

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
James E. Reeves, Special Referee

Case No. 2013-000965

SCBT, N.A.,Respondent,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman, South Carolina Department of Revenue,
Baird Transport, Inc., Defendants.

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is theAppellant.

FINAL BRIEF OF RESPONDENT

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MAY 1, 2014

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. The sale of the mortgaged property and Waiver of Deficiency Judgment renders the instant appeal moot.**
- II. The Appellant has failed preserve the subject issues for review.**
- III. Even if Appellant's due process issue is preserved for review, his argument fails because Appellant was not denied due process in the underlying matter.**
- IV. Even if the issue of whether Respondent proved a valid, existing debt is preserved for review, Appellant's argument fails because Respondent established Appellant, for value received, made, executed and delivered a promissory note dated April 27, 2009 promising thereby to pay Respondent the sum of \$92,568.00.**

STATEMENT OF THE CASE

On January 12, 2012, Respondent initiated the instant action by filing a Lis Pendens, Summons and Complaint in the Orangeburg County Court of Common pleas captioned *SCBT, N.A. v. Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of Revenue; The United States of America acting by and through its agency the Internal Revenue Service; Baird Transport, Inc.* and bearing civil action number 2012-CP-38-0030. (R. p. 7 at ¶¶ 1-2; R. pp. 180-233). The Complaint alleges, inter alia, that the Appellant herein, Shelton Hoffman a/k/a Shelton L. Hoffman (hereinafter “Appellant”) defaulted on a Note executed and delivered by Appellant to the Respondent, SCBT, N.A. (hereinafter “SCBT” or “Respondent”), the same being secured by a Mortgage and Security Agreement more particularly described infra. (R. p. 10 at ¶¶ 21, 22; p. 11 at ¶¶ 26, 27; p. 13 at ¶¶ 31, 32). The Complaint further requests that SCBT be allowed to foreclose the Mortgage and pursue any and all remedies thereunder. (R. p. 13 at ¶ 30).

Thereafter, on February 10, 2012, Appellant filed an Answer to the Complaint wherein he accepted SCBT’s allegations in paragraphs 1-27 of the Complaint “upon proof of claim; that the matter has not already been settled and closed between the parties” and demanded SCBT show cause why the Complaint should not be dismissed. (R. p. 8 at ¶ 7; R. p. 179).

On February 27, 2012, the Clerk of Court for Orangeburg County issued an Order of Reference pursuant to Rule 53(b), SCRCP, referring the subject action to the Master in Equity for Orangeburg County. (R. pp. 3-4; R. pp. 119-20).

On April 23, 2012, Appellant filed a Motion to Cancel hearing and Motion to Dismiss Foreclosure Action and All Related Actions. (R. p. 8 at ¶ 13). On May 3, 2012, Appellant filed a Motion to Add Representation by Attorney in Fact and an Amended Motion to Cancel Hearing and Motion to Dismiss Foreclosure Action and All Related Actions. (R. pp. 5-6; R. p. 8 at ¶ 13).

On May 30, 2012, Margaret A. Collins filed a Notice of Appearance signifying her appearance in this matter as counsel for Appellant. (R. p. 8 at ¶ 13; R. p. 144). Subsequently, on June 22, 2012, Appellant submitted for filing Defendant Hoffman's First Supplemental Notice of Motion, Motion to Strike Plaintiff's Answer, or in the Alternative, Motion to Require Amendment of Complaint and Motion to Add Indispensable Party and Motion for Continuance. (R. pp. 5-6; R. p. 8 at ¶ 13).

On July 3, 2012, Defendant United States of America was dismissed from the underlying action pursuant to a Consent Stipulation of Dismissal as to Defendant United States of America Acting By and Through Its Agency the Internal Revenue Service. (R. p. 8 at ¶ 9).

