

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

Wells Fargo Bank, N.A.,

Plaintiff,

v.

Eric L. McGlaughlin; Gary L.  
McGlaughlin; Oneta C. McGlaughlin,

Defendants,

IN THE COURT OF COMMON PLEAS  
CASE NO.: 2015-CP-32-00547

**ORDER DENYING DEFENDANT'S  
MOTION TO RECONSIDER OR CLARIFY**

**RECEIVED**  
APR 15 2019  
SC Court of Appeals

**INTRODUCTION:**

**THIS MATTER** came before me on February 7, 2019 to fully hear and adjudicate the Defendant's Motion to Reconsider or Clarify. Present at the hearing were William P. Stork, Esq., attorney for Plaintiff, and Andrew S. Radeker, Esq., attorney for Defendant Eric L. McGlaughlin (hereinafter "Defendant").

Based upon the arguments, testimony, and evidence presented at trial, I find and conclude as follows:

**BACKGROUND:**

The instant action is one for foreclosure of property located in Lexington County, South Carolina. The Lis Pendens, Summons and Complaint were filed February 11, 2015. On April 8, 2015, Defendant appeared in this action by virtue of an Answer and Affirmative Defenses. On February 25, 2016, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the action was referred to the undersigned Master In Equity to make appropriate findings of fact and conclusions of law. On March 24, 2017, Plaintiff, through counsel, filed a Motion for Summary Judgment. On April 27, 2017, Defendant, through counsel, filed a Motion for Summary Judgment or Dismissal. On November 19, 2018, a hearing was held before this Court on Plaintiff's Motion for Summary Judgment and on

Defendant's Motion for Summary Judgment or Dismissal. By Order of the Court, filed December 19, 2018, Plaintiff's Motion for Summary Judgment was denied, and Defendant's Motion to Dismiss pursuant to Rule 12(b) (8), SCRPC was denied. This Court is withholding ruling upon Defendant's Motion for Summary Judgment until a Rule to Show Cause hearing is held whereby all prior assignee's of record have been joined as parties and had the opportunity to assert ownership of the subject Promissory Note and Mortgage. On December 28, 2018, Defendant filed the instant Motion to Reconsider or Clarify, asserting that the Court:

- 1) Refrained from ruling on Defendant's Motion for Summary Judgment;
- 2) Erred in ordering the scheduling of a Rule to Show Cause whereby all prior assignees of record have the chance to appear and assert any ownership interest in the subject Promissory Note and Mortgage; and
- 3) Erred in denying Defendant's Motion to Dismiss pursuant to Rule 12(b)(8), SCRPC; and
- 4) Erred in denying Defendant's Motion to Dismiss pursuant to a judicial stay placed on a prior filed action between the parties pursuant to South Carolina Supreme Court Administrative Order 2011-05-02-01.

**DISCUSSION:**

Defendant's Motion for Summary Judgment

This Court is withholding ruling upon Defendant's motion for summary judgment until a hearing on the Plaintiff's Rule to Show Cause has been held as contemplated by this Court's previous order.

Motion to Reconsider with Regard to Decision to Issue Summons and Rule to Show Cause

This foreclosure action was referred pursuant to Rule 53 SCRPC. Rule 71 SCRPC details how the court is to make determination of the debt owed to the Plaintiff. Inherent in this examination is for the court and the parties to determine who is the proper Plaintiff or owner of the note and mortgage. The court notes, while not citing, the numerous appellate cases over the last ten (10) years addressing the issue of who is the proper Plaintiff to have standing to sue the Defendant in a foreclosure action.

The Defendant(s) want the proper Plaintiff named so the case can be adjudicated and their rights and obligations decided and determined, rather than not determining the possible Plaintiff and leaving the Defendant(s) open to a second or third law suit based upon another party claiming that they own the note and should be named Plaintiff. The Court and the Plaintiff have similar desires to use judicious judicial economy.

Here, Plaintiff alleges it has set forth clear ownership of the note and mortgage; defendant(s) disagree, arguing specific parties appear to be the record owner of the note. The court has ruled that a Summons and Rule to Show Cause is to be issued to all parties in the chain of ownership of the note and mortgage to appear before the court to either claim an ownership interest by appearing at RTSC hearing or, waiving any right to claim so, by failure to appear.

This procedure would seem to be in each parties and the court's best interest and use of judicial economy and time. If for example, this was a quiet title action and one party claimed an omitted owner was left out, certainly no one would object to joining or giving the opportunity for the omitted owner to be ruled into court with a Summons and Rule to Show Cause, so that the court could properly adjudicate all interests.

It is undisputed that the RTSC must be served with a Summons. Again, the Court calls attention to the several South Carolina appellate cases stating and re-stating this fundamental rule. Since there is to be a Summons with the RTSC, then the only other jurisdictional issue might be does the issuance of the Summons and RTSC exceed Order of Reference powers? Clearly, No., whereas, there are cases detailing bringing in an omitted lien creditor after the action, here the action is still on going.

The purpose of the Summons and Rule to Show Cause hearing, whereby all assignees of record are joined to the action, is to give the assignees in the assignment chain the opportunity to assert any ownership interest in the subject Promissory Note and Mortgage. Not until the Summons and Rule to Show Cause hearing has been held will the Court rule on questions concerning the ownership of the note and mortgage and the Plaintiff's right to enforce them in this foreclosure action. The Court has the right to add parties to this action, which provides the basis for the issuance of the rule to show cause. Rule 19, SCRCPC; *see also Gillman v. City of Beaufort*, 368 S.C. 24, 28, 627 S.E.2d 46, 748 (Ct. App. 2006) ("Rule 19, SCRCPC allows a court to join, whenever possible, persons materially interested in an action so that a complete determination can be made."). The

Defendant argued that the Summons and Rule to Show Cause procedure ordered by the Court appears to abrogate or lessen the Plaintiff's burden to prove its entitlement to enforce the subject note and mortgage. The Court disagrees. The purpose of the Summons and Rule to Show Cause proceeding is to determine whether the entities to which the Rule to Show Cause is directed assert any interest in the subject note and mortgage, which bears upon questions concerning the ownership of the note and mortgage and the Plaintiff's right to enforce the same.

Defendant's Motion to Dismiss pursuant to Rule 12(b) (8), SCRPC

"In South Carolina, dismissal under Rule 12(8) (8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 105, 674 S.E.2d 524, 531 (2009). While it is undisputed that a prior action between the parties was pending at the time of filing of the instant action, that prior action has since been dismissed. As was stated by the South Carolina Supreme Court in the *Capital City Ins.* case, a dismissal under Rule 12(b)(8), SCRPC requires that there be another action pending. Since Plaintiff voluntarily dismissed the prior action, no duplicate action is currently pending between the parties and therefore dismissal under Rule 12(b) (8), SCRPC is improper.

South Carolina Supreme Court Administrative Order 2011-05-02-01

Pursuant to South Carolina Supreme Court Administrative Order 2011-05-02-01 (hereinafter "Admin Order"), "no foreclosure hearing may be held in the foreclosure action until the Mortgagee's attorney certifies that the Mortgagee has complied with the requirements of paragraphs B (1)(a) through (e) above." While this language precludes the Mortgagee prosecuting a foreclosure action from entering judgment in a matter until compliance has been certified, it does not prevent a Mortgagee from proceeding with prosecution of a foreclosure. In the instant matter, a second foreclosure action was filed while a prior foreclosure action was still technically stayed pending compliance with the Admin Order. The mere filing of a new foreclosure action does not violate the terms of the Admin Order because no final hearing was

scheduled. Because of this, Defendant's argument for dismissal pursuant to the terms of the Admin Order fails as a matter of law.

**IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:**

1. That the Defendant's Motion to Reconsider or Clarify is denied for the above reasons stated.
2. That this Court's ruling upon Defendant's Motion for Summary Judgment is held in abeyance pending the outcome of Plaintiff's Summons and Rule to Show Cause.

AND IT IS SO ORDERED.

Lexington, South Carolina

The Honorable James O. Spence  
Master in Equity for Lexington County

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

Electronically signed on 2019-03-26 09:31:53 page 6 of 6