was within their rights to resell the property since they held a judicial deed from the Orangeburg County Master-in-Equity. Appellant did not file a lis pendens against the property and there was no order by the court precluding such a sale. The sanctions ultimately assessed against appellant were due to her repetitive bad faith and frivolous litigation. The interim bond that was required by the trial court may have been based in part on what interest would have accrued under the loan, but such bond was ordered over the objections of respondent's counsel and was never even posted by appellant. Indeed, the method of calculating the bond was suggested by appellant's counsel. (R.p. 240, line 23 - p. 241, line 5).

After the appellant filed the motion for reconsideration and respondent filed a return to the motion, appellant scheduled a hearing for February 11, 2009. (R.p. 362). Appellant had previously filed another pro se Chapter 13 Bankruptcy on December 30, 2008 as Case No.08-08382-dd. Respondent's counsel was concerned about a hearing being conducted while the appellant was in bankruptcy and consulted with the Chapter 13 Trustee as well as appellant's bankruptcy attorney. After being assured that the appearance by respondent's counsel at the scheduled hearing would not be deemed a violation of any potential bankruptcy stay, respondent's counsel drafted a hearing notice which corrected the defects in the hearing notice drafted by appellant. At the motion hearing, respondent's counsel was accused of violating the stay by appellant's bankruptcy attorney. By letter dated February 11, 2009, respondent's counsel confirmed that the hearing had been scheduled by the appellant and that he had discussed the matter with the Chapter 13 Trustee and the bankruptcy attorney prior to the hearing. (R.pp. 360 - 364).

The sanctions leveled against appellant were intended to reimburse the respondent for the attorney fees and costs incurred in defending the series of frivolous motion by appellant. The record reflects that the sanctions were reasonable under the facts and circumstances of the case. Unfortunately, no sanctions imposed have been sufficient to discourage the bad faith conduct of the appellant.

CONCLUSION

The appellant has failed to make a showing that the trial judge abused his discretion by issuing an order based on an error law or that the order is based on factual conclusions that are without evidentiary support. To the contrary, the record in this action shows that the appellant's post-trial motions and allegations arising in her

testimony were wholly without merit. Furthermore, the related bankruptcy cases and civil cases are replete with evidence of the appellant's bad faith litigation and dilatory tactics. If the relief sought by the appellant in this appeal were granted, it would impugn the integrity of the court and seriously prejudice the interests of the respondent. It would also encourage further bad faith actions in a case where no meritorious defense exists. He who comes into equity must come with clean hands. It is far more than a banality. It is a self-imposed ordinance that closes the door of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief. Precision Instrument Mfg. Co. v. Automotive Co., 324 U.S. 806, 814 (1945). Appellant is a bad faith litigant who has consistently shown that she has no regard whatsoever for the specific ethical requirements of Rule 11 SCRCP or even the general notion of veracity and forthrightness in a legal case. The evidence conclusively shows that the appellant has repeatedly made knowingly false statements in her pleadings and testimony and the court properly denied her post-trial motions and sanctioned her frivolous conduct.

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Laura Toney is, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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Case No. 2007-CP-38-807

Deutsche Bank National Trust Company as Trustee for the Holders of New Century Home Equity Loan Trust, Series 2005-A, Asset Backed Pass-Through Certificates, ... Respondent,

v.

Laura Toney, LaSalle Bank National Association, as Trustee for the registered holders of Structured Asset Securities Corporation, Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 and LaSalle Bank National Association, Trustee for Lehman Brothers Structured Asset Investment Loan Trust Sail 2005-2 of whom Laura Toney is, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Final Brief, Certificate of Counsel and proof of service on appellant by depositing a copy of it in the United States Mail, postage prepaid, on October 4, 2013, addressed to the pro se Appellant, Laura Toney, P.O. Box 722, Bishopville, SC 29010.

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