On July 13, 2012, after a hearing, the Honorable O. Davie Burgdorf issued an Order Granting Continuance of Defendant Shelton F. Hoffman and Stipulations of Counsel, wherein the parties stipulated that 1) Appellant's "Motion to Cancel Hearing and Motion to Dismiss Foreclosure Action and All Related Actions" and "Amended Motion to Cancel Hearing and Motion to Dismiss Foreclosure Action and All Related Actions" would be stricken, except as the issue of whether or not the Matrix defense was properly before the Court; 2) the loan which is the subject of the action is a commercial loan; 3) SCBT would not object to a timely petition by Appellant to seek an appraisal

under the S.C. appraisal rights statute, in the event of a deficiency; 4) upon proof of then existing hazard insurance coverage on the collateral which is the subject of this action, SCBT will credit Appellant's loan for such periods as were covered by the then existing hazard insurance and any late fees associated therewith; and 5) the action would proceed pursuant to the stipulations. (R. pp. 5-6; R. p. 8 at ¶ 13).

On September 12, 2012, the Honorable O. Davie Burgdorf issued an Order recusing himself and remanding the present action back the Clerk of Court for appointment of a Special Referee. (R. pp. 3-4; R. p. 9 at ¶ 14). Also on September 12, 2012, counsel for Appellant, Margaret Collins, submitted a Notice of Motion and Motion to be Relieved as Counsel. (R. p. 9 at ¶ 15; R. pp. 121-22).

On October 9, 2012, counsel for SCBT filed a Notice of Motion and Motion for Order of Reference seeking an Order referring the case to the Honorable James E. Reeves, as Special Referee, and, on November 20, 2012, the Honorable Dianne S. Goodstein issued an Order referring the case to James E. Reeves as Special Referee. (R. pp. 119-20).

On December 18, 2012, counsel for SCBT filed a Notice of Hearing that a hearing on Ms. Collins' Motion to be Relieved as Counsel and the trial of the case would be held on January 10, 2013 before the Honorable James E. Reeves. (R. p. 9 at ¶ 16; R. pp. 117-18).

On January 2, 2013, Appellant, appearing pro se, filed an Objection to Motion to be Relieved as Counsel and Motion to Delay Foreclosure Hearing wherein he sought, inter alia, a temporary restraining order, preliminary and permanent injunction directing the Special Referee to refrain from executing any foreclosure orders with respect to

Appellant's property and a temporary restraining order, preliminary and permanent injunction preventing SCBT from collecting on the subject loan and from causing Appellant's property to be sold or assigned to a third party. (R. p. 9 at ¶ 17).

On January 8, 2013, Appellant, again appearing pro se, filed Defendant's Memorandum in Support of Injunctive Relief and Declaratory Judgment. (R. p. 9 at ¶ 18).

On January 10, 2013, the Honorable James E. Reeves issued an Order of Continuance continuing the hearing on Ms. Collins' Motion and the trial. The Order states that the Court was not inclined to delay the case any further, and advised Appellant to immediately seek counsel or be prepared to appear without the assistance of counsel in light of Ms. Collins' pending Motion to be Relieved. (R. p. 9 at ¶ 19; R. pp. 121-23).

On January 22, 2013, the Honorable James E. Reeves issued a Notice of Hearing for February 12, 2013, notifying all parties of record that the trial of the case and a hearing on Ms. Collins' Motion to be Relieved as Counsel would be held on February 12, 2013. (R. pp. 9-10 at ¶20). This Notice of Hearing again noted that the Court was not inclined to delay the case any further, and advised Appellant to immediately seek counsel or be prepared to appear without the assistance of counsel in light of Ms. Collins' pending Motion to be Relieved. (R. pp. 9-10 at ¶20; R. pp. 121-23).

On February 12, 2013, the Special Referee heard arguments regarding Ms. Collins' Motion to be Relieved as Counsel and presided over a trial regarding the allegations presented within SCBT's Complaint. (R. p. 235; R. p. 237, lines 2-18). All parties were present, including Mr. Appellant and his son. (R. p. 238, line 24-p. 239, line 3). Appellant did not present any evidence at trial, but was given the opportunity to

submit a brief within ten days of the hearing. (R. p. 290, lines 12-23; R. p. 293, lines 9-15; R. p. 296, lines 18-24). On February 21, 2013, Appellant filed a Memorandum of Facts. (R. pp. 298-315).

On March 19, 2013, the Honorable James E. Reeves issued a Judgment of Foreclosure and Sale – Deficiency Judgment Demanded against Shelton Hoffman. (R. pp. 7-22).

