

IN 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.

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL JUDGE ABUSED ITS DISCRETION WHEN HE ORDERED THE DEFENDANT TO PAY THE PLAINTIFF INTEREST ON A MORTGAGE THAT WAS ALREADY SOLD TO A THIRD PARTY AND NOT GIVING THE APPELLANT THE OPPORTUNITY TO PRESENT NEW EVIDENCE.**

- II. THE TRIAL JUDGE VIOLATED PROCEDURAL DUE PROCESS IN DENYING THE APPELANT THE OPPORTUNITY TO BE HEARD ON THE MOTION FILED.**

STATEMENT OF CASE

A Foreclosure Hearing was held in Orangeburg County on January 9, 2008, and a Foreclosure Decree was filed on January 10, 2008. The sale was held on February 4, 2008, with the Plaintiff being the highest bidder. The house was subsequently sold to a third party on August 20, 2008.

The Defendant filed a Motion to Vacate Order of Foreclosure and Sale on January 30, 2008. The Defendant's motion was denied. Another Motion for Relief from Judgment Rule 60 on April 14, 2008, based on the fact the lis pendens was not served properly and the Defendant did not sign the important loan documents. This Motion was also denied by the Courts.

The Court also ordered the Defendant to pay the attorney fees of \$6,666.66 which also included interest on a mortgage that was already sold to a third party. The Defendant feels that the Plaintiff committed fraud on the courts when it requested that the Defendant pay interest on the mortgage that they no longer owned. The record will show that the house was sold to a third party on August 20, 2008. This hearing was held a few days later on August 27, 2008. The Plaintiff made no reference to the fact that the property was sold just days before.

The Defendant upon discovery of this fraudulent behavior from the Plaintiff filed a Motion for Reconsideration and Motion on December 22, 2008. After repeated attempts to secure a date for the Courts to hear this Motion, the Defendant was granted a hearing date on February 24, 2010. The Defendant's Motion for Reconsideration mysteriously disappeared from the Orangeburg County Clerk of

court's Office. The Defendant wrote a letter to the Orangeburg Clerk's Office notifying them of this theft. The Defendant feels that it is strange that the Plaintiff was able to sell and transfer property to a third party when there was a pending Motion for Reconsideration. The Clerk's Office reinstated the Motion for Reconsideration after the property was sold. At this hearing, the Defendant attempted to admit several exhibits to the courts to prove that the Plaintiff committed fraud by not revealing the fact that the property was already sold to a third party. The Defendant attempted to admit six (6) Exhibits on record. The courts accepted the Exhibits as part of the record, but did not allow the Court Reporters to get a copy of these Exhibits. The Defendant also attempted to admit into evidence that fact that the Plaintiff admitted in a transcript from the hearing on August 27, 2008, that the Plaintiff was already compensated for his services. Also, the evidence will show that the Plaintiff was attempting to get paid twice for the same services. What is more repulsive is that the Plaintiff was attempting to receive interest on a loan from the Defendant that no longer existed.

The transcript will also prove that the Plaintiff committed fraud on the Courts in attempting to receive interest on a mortgage that no longer existed. I feel that the Plaintiff violated the Code of Professional Conduct along with committing fraud on the Courts in attempting to receive interest on a mortgage that no longer existed.

In the Defendant's Motion for Reconsideration, the Defendant requested that the Foreclosure Sale be vacated and reversed and the order recorded on December 11, 2008, is vacated. The Defendant also requested punitive damages in the amount

of \$100,000.00. The Defendant also requested a hearing in this matter. The Defendant's request was denied.

Standard of Review

Denial of the Appellant's Motion for Reconsideration or to set aside a default judgment under a standard of abuse of discretion. See Canaan v. Bartee, 272 Kan. 720, Syl 9, 35 P. 3d 841 (2001). Judicial discretion is abused when no reasonable person would take the view adopted by the trial court. Harsch v. Miller, 288 Kan. 280, 293, 200 P.3d 467 (2009). Review for abuse of discretion includes review to determine whether erroneous legal conclusions guided the exercise of discretion. State v. Skolaut, 286 Kan. 219, Syl 3, 182 P.3d 1231 (2008). The Appellant was order to pay the Korn Law Firm interest on a mortgage loan that already sold to a third party. The Korn Law Firm is not licensed to solicit interest on a mortgage loan. Also, the Korn Law Firm attempted to get paid twice for services rendered by them- one from Deutsche Bank and another payment from the Appellant. The House was sold on August 20, 2008. The Respondent made no reference to this in the hearing for Motion for Reconsideration, but instead requested that the Appellant pays the Korn Law Firm interest on a mortgage loan that no longer existed.

