

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2015-CP-32-00547

Wells Fargo Bank, N.A.,  
Plaintiff,  
vs.

Eric L. McGlaughlin; Gary L.  
McGlaughlin; Onetta C. McGlaughlin,  
Defendants.

ORDER

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APR 15 2019

SC Court of Appeals

Plaintiff and Defendants have filed cross motions in this contested foreclosure case. Plaintiff seeks summary judgment and Defendants argue that Plaintiff SJM should be denied and that Defendants is entitled to dismissal based on SCRCP 12 (b) (8).

The Court, based upon a review of the pleadings, counsel arguments and respective parties – e-filed memos, finds as follows:

#### **PLAINTIFF SUMMARY JUDGMENT MOTION DENIED**

Plaintiff motion for summary Judgement denied since there are both contested issues of fact and legal issues that warrant further argument.

Summary judgment should be granted where the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show there is no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issue of fact exists, the evidence and all inferences, which can reasonably be drawn therefore, must be viewed in the light most favorable to the nonmoving party. *BPS, Inc. v. Worthy*, 362 S.C. 219, 325, 608, S.E.2d 155, 158 (Ct. App. 2005).

All ambiguities, conclusions, and inferences rising from the evidence must be construed most strongly against the moving party. *Id* at 325, 608 S.E.2d at 159. Summary judgment is not

appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Bennet v. Investors Title Ins. Co.*, 370 S.C. 561, 569, 635 S.E.2d 660, 664 (Ct. App. 2006).

“Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of genuine issue of material fact.” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). “With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility ‘may be discharged by “showing” –that is, pointing out to the [trial] court- that there is an absence of evidence to support the nonmoving party’s case.’” *Id.* (alteration in original) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). “The moving party need not ‘support its motion with affidavits or other similar materials *negating* the opponent’s claim.’” *Id.* (quoting *Celotex*, 477 U.S. at 323); see also *Richardson v. State-Record Co.*, 330 S.C. 562, 499 S.E.2d 822 (Ct.App.1998). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

The benefit of the doubt is given to the non-moving party. *Watters v Terminix Services, Inc.*, 658 S.E.2d 110, 111(Ct. App. 2008)

Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is a dispute as to the conclusion to be drawn from those facts. *Gignilliat v Gignilliat, Savitz & Bettis, LLP*, 684 S.E. 2d 756, 758 (2009).

The court applies the scintilla of evidence standard in civil cases. *Hancock v Mid-South Management Co., Inc.* 673 S.E.2d 801, 802-803 (2009).

**DEFENDANTS 12 (B) (8) MOTION IS DENIED.**

The Defendant contends that the proper course of action in this case would be to dismiss the case pursuant to Rule 12(b) (8), SCRCP, which requires the dismissal of an action where

“another action is pending between the same parties for the same claim.” However, the prior action has since been dismissed thereby eliminating the issue. Furthermore, dismissing the action at this time would not benefit either party as the Plaintiff would be able to re-file the suit. A dismissal would only serve to cause the accumulation of additional costs and fees to both parties. A dismissal pursuant to SCR 12 (b) (8) is a drastic remedy. *Capital City Ins. Co. v. BP Staff, Inc.* 382 S.C. 92, 106 (S.C. Ct. App. 2009). A dismissal **may** be proper when there is another action **pending** between the same parties on the same claim. *Id.* (emphasis added).

In this case, this issue has already been corrected by the Court with its dismissal of the prior stagnant action. The purpose of Rule 12 is not to cause delay but to ensure that actions are properly brought and that the court and parties are not wasting valuable time and resources by trying the same issues in two different cases. The prior action, which was not being actively litigated/pursued, has been dismissed by order of the Court eliminating any such concerns.

#### **PLAINTIFF TO SERVE SUMMONS AND RULE TO SHOW CAUSE**

Plaintiff to serve Summons and Rule To Show Cause on all possible owners of the note and mortgage,

Defendant argues that the legal owner of the notes must be MERS. “Per the assignment documents the Plaintiff has offered, MERS owns the note and mortgage.” MERS is not a party. SCR 19 and 21 contemplates joining such parties. “Parties may be dropped or added by order of the court on motion of the party or of its own initiative at any stage of the action and on such terms as are just.

No other party has come forward claiming ownership of the note and mortgage other than the Plaintiff. If the Defendant is legitimately concerned that the complete ownership interest has not transferred to the Plaintiff, this Court can fully resolve this issue and alleviate any concerns by issuing a Rule to Show Cause naming all prior parties and ordering them to come forward

if any such interest is claimed. This would eliminate any concerns regarding potential threats of double liability. It would also address any concerns regarding entities wrongfully correcting payments, although Plaintiff would note that no such concerns have been raised.

I find a Summons and RTSC joining all possible claimants to ownership of the note and mortgage is just because it will result in judicious use of court time and a judicial determination of note and mortgage ownership which will insure to the benefit of both Plaintiff and Defendant.

**AND IT IS SO ORDERED.**

James O. Spence  
Master In Equity

**Signature page to follow**



Lexington Common Pleas

**Case Caption:** Wells Fargo Bank NA VS Eric L McGlaughlin , defendant, et al  
**Case Number:** 2015CP3200547  
**Type:** Master/Order/Other

AND IT IS SO ORDERED.

S/JUDGE JAMES O. SPENCE-3068