THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
The Honorable Gordon G. Cooper
Master in Equity

Appellate Case No. 2017-002200
Circuit Court Case No. 2010-CP-42-05847

Wells Fargo Bank, N.A. as Trustee for Bear Stearns Asset Backed Securities I Trust 2004-BO1 — **Respondent**

v.

Betty L. Tangeman, Barry D. Mallek, Alice R. Mallek, Donald Coggins, and Jr Delbert R. Tangeman — **Defendants**

Of Whom Delbert R. Tangeman is the — **Appellant**

BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

1. Whether the trial court was within its discretion to deny the Appellant's Motion to Reconsider by following the plain language of Rule 59(e) and concluding that Appellant's service of the Motion to Reconsider twenty-three (23) days after receiving the Summary Judgment Order did not satisfy his obligation to do so within ten (10) days after receiving the Summary Judgment Order?

2. Whether the trial court was within its discretion to deny the Motion to Reconsider where the Appellant presented no evidence in support of any relevant Rule 60(b) factor and, instead, merely recycled arguments that had been previously asserted and dismissed?

STATEMENT OF THE CASE

A. Appellant's Default and the Trial Court's Entry of the Order Permitting Foreclosure.

On or about September 12, 2000, Defendant Betty L. Tangeman executed a Fixed Rate Note ("Note") in favor of Bank One, NA in the amount of $49,000. (R. pp. A9–A10, ¶ 7). The Note was secured by a mortgage ("Mortgage") on the property located at 102 Oak Ridge Ct. Apt. A & B, Duncan, South Carolina 29334 (the "Property"). (R. p. A10, ¶ 8). Both Defendant Betty L. Tangeman and Defendant-Appellant Delbert R. Tangeman ("Tangeman", and together with Betty L. Tangeman, "Mortgagors") executed and delivered the Mortgage to Bank One, NA. (R. p. A10, ¶ 8). The Mortgage was recorded on September 14, 2000 in Mortgage Book 2382 at page 703, in the Office of the Register of Deeds for Spartanburg County. (R. p. A10, ¶ 9). By deed dated January 25, 2008 and recorded January 29, 2008 in Book 90-N at page 821, in the Office of the Register of Deeds for Spartanburg County, the Mortgagors conveyed the Property unto themselves as joint tenants with the right of survivorship. (R. p. A10, ¶ 12).

On or around February 16, 2009, JPMorgan Chase Bank, N.A., successor by merger to Bank One, NA, assigned the Mortgage unto GMAC Mortgage, LLC ("GMAC"). (R. p. A16, ¶ 3). This assignment was recorded on February 27, 2009, in Mortgage Book 4189 at page 731, in the Office of the Register of Deeds for Spartanburg County. (R. p. A16, ¶ 3). On or around December 9, 2016, GMAC, by its Attorney in Fact Ocwen Loan Servicing, LLC, assigned the Mortgage to Wells Fargo Bank, N.A. as trustee for Bear Stearns Asset Backed Securities I Trust 2004-BO1 ("Wells Fargo"). (R. pp. A16–A17, ¶ 4). This assignment was recorded on December 30, 2016 in Mortgage Book 5221 at page 831, in the Office of the Register of Deeds for Spartanburg County. (R. p. A16, ¶ 4). Thereafter, by virtue of another assignment dated December 9, 2016 and recorded January 18, 2017 in Mortgage Book 5228 at page 211, in the Office of the Register of Deeds for Spartanburg County, GMAC assigned the Mortgage to Wells Fargo. (R. p. A17, ¶ 5).