On April 10, 2013, SCBT filed a Waiver of Deficiency Judgment wherein it waived all rights it had to a personal or deficiency judgment against Appellant in this case. (R. p. 25). Subsequently, on April 12, 2013, Appellant filed a Notice of Appeal in this matter. (R. p. 23). On May 6, 2013, the subject property was sold at foreclosure sale. (R. p. 23; R. pp. 324-25; R. pp. 326-30). Appellant did not post a bond or file a motion to stay sale.

STATEMENT OF THE FACTS

On October 21, 2003, Appellant executed a single-pay note in favor of Respondent in the amount of \$100,660 which secured by a real estate mortgage dated October 21, 2003 (the “Mortgage”). (R. p. 10 at ¶22; R. p. 272, line 5-p. 274, line 17; R. pp. 352-61)¹. The 2003 loan was subsequently paid off by Appellant, and, shortly thereafter Appellant received another loan from Respondent which was also secured by the Mortgage, which was subsequently and paid off by the proceeds of another loan made by Respondent, which was also secured by the Mortgage. *Id.*

¹ The Mortgage was also admitted into evidence without objection at the foreclosure hearing as Exhibit 2 and included in the Transcript, but was not included in the Record on Appeal filed by Appellant. Respondent has requested Appellant prepare an amended Record on Appeal and at the time this Final Brief was submitted was waiting for a response before filing the applicable motion. *See Record on Appeal*, p. 235.

The note was renewed and/or modified several times, with the final renewal note executed by Appellant on April 27, 2009 (the "Note"), in the amount of \$92,568.00. (R. p. 10 at ¶ 21; R. p. 179; R. pp. 214-15; R. p. 267, line 24-p. 270, line 16).² Pursuant to the express terms of the Note, Appellant agreed that the Note would be secured by the Mortgage and also a Commercial Security Agreement dated November 13, 2008 (the "Security Agreement"). (R. pp. 214-15, R. p. 10, ¶ 21, R. p. 11 at ¶ 26; R. p. 271, line 20-p. 272, line 1; R. pp. 350-351).³

The Mortgage, which was filed on October 21, 2003, is of record in the Office of RMC/ROD in Book 1392 at page 239 and includes a future advance provision which specifically states that it secures all present and future obligations of Appellant to SCBT under any promissory note, contract, guaranty, or other evidence of debt existing at or after the execution of the mortgage. (R. p. 274, line 19-p. 275, line 5; R. pp. 352-361; R. p. 10, ¶ 21). The property subject to the Mortgage is described as follows:

All that certain piece, parcel or tract of land containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section I, prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the northeast by U.S. Highway 178 and measuring thereon 195 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50 foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

Also:

² The Note was admitted into evidence without objection at the foreclosure hearing as Exhibit 1 and included in the Transcript, but was not included in the Record on Appeal filed by Appellant. Respondent has requested Appellant prepare an amended Record on Appeal and at the time this Final Brief was submitted was waiting for a response before filing the applicable motion. *See Record on Appeal*, p. 235.

³ The Security Agreement was admitted into evidence without objection at the foreclosure hearing as Exhibit 3 and included in the Transcript, but was not included in the Record on Appeal filed by Appellant. Respondent has requested Appellant prepare an amended Record on Appeal and at the time this Final Brief was submitted was waiting for a response before filing the applicable motion. *See Record on Appeal*, p. 235.

All that certain piece, parcel or tract of land, containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 23 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the North by Lot 22 on said plat and measuring thereon 171.1 feet; on the Northeast by lands now or formerly of Bradshaw and measuring 233.4 feet; on the Southeast by lands now or formerly of Bradshaw and measuring 100 feet; on the South by Lot 24 on said plat and measuring thereon 333.6 feet; and West by the right of way of a 50 foot road and measuring thereon 174.1 feet; be all measurements a little more or less.

This being the same property conveyed to Shelton L. Hoffman by the following deeds:

Deed of Beulah S. Nash, et al dated October 3, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 963.

Deed of Ruth N. Hayden et al dated October 13, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 969.