ARGUMENTS

I. DID THE TRIAL JUDGE ABUSE ITS DISCRETION WHEN HE ORDERED THE DEFENDANT TO PAY THE PLAINTIFF INTEREST ON A MORTGAGE THAT WAS ALREADY SOLD TO A THIRD PARTY AND NOT GIVING THE APPELLANT THE OPPORTUNITY TO PRESENT NEW EVIDENCE?

The Appellant received a mortgage loan from the Respondent Dated May 23, 2005 (r. pp. 58-90). The mortgage was assigned in November 2, 2005 (r. pp.91-92).

A foreclosure hearing was held on January 9, 2008 (r. pp.13-17). The Respondent foreclosed on the Appellant's property with the Respondent being the highest bidder. (r.pp.34-40).

The house was subsequently sold to a third party on August 25, 2008 (r.pp.331-332).

The Appellant attended another hearing on August 27, 2008, where the Respondent made several fraudulent statements before the courts. The Respondent made no reference about the house being

already sold to a third party. During this hearing the Respondent requested that the Master-In-Equity order the Appellant to pay interest to the **Korn Law Firm** on a mortgage loan that was already sold to a third party (r. pp.331-332).

The Respondent no longer owned the mortgage (r. pp.331- 332).

The Plaintiff made no reference to this during the hearing on August 27, 2008, leading the Courts to believe that the property had not been sold.(r. pp. 235 lines 3-10). The Respondent misrepresented a material fact and the trial judge refused to allow the Appellant the opportunity to present evidence.

The Plaintiff's clients are bind by the statements made by Mr.

Murrell. In United Farm Bureau Mut. Ins. Co. v. Groen,486

N.E. 2d 571, 573,(Ind. Ct. app. 1985). See also Meidreich v.

Rank 40 Ind. App. 393, 397, 82 N.E. 117, 118 (1907)(attorney is

more than a mere agent of the client; attorney is the "sole manager of business committed to his care.") Decisions relating to trial

tactics for example-when to object, what motion to file, which

arguments to present, how to negotiate are left to the attorney. In

Alma Lumber co. v. Beecham 25 S.E. 285, 286 (SC 1896), See

also Parr v. Chicago, B&Q,R.R. Co., 184 S. w. 1169, 1170 (Mo.

Ct. App. 1916). A variant on this theme is that in Court the client speaks through the attorney who is deemed the same as the client.

“There is full power on the part of the counsel to represent the client (in Court)...”**Williams v. Williams, 7 S.E. 135 (Ga. 1888).**

The Plaintiff also misrepresented a material fact in the computation of attorney’s fees (r. pp.20-21) Mr. Murrell clearly stated that he had been compensated for his services (r p. 235 lines5-10)

The Plaintiff knowing that the property was conveyed to a third party had the interest from a loan that no longer exists in his computation for attorney’s fees in the amount of \$5666.66(r. pp. 20-21). The Appellant was ordered to pay attorney fees of \$5,000.00. In the order dated December 9, 2008, an additional \$666.00 was added for interest on the mortgage (r pp. 20-21). The Mortgage was sold on February 20, 2008 (r.pp.331-333) as of August 26, 2008.

The Appellant filed a Motion for Reconsideration on December 22, 2008 (r. pp. 54-57). The Respondent filed a Return to Defendant’s Motion for Reconsideration (r. pp. 45-47). The Appellant’s Motion was denied on February 14, 2010 (r. pp.22-23). Through the Appellant’s research, it was discovered that the Appellant’s

Motion For Reconsideration was stolen from the Orangeburg Clerk's Office. The Appellant notified the Clerk's Office and the Motion was reinstated.(r. p. 163).

At the August 27, 2008, hearing, the Appellant was ordered to pay interest on a mortgage loan that the Respondent no longer owned by the Korn Law Firm. The Respondent made no reference to the house already being sold to a third party during the hearing on August 27, 2008. During the August 27, 2008, hearing the Respondents made several statements verifying the fact that he was already compensated for his services. (r. p. 235, lines3-10)

“How is this not a compulsory counterclaim that should have been alleged one year ago? *I mean, my client's not only had to pay me to continue to litigate this, but now they're supposed to pay me litigate this issue as well as hire my own conflicting expert, as well as my client can do nothing with the property while these motions are pending.*” The Respondent also stated from the same hearing on page-239 line 25 and page 240, lines 1-7, “*I mean she's got all the money in the world to litigate while my client continues to have to pay insurance on the property, keep the property secure, and pay taxes on it, foregoing a potential appeal.*”

I mean, how long is my client required to, how on earth are we supposed to run a banking system in the United States under these condition." These statements from the Respondent clearly prove that he had been compensated for his services and the house had not been sold. Also, letters dated September 8, 2008 and September 12, 2008, (r, pp.160-161) questioned why the Respondent stated that the property had not been sold. The Respondent misrepresented a material fact and the trial judge refused to allow the Appellant the opportunity to present evidence at the hearing on February 8, 2011. As the transcript from the February 8, 2011, (r. pp. 248-278), will discover, the Appellant attempted to submit several exhibits to prove that the Respondent committed fraud on the Court, but my attempts were denied. The Appellant feels that this was an abuse of judicial discretion. Judicial discretion is abuse when no reasonable person would take the view adopted by the trial court. **Harsch v. Miller, 288 Kan 280, 293, 200 P. 3d 467 (2009).** Review for abuse of discretion included review to determine whether erroneous legal conclusions guided the exercise of discretion, **State v. Skolaut, 286 Kan 219, 3, 182 P. 3d 1231 (2008).** Judicial abuse of discretion occurs when

the trial judge acts in an arbitrary or unreasonable way that results in unfairly denying a person an important right or causes an unjust result. In this case the Appellant was ordered to pay the Korn Law Firm interest on a mortgage that was already sold to a third party. Substantive due process prevents governments and governmental acts, meaning public officials with the actual or apparent ability to act in their official capacities, from acting arbitrarily, capriciously, and outside the scope of their authority.

II. DID THE TRIAL JUDGE VIOLATE PROCEDURAL DUE PROCESS IN DENYING THE APPELLANT THE OPPORTUNITY TO BE HEARD ON THE MOTION FILED?

The Appellant filed a Motion to vacate the foreclosure due to the Respondent's fraudulent behavior in attempting to require that the Defendant pay him interest on a mortgage that was already sold to a third party.(r. pp. 20-21; r. pp. 331-333). The Respondent or agents illegally

sold the Appellant's property when there was a pending Motion for Reconsideration (r. pp. 331-333). The Respondent misrepresented a material fact in concealing the fact that house had been sold and not informing the Courts that the Sale of the house had already taken place (r. p.235 lines 5-11). The letter dated February 14, 2008, (r.p.159) clearly verifies that the Respondent had knowledge of the sale of the house. This letter addressed to the Occupant of the house informed her of the sale. This is truly fraud on the Court.

The Korn Law Firm is not engaged in the practices that would make it a party to either the enforcement of mortgages or receiving interest from a mortgage. The Korn Law firm does not take applications, underwrite loans, make decisions on whether to extend credit, collect mortgage payments, hold escrows for taxes and insurance, or provide any loan servicing functions whatsoever. For these reasons, the Appellant feels that the trial Judge abused its discretion by ordering the Appellant to pay interest on a mortgage to the Korn Law Firm.

The Appellant feels that her due process was violated because according to the Notice of Hearing, "The purpose of the hearing was to take testimony, finding of facts and conclusions of law and to enter final judgment."

Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. Thus, where a litigant had the benefit of a full and fair trial in the state courts, and his rights are measured, not by laws made to affect him individually, but by general provisions of law applicable to all those in like condition, he is not deprived of property without due process of law, even if he can be deprived of his property by an adverse result. **Marchant v. Pennsylvania R.R.** 153 U.S. 380, 386 (1894).

Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property. **Carey v. Piphus**, 435 U.S. 247, 259 (1978).

“Procedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases. **Mathew v. Eldridge** 424 U.S. 319, 344 (1976). Thus the required elements of due process are those that minimize substantively unfair or mistaken deprivations by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests **Fuentes v. Shevin**, 407 U.S. 67, 81 (1972). At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one’s

interests even if one cannot change the result. Carey v. Phipus, 435 U.S. 247, 266-67 (1978); Marshall v. Jerico, Inc. 446 U.S. 238, 242 (1980); Nelson v. Adams, 120 S. Ct. 1579 (2000) (amendment of judgment to impose attorney fees and costs to sole shareholder of liable corporate structure invalid without notice or opportunity of dispute).