GMAC, as predecessor in interest to Wells Fargo, initiated this foreclosure action (the "Complaint") against Tangeman on November 3, 2010. (R. pp. A7–A12).[1] The Complaint alleged that the loan was in default and due on July 12, 2010, and that the conditions of the Note and Mortgage had been broken. (R. pp. A10–A11, ¶ 13). In December 2010, the Mortgagors answered the Complaint and asserted a counterclaim for tortious interference with prospective contractual relationship. (R. p. A15, ¶ 4). Respondent's predecessor in interest filed a motion for partial summary judgment with respect to the counterclaim, and the Circuit Court – after a lengthy delay due to Respondent's predecessor in interest filing bankruptcy – granted the motion and dismissed the counterclaim. (R. p. A16, ¶ 6). The case was then referred to the Honorable Gordon G. Cooper, Master in Equity for Spartanburg County in July 2015.

On March 6, 2017, Respondent filed a motion for summary judgment on its foreclosure action against Tangeman and the other defendants. Following a hearing, the Master in Equity, on May 11, 2017, granted the motion – specifically finding that Respondent was entitled to foreclose because the Mortgagors/Appellant breached the terms of the Note and Mortgage – and issued a notice of sale. (R. pp. A15–A30). The Master in Equity specifically found that the Mortgage constitutes a first lien priority mortgage on the Property and that the liens of defendants Barry D. Mallek, Alice R. Mallek, and Donald C. Coggins were junior in priority to Respondent's first mortgage lien. (R. p. A17, ¶ 6; R. p. A19, ¶¶ 10–11). On May 23, 2017, Tangeman was properly served with the Summary Judgment Order. (R. p. 9, lines 29–30).

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[1] The foreclosure action was also asserted against Betty L. Tangeman, but she is not an appellant in the present appeal. Similarly, Barry D. Mallek, Alice R. Mallek, and Donald C. Coggins – junior lienholders with respect to the Property – were defendants in the foreclosure action but are not involved in the present appeal.

On June 5, 2017, the Property was sold at a public auction. As reflected in the "Deed (Public Sale)" recorded on July 20, 2017 in Mortgage Book 116M at pages 621–626, in the Office of the Register of Deeds for Spartanburg County, Respondent purchased the Property at the public auction. (R. pp. A34–A39).

B. The Master in Equity's Order Denying Tangeman's Motion to Reconsider.

On June 15, 2017 (twenty-three (23) days after Tangeman received a written copy of the Summary Judgment Order), the Mortgagors – including the Appellant – filed a motion styled "Defendant's Motion to Reconsiders [sic] and Open the Case" (hereinafter "Motion to Reconsider"). (R. pp. A31–A33). The Certificate of Service attached to the Motion to Reconsider indicates that the Motion to Reconsider was served on Respondent on the same date – June 15, 2017. (R. p. A33). In the Motion to Reconsider, Appellant argued in relevant part as follows:

> 1. The/our contract with GMAC was first broken by GMAC when they sent back multiple payments of approximately $4,300.00 back to me/us.
>
> 2. I found errors in the "Findings of Fact" documnet [sic]. Tangeman's have always maintained property insurance. I also disagree with all or most of the figures in the same section.
>
> 3. The plaintiff does not possess a legal note. What was filed with the court was obviously recopied numerous times, the account number is blotted out, it is not in blue ink as required in South Caroline [sic].
>
> 4. The three (3) year statute of limitations (code ann. 15-3-510 et seg. [sic]) on collecting a debt in South Caroline [sic] expired several years ago. Three other Law Firms have attempted to foreclose on this dwelling, one of them had a different case number.
>
> 5. I do not see a chain of allonges, assignments, or endorsements attached to the fraudulent note. Each of the buyers of this fraudulent note must prove that the above [sic] or affidavits proving legal transferance [sic] in order to have Standing.

(R. p. A31, ¶¶ 1–5).[2] The Motion to Reconsider did not clarify whether it was being brought pursuant to SCRCP 59(e) – as a motion to alter or amend – or pursuant to SCRCP 60(b) – as a motion for relief from judgment.

On September 25, 2017, the Master in Equity held a properly noticed hearing on the Mortgagors' Motion to Reconsider. (R. pp. 14–22). At the hearing attended by both parties, Tangeman presented oral argument on his claims relating to the redacting and copying of the Note, the application of the three-year statute of limitations set forth in S.C. Code Ann. § 15-3-510 *et. seq.*, and the propriety of the chain of assignments of the Note. (R. p. 15, line 16-p. 16, line 2). Wells Fargo presented counterarguments, and the trial court expressed its agreement with Wells Fargo's positions. (R. p. 17, line 16-p. 18, line 8).

On September 27, 2017, the trial court issued its Order Denying Motion to Reconsider and Reopen Case of Defendant Delbert R. Tangeman (hereinafter "Order Denying Motion to Reconsider"). (R. pp. 8–11). The trial court concluded that the Motion to Reconsider – as a Rule 59(e) motion – was untimely; that even if the Motion to Reconsider were not untimely, Tangeman failed to meet the requirements of Rule 59(e); and that the Motion to Reconsider – construed as a Rule 60(b) motion – failed to present any of the argument or evidence necessary to obtain relief from judgment under that rule. (R. pp. 9–10).

C. Tangeman's Attempt to Appeal the Summary Judgment Order During the Pendency of the Motion to Reconsider.

On August 28, 2017, while his Motion to Reconsider was pending before the trial court, Tangeman attempted to appeal the Summary Judgment Order to this Court by filing an initial brief.

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[2] Tangeman's other arguments/statements in the Motion to Reconsider were that he was prepared to file a lawsuit against Wells Fargo's trial counsel and his law firm, which Tangeman referred to as a "'foreclosure mill!' taking advantage of poor people," and that both Wells Fargo's trial counsel and the trial court had not served unspecified pleadings and orders on Tangeman in a proper manner. (R. pp. A31–A32, ¶¶ 6–7).

(R. pp. A40–A43).[3] After the Court informed Tangeman of various deficiencies with his filing, including his failure to indicate when he received written notice of entry of the Summary Judgment Order, Tangeman, on September 15, 2017, filed a document titled "Notice of Appeal," which stated, "APPELLANT RECEIVED THE WRITTEN NOTICE OF THE ORDER ON JULY 24, 2017, BUT STILL UNSIGNED."[4] (R. p. A45–A46). Tangeman attached to the September 15, 2017 notice of appeal a certificate of service indicating that he served it on Wells Fargo on September 14, 2017. (R. p. A46). Because Tangeman, by his own admission, failed to serve this notice of appeal within thirty (30) days of the Summary Judgment Order, *see* SCACR 203(b)(1), this Court, on September 19, 2017, dismissed Tangeman's first appeal in this case. (R. pp. A48–A49).

D. Tangeman's Subsequent Notice of Appeal and Initial Brief to This Court.

On October 13, 2017, Tangeman filed a second notice of appeal with this Court (hereinafter "Notice of Appeal"). (R. p. 13). Following receipt of a deficiency notice from the Court relating to, *inter alia*, Tangeman's failure to attach the order from which he is appealing, Tangeman, on October 30, 2017, filed with the Court the Order Denying the Motion to Reconsider. Both Tangeman's Notice of Appeal and the trial court order that Tangeman submitted to this Court clarify that Tangeman is appealing from the Order Denying his Motion to Reconsider only.

Tangeman filed an initial draft of his opening brief on or around November 15, 2017 and – after the Court noted various deficiencies with the filing – subsequently filed an amended initial brief on December 29, 2017 ("Appellant's Initial Brief"). Tangeman served Appellant's Initial Brief on the same date.

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[3] This initial appeal was assigned Appellate Case No. 2017-001799.

[4] Based on other arguments made in these proceedings, Tangeman's confusion about whether the order was signed appears to derive from the trial judge electronically signing the Summary Judgment Order. (R. p. A27).

Appellant's Initial Brief does not contain a statement of issues on appeal, a statement of the case, or a conclusion, all as required by SCACR 208(b)(1). Instead, the brief merely reasserts virtually the exact same arguments presented to the trial court in Tangeman's Motion to Reconsider.

SUMMARY OF THE ARGUMENT

Tangeman appeals the denial of his Motion to Reconsider the prior Summary Judgment Order. In his Motion to Reconsider, Tangeman did not clarify whether he was asserting a Rule 59(e) motion – seeking to alter or amend the Summary Judgment Order – or a Rule 60(b) motion – seeking relief from judgment. The trial court evaluated the Motion to Reconsider under both possible standards and was well within its discretion in denying the Motion to Reconsider.

When construing the Motion to Reconsider as a Rule 59(e) motion, the trial court did not abuse its discretion by applying the plain language of the rule – which required Tangeman to serve the motion within ten (10) days of receiving the written Summary Judgment Order – and concluding that the Rule 59(e) motion was untimely. The trial court likewise did not abuse its discretion by concluding, in the alternative, that the Motion to Reconsider failed to meet the requirements of Rule 59(e) in any event, even if it were timely, which it was not.

When construing the Motion to Reconsider as a Rule 60(b) motion, the trial court did not abuse its discretion by concluding that Tangeman merely reasserted affirmative defenses previously made and ruled upon, and therefore failed to present any evidence in support of the relevant factors warranting relief under Rule 60(b).

ARGUMENT

I. The Trial Court Did Not Abuse its Discretion in Concluding that Appellant's Motion to Reconsider – When Construed as a SCRCP 59(e) Motion to Alter or Amend – was Untimely.

This Court reviews the denial of a motion to alter or amend pursuant to SCRCP 59(e) under an abuse of discretion standard. *See Pollard v. Cnty. of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (1994). The trial court did not abuse its discretion by applying the plain language of SCRCP 59(e).

Under SCRCP 59(e), "[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." According to the Master in Equity, the written Summary Judgment Order was served on Tangeman on May 23, 2017. (R. p. 9, lines 29–30). However – according to the Appellant himself – Tangeman did not serve the Motion to Reconsider until June 15, 2017, which is twenty-three (23) days after Tangeman received written notice of the Summary Judgment Order. (R. p. A33). The trial court did not abuse its discretion in concluding that Tangeman's "Motion [to Reconsider] was not timely filed." (R. p. 9, lines 30–31).

In any event, Tangeman does not challenge the trial court's conclusion that the Motion to Reconsider was untimely. He makes no argument on appeal disputing either (a) the date he received written notice of the Summary Judgment Order, or (b) the date he served his Motion to Reconsider. For this reason alone, this Court should affirm the Master in Equity's Order Denying Motion to Reconsider. *See Lindsay v. Lindsay*, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (1997) ("It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling.").

II. Even if Appellant's Motion to Reconsider – Construed as a Rule 59(e) Motion—were Not Untimely, the Trial Court Nevertheless Did Not Abuse its Discretion in Denying the Motion.

Based solely on the untimeliness of Tangeman's Motion to Reconsider, the Court should affirm the Order Denying the Motion to Reconsider and need not consider any additional arguments. Nevertheless, even if Tangeman's Motion to Reconsider were not untimely, which it was, the trial court did not abuse its discretion in denying it.

Motions to alter or amend under Rule 56(e) enable litigants to ask a court to "reconsider or rule on" issues the litigant believes the court, in its first consideration of the issues, either "misunderstood, failed to fully consider, or perhaps failed to rule on." *Elam v. S.C. Dep't of Transp.*, 361 S.E. 9, 24, 602 S.E.2d 772, 780 (2004). Ignoring this framework, Tangeman does not contend on appeal that the trial court abused its discretion by misunderstanding or failing to fully consider certain issues. Instead, Appellant's Initial Brief is a mere regurgitation of his Motion to Reconsider. These issues were fully and properly ruled on by the trial court in denying the Motion to Reconsider. Accordingly, the trial court did not abuse its discretion.

For instance, on appeal, Tangeman makes two separate arguments – captioned "Regarding the Issue of Standing" and "Regarding Assignments Attached to the Note" – in which Tangeman contends that Wells Fargo is not the real party in interest and did not have the right to foreclose on the Property due to its use of a copy of the original Note at the Summary Judgement hearing (rather than using the original) and due to alleged improprieties relating to the various assignments of the Note (such as the absence of staple marks on the Note). (Appellant's Initial Brief at pp.6–7). Tangeman also challenges on appeal various redactions made to the Note to protect personally identifiable information, explaining that "[t]oo much redaction leades [sic] me to be suspicious of the note's orrginality [sic]." (*Id.* at p.6). Tangeman made these same arguments to the Master in Equity (R. p. A31, ¶¶ 3, 5) and the Master in Equity properly addressed these arguments by

concluding, based on ample evidence in the record, that Wells Fargo "established that it was the holder of the subject loan with the right to bring the within action by presenting a properly endorsed Note, Mortgage, and correct chain of assignments of the Mortgage," (R. p. 10, lines 2–4).

Similarly, Appellant's Initial Brief asks this Court to apply a three-year statute of limitations to Wells Fargo's foreclosure action. (*See* Appellant's Initial Brief at p.7). However, Appellant made this argument in his Motion to Reconsider (R. p. A31, ¶ 4) and the trial court properly concluded that "[t]he statute of limitations cited by Defendant is not applicable to mortgage foreclosure actions." (R. p. 10, lines 6–7; *cf. Suttles v. Wood*, 280 S.C. 272, 274, 312 S.E.2d 574, 576 (Ct. App. 1984) (explaining that twenty-year statute of limitations set forth in S.C. Code Ann. § 15-3-520 applies to foreclosure actions)).[5]

Finally, Appellant's Initial Brief contends that GMAC somehow "started the default" by returning payments to Tangeman. (Appellant's Initial Brief at p.8). Tangeman made this same argument in his Motion to Reconsider. (R. p. A31, ¶ 1). Tangeman does not explain, and it is unclear, how or why these alleged actions, even if true, would support an alteration or amendment to the Summary Judgment Order. In any event, the trial court addressed this argument by properly

[5] In any event, as the trial court correctly noted, the foreclosure action was filed "within six (6) months of the default of payment." (R. p. 17, lines 18–19; *see* R. p. A10, ¶ 13). Thus, under either statute of limitations – three years or twenty years – Respondent's foreclosure action was timely.

concluding that Wells Fargo "presented sufficient evidence reflecting the existence of a contract, the breach of said contract, and its damages resulting from that breach." (R. p. 10, lines 4–6).[6]

For these reasons, even if Appellant's Motion to Reconsider were not untimely – which it was – the trial court was well within its discretion in denying the Motion to Reconsider.

III. The Trial Court Did Not Abuse its Discretion in Concluding that Appellant's Motion to Reconsider – When Construed as a SCRCP 60(b) Motion for Relief from Judgment – Failed to Present any Relevant Argument or Evidence Necessary for Relief under that Rule.

Even if Tangeman's Motion to Reconsider were construed as a Rule 60(b) motion for relief from judgment, it was nevertheless properly denied. Like its review of decisions on Rule 59(e) motions, this Court, "in reviewing a decision with respect to Rule 60(b) . . . utilizes a deferential standard of review," *Auto Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 594–95, 748 S.E.2d 781, 786 (2013), in which this Court's review is "limited to determining whether there was an abuse of discretion," *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502–03 (2006). Abuse of discretion in this context "arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *Id.* at 551, 633 S.E.2d at 503.