Also:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T.K. Hoffman; on the Southwest again by property now or formerly as the home place of T.K. Hoffman; and on the Northwest, again by the right of way of Lightning Hill Road.

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodore Koinis Hoffman which was duly admitted to probate and filed in the Office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

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(R. p. 10 at ¶ 22; P. pp. 17-18 at ¶ 54).

In his Answer, Appellant did not dispute the debt or signing the Note. (R. p. 179).

His sole defense was that the Loan was allegedly paid off by a U.S. Treasury Bond

memorized by a UCC Financing Statement filed by a Dew James-Chappell, Jr.⁴ (R. p. 179).

The Answer was never amended. Appellant also failed to object to the admission of the Note into evidence at the merits hearing, and even admits to signing the Note in his Appellate Brief. (Initial Brief of Appellant, p. 5; R. p. 267, line 24-p. 270, line 16).

Appellant failed to make payment due on the Note as provided therein and SCBT, as the holder, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of its counsel for remedy by foreclosure. (R. p. 11 at ¶ 27; R. p. 13 at ¶ 29; R. p. 13 at ¶¶ 30-32; R. p. 268, lines 12-21; R. p. 278, lines 24-25; R. p. 279, lines 1-15; R. p. 282, lines 18-20; R. p. 283, lines 4-9).

On January 12, 2012, Respondent initiated the instant foreclosure action by filing a Lis Pendens, Summons and Complaint in the Orangeburg County Court of Common pleas captioned *SCBT, N.A. v. Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of Revenue; The United States of America acting by and through its agency the Internal Revenue Service; Baird Transport, Inc.* and bearing civil action number 2012-CP-38-0030. (R. p. 7 at ¶¶ 1-2; R. pp. 180-233).

Following a trial on the merits of the action, on March 3, 2013, Special Referee James E. Reeves issued a Judgment of Foreclosure and Sale – Deficiency Judgment Demanded against Shelton Appellant. (R. pp. 7-22). The Judgment found that the Note was secured by the Mortgage, was in default, and ordered the sale of the mortgaged

⁴ Mr. James Chappell is a known member of the “Sovereign Litigation” group and has been indicted for similar foreclosure scams.

property⁵ and granted a deficiency judgment against Appellant in favor of SCBT. (R. pp. 7-22). The Judgment also included a Notice of Sale scheduling the sale of the mortgaged property for May 6, 2013. (R. pp. 19-21). Appellant did not move for reconsideration following the issuance of the Judgment. See Rule 52(b), SCRCF; Rule 59(e), SCRCF.

Thereafter on April 10, 2013, SCBT filed a Waiver of Deficiency Judgment whereby SCBT waived all rights it had to a personal or deficiency judgment against Appellant in order that the sale may become final on the scheduled sales day. (R. p. 25).

On April 12, 2013, Appellant filed a Notice of Appeal in this matter, but did not post a bond or request the court stay the sale of the property pending the appeal. Accordingly, the sale of the mortgaged property proceeded as scheduled on May 6, 2013 and was final that day. Both SCBT and Appellant's family participated in the bidding process. (R. pp. 326-330).

ARGUMENT

I. The sale of the mortgaged property and Waiver of Deficiency Judgment renders Appeal Moot.

As a threshold matter, even if the allegations within Appellant's Initial Brief are taken as true, which Respondent disputes, the instant appeal fails because intervening events render Appellant's request for relief moot. An appellate court will not pass on moot and academic issues or make adjudications where there remains no actual controversy. Jackson v. State, 331 S.C. 486, 490 n.2, 489 S.E.2d 915, 917 n.2 (1997). "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of

⁵ After the foreclosure action was initiated, it was discovered that a portion of the property had been conveyed out prior to the Mortgage. Accordingly this portion of the property was less and excepted from the Judgment.

effectual relief impossible for a reviewing court.” Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006).

In South Carolina, judicial sales occurring as a result of litigation shall be final, in order to, *inter alia*, assure reliance upon such sales and induce bidding. Appeal of Paslay, 230 S.C. 55, 64, 94 S.E.2d 57, 61 (1958); see also Eastern Savings Bank, FSB v. Sanders, 373 S.C. 349, 355, 644 S.E.2d 802, 805 (Ct. App. 2007) (holding that the purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final); Cumbe v. Newberry, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968) (public policy requires that the validity of judicial sales be upheld). Furthermore, where there is an express waiver of the right to a deficiency judgment, the thirty-day waiting period will not apply and a sale is deemed closed on the day of the sale. S.C. CODE ANN. § 15-39-740 (1977).