Some form of hearing is required before an individual is finally deprived of a property interest. Armstrong v. Manzo, 380 U.S. 545, 550 (1965); Robinson v. Hanrahan, 409 U.S. 38 (1974); Greene v. Lindsey, 456 U.S. 444 (1982) This right is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions.

The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment. Fuentes v. Shevin, 407 U.S. 67, 80-81 (1972). Thus, the notice of hearing and the opportunity to be heard must be granted at a meaningful time and in a meaningful manner. Armstrong v. Manzo 380 U.S. 545, 552 (1965).

Just as in criminal and quasi-criminal cases, an impartial decision maker is an essential right in civil proceedings as well. Tumey v. Ohio, 273 U.S. 510 (1927); In re Murchison, 349 U.S. 133 (1955). Goldberg

v. Kelly, 397 U.S. 254, 271 (1970). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. At the same time, it preserves both the appearance and reality of fairness by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. **Marshall v. Jerrico 446b U.S. 238, 242 (1980) Schweiker v. McClure, 456 U.S. 188, 196 (1982).**

Thus a showing of bias or of strong implications of bias was deemed made where a state optometry board, made up of only private practitioners, was proceeding against other licensed optometrists for unprofessional conduct because they were employed by corporations. Since success in the board's effort would redound to the benefit of private practitioners, the Court thought the interest of the board members to be sufficient to disqualify them. **Gibson v. Berryhill, 411 U.S. 564 (1973).** Or, the conduct of deportation hearings by a person who while he had not investigated the case heard, was also an investigator who must judge the results of others' investigations just as one of them would some day judge. This raised a substantial problem which was resolved through statutory construction. **Wong Yang Sung v. McGrath, 339 U.S. 33**

(1950). Handi v. Rumsfld 03-6696, U.S. Supreme Court June 28, 2004;

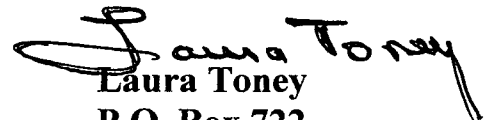
(“Procedural due process rules are meant to protect persons not from the deprivation but from the mistaken or unjustified deprivation of life, liberty, or property”) see also id at 266 (noting the importance to organized society that procedural due process be observed emphasizing that the right to procedural due process is absolute in the sense that is does not depend upon the merits of a claimant substantive assertions”).

In Boddie v. Connecticut 401 U.S. 371 (1971)” These due process decisions, representing over a hundred years of effort by this court to give concrete embodiment to this concept, provide, complete vindication for appellant’s contentions. In particular, precedent has firmly embedded in our due process jurisprudence important principles upon whose application we rest our decisions in the case before us. Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims on right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that “Wherever one is assailed in his person or his property, there he may defend.” **Windsonr v. Mc Veigh 93 U.S. 274, 277 (1876); Baldwin v. Hale 1Wall 223 (1864); Hover v.**

Elliott 167 U.S. 409 (1897). “there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.”**Id, at 313.**

CONCLUSION

The record in this case will show that the Respondent has committed fraud on the Court. It also shows that the Appellant was denied the due process to present her case. The Appellant respectfully requests that the Court will vacate the judgment in this case and allow the Appellant to present her case so that justice will prevail. The Appellant prays that the Courts will reverse the foreclosure and sale of the Appellant's home and remand this case for further proceedings. The Appellant is also requesting punitive damages for the illegal actions of the Respondent.


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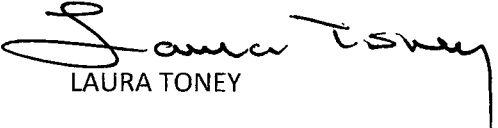
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CERTIFICATE OF MAILING

THIS IS TO CERTIFY THAT I MAILED OF COPY OF THE APPELLANT'S FINAL BRIEF TO THE KORN LAW FIRM
ADDRESSED AT P.O. BOX 11264, COLUMBIA, SC VIA UNITED STATES POSTAL SERVICE ON DECEMBER 19,
2013.

CC: KORN LAW FIRM


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