Under Rule 60(b), a litigant can seek and obtain relief from an order in the event of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentations,

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[6] Appellant's Initial Brief also includes the following argument: "From the beginning of the default . . . GMAC began including fire and Hazard Insurance as did all the succeeding buyers of said note. If you multiply $500 to $700 per year for bank added insurance [sic] probably more than $10,000.00. So where is that hiden [sic] in those figures Wells Fargo bank gave to attorney Kelchner?" (Appellant's Initial Brief at p.8). Tangeman made an argument about insurance in his Motion to Reconsider, but it was limited to a contention that "Tangeman's have always maintained property insurance." (R. p. A31, ¶ 2). Because Tangeman did not argue in his Motion to Reconsider that GMAC "includ[ed] fire and Hazard Insurance" in some unspecified way, the Court should not consider this argument on appeal. *See Tri-Cnty. Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 783 (1990) ("As this claim was not raised below, it will not be considered for the first time on appeal.").

or other misconduct of an adverse party, *see* SCRCP 60(b)(1–3), or where the judgement is void or has been satisfied, released, or discharged, *see* SCRCP 60(b)(4–5). Importantly, however, "[t]he movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle [him] to relief." *BB & T*, 369 S.C. at 552, 633 S.E.2d at 503.

Tangeman presented no evidence of any of these relevant Rule 60(b) factors in his Motion to Reconsider. (R. pp. A31–A32). To the contrary, Tangeman merely restated the same arguments that he made at prior stages of this case, as the trial court concluded. (R. p. 9, lines 22–23 ("Defendant bases his Motion on a recitation of affirmative defenses previously made in his responsive pleadings . . . .")).[7] Accordingly, the trial court did not abuse its discretion in concluding that the re-assertion of old arguments did not satisfy any of the Rule 60(b) factors:

> Defendant offers no evidence that the Judgment should be set aside by virtue of mistake, inadvertence, surprise or excusable neglect. Likewise, Defendant presented no newly discovered evidence nor sufficiently alleged any fraud, misrepresentation, or other conduct by an adverse party justifying reconsideration of the Judgment. The Judgment is not void nor has it been satisfied, released, or discharged.

(R. p. 10, lines 10–14). Indeed, Appellant's Initial Brief does not even contend that the arguments Tangeman asserted in his Motion to Reconsider satisfied one or more of the Rule 60(b) factors, as he must to obtain relief, *see BB & T*, 369 S.C. at 552, 633 S.E.2d at 503. Accordingly, even if the Motion to Reconsider were deemed a Rule 60(b) motion, the trial court nevertheless did not abuse

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[7] The trial court's conclusion in this respect was seemingly based on Wells Fargo's arguments during the hearing on Tangeman's Motion to Reconsider. (R. p. 16, lines 6–15 ("These issues all were brought up prior to the judgment being filed and the Motion for Summary Judgment being filed. Mr. Tangeman's counterclaims were dismissed. I believe there is a Motion to Reconsider which was also dismissed. At the hearing he argued again with respect to standing. The issues with respect to the payments and the property insurance also were addressed at the hearing. . . . None of the arguments raised . . . provide grounds to set this aside pursuant to Rule 60.")).

its discretion in denying the motion upon finding that Tangeman failed to present any evidence supporting such relief.

CONCLUSION

For these reasons, the trial court's Order Denying Motion to Reconsider and Reopen Case of Defendant Delbert R. Tangeman should be affirmed in its entirety.

This 19th day of March 2018.

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Of Whom Delbert R. Tangeman is the — **Appellant**

RULE 211(b) CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **BRIEF OF RESPONDENT** complies with SCACR 211(b) because it is identical to Respondent's previously filed Initial Brief of Respondent except for references to the record and correction of typographical errors and misspellings.

This the 19th day of March, 2019.

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Of Whom Delbert R. Tangeman is the — **Appellant**

PROOF OF SERVICE

I hereby certify that a copy of the foregoing **BRIEF OF RESPONDENT** was sent via first-class U.S. Mail, postage prepaid, and addressed as follows:

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