In his initial brief, Appellant prays the Order of Foreclosure of the Special Referee be reversed and vacated and that this case be remanded for further proceedings. (See Appellant’s Initial Brief.) Following the issuance of the Judgment of Foreclosure and Sale, SCBT filed a Waiver of Deficiency whereby SCBT waived all rights it had to a personal or deficiency judgment against Appellant in order that the sale may become final on the scheduled sales day. (R. p. 23; R. p. 25).

Importantly, Appellant’s Appeal did not stay the sale of the property. See Rule 241(b), SCACR (general rule that appeal stays matters decided in judgments does not apply to judgments directing the sale or delivery of possession of real property as provided in S.C. Code § 18-9-170). Additionally, Appellant never attempted to set aside or stay the sale of the subject property or post a bond, and participated in the bidding

process. See South Carolina Nat'l Bank v. Blossom, 321 S.C. 110, 113, 467 S.E.2d 767, 769 (Ct. App. 1996) (discussing S.C. CODE § 18-9-170 requiring the posting of a bond in order to stay an order directing the sale of property).

These intervening events, when coupled with the precedent set forth above, clearly establish that the instant appeal is moot. Sloan, 369 at 25, 630 at 478 (2006), Cumbe, 251 S.C. at 37, 159 S.E.2d at 917. Even if the Order of Foreclosure is reversed and remanded, Appellant does not have a meaningful remedy because the property that is the subject of this matter is no longer owned by Appellant. Furthermore, the exceptions to mootness have not been raised by Appellant and do not apply in this instance. Sloan, 369 at 26-27, 630 at 478 (2006) (discussing the two occasions where an appellate court can take jurisdiction despite mootness: “1) when the issue raised is capable of repetition, yet evading review, and 2) when the question considers matters of important public interest.”). Accordingly, Appellant’s appeal must be dismissed.

II. The issues raised by Appellant are not preserved for review.

It is axiomatic that in order for an issue to be properly preserved for appeal, it must have been both raised and ruled upon by the trial court. Queens Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 372, 628 S.E.2d 902, 919 (Ct. App. 2006). “Error preservation principles are intended to enable the trial court to rule after it has considered all relevant facts, law and arguments.” Id., 368 S.C. at 372, 628 S.E.2d at 919. Issue preservation rules are intended to provide the trial court with an opportunity to rule on these issues, and thus provide a reviewing court with a platform for meaningful review. Id.

In non-jury actions, a party may move the court pursuant to Rule 52, SCRCP, to amend its findings not later than 10 days after receipt of notice of entry of judgment. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14, 602 S.E.2d 772, 775 (2004); see also, Rule 52, SCRCP. Similarly, Rule 59(e), SCRCP, allows a party to move the court to alter or amend its order not later than 10 days after receipt of written notice of the entry of the order. Rule 59(e), SCRCP. Motions made pursuant to Rules 52(b) and 59(e), SCRCP, are generally characterized as motions for reconsideration. Elam, 361 S.C. at 22, 602 S.E.2d at 779.

There are two basic situations in which a party should consider filing a motion for reconsideration. Id. at 24. First, a party *may* wish to file a motion for reconsideration when the party believes a court has misunderstood, failed to fully consider, or failed to rule on an argument or issue that the party wishes for the court to reconsider or rule upon. Id. (emphasis added). Secondly, and most importantly for the purposes of the instant appeal, a party *must* file a motion for reconsideration when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. Id. (emphasis added); see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724, (2000) (holding that if a losing party raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review).

a. Appellant's Due Process argument was not ruled upon in underlying matter

On September 12, 2012, Appellant's prior counsel, Margaret A. Collins, filed a Motion to be Relieved as Counsel (R. p. 9, ¶ 15; R. pp. 121-23). On January 2, 2013, Appellant, appearing pro se, filed an Objection to Motion to be Relieved as Counsel and

Motion to Delay Foreclosure Hearing. (R. pp. 78-114). At the hearing, Appellant was asked whether he objected to Ms. Collins' Motion. (R. p. 258, lines 20-25, p. 262, lines 1-3, p. 262, line 25-p. 263, line 2). Appellant initially voiced no objection, but subsequently objected to Ms. Collins' motion (R. p. 9 at ¶ 15; R. p. 14 at ¶ 34; R. p. 258, lines 20-25, p. 262, line 25-p. 263, line 2). Ultimately, the Court granted Ms. Collins' Motion and over Appellant's objections. (R. p. 14 at ¶ 34; R. p. 259, lines 5-11; R. p. 263, lines 5-10).

At the conclusion of the hearing, the Court gave the Appellant 10 days to submit a memorandum presenting his argument in this matter. (R. p. 293, lines 4-22). On February 21, 2013, Appellant submitted his memorandum to the Court wherein he alleges he was denied the right to a fair trial when the Court granted Ms. Collins' Motion to be Relieved as Counsel and prevented Appellant from obtaining alternate counsel. (R. p. 309; R. p. 311).

The Honorable James E. Reeves issued a Judgment of Foreclosure and Sale on March 3, 2013. (R. pp. 7-22). The Judgment granted Ms. Collins' Motion to be Relieved as Counsel but did not address Appellant's alleged denial of a right to a fair trial or due process arguments. (R. p.14, ¶ 34-p.18, ¶ 54). Appellant did not file a motion to reconsider (alter or amend) pursuant to Rule 52(b) or 59(e), SCRCF. Giving Appellant the benefit of the doubt, Appellant first raises due process argument in his memorandum submitted to the court following the hearing on the matter. (R. p. 309, R. p. 311). However, as discussed above, the Judgment of Foreclosure is silent as to Appellant's alleged denial of a right to a fair trial or due process. (R. p.14, ¶ 34-p.18, ¶ 54). Even if Appellant's due process argument was properly raised before the court, which Respondent disputes, Appellant did not file either a Rule 52(b) or 59(e) motion to obtain

a ruling on the issue. Accordingly, Appellant's due process issue is not preserved for appellate review. Elam, 361 S.C. at 14-24, 602 S.E.2d at 775-779, I'On, 338 S.C. at 422, 526 S.E.2d at 724.

- b. The issue of whether Respondent proved a valid and existing debt was neither raised nor ruled upon in underlying matter, or, in the alternative, has been abandoned by Appellant.

In his Initial Brief, Appellant argues the satisfaction of the earlier 2003 note obviates Respondent's support for the instant foreclosure action. (Initial Brief of Appellant, pp. 10-11.) However, as Appellant admits within his own brief, this argument was never raised, nor ruled upon in the underlying matter. (See Initial Brief of Appellant, p11.) ("This is clearly the type of issue that could have, and should have been explored during the hearing in this matter, had Appellant been provided with due process."). The transcript of the hearing is devoid of any argument regarding the satisfaction of the subject note. (R. pp. 234-97). Additionally, Appellant's Memorandum of Facts provides his own, uncorroborated version of events and supporting law, but never directly addresses the issue of whether Respondent proved a valid and existing debt. (R. p. 298-313).

This issue was neither raised nor ruled upon by the underlying Court, and there is no evidence that Appellant filed a Rule 52(b) or 59(e) motion to preserve the matter for review. Accordingly, the issue of whether Respondent proved a valid and existing debt is not preserved for review. Elam, 361 S.C. at 14-24, 602 S.E.2d at 775-779, I'On, 338 S.C. at 422, 526 S.E.2d at 724.

Additionally, even if this issue is preserved for review, which Respondent disputes, Appellant cites no legal authority in his Initial Brief in support of the

proposition that Respondent failed to prove a valid and existing debt. See Mulherin-Howell v. Cobb, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App. 2005) (holding that an issue is deemed abandoned on appeal when appellant cites not legal authority to support the argument and the argument itself is merely conclusory.) Accordingly, on this basis alone, Respondent submits Appellant's argument is abandoned and the underlying Judgment should be affirmed.

III. Even assuming, arguendo, Appellant's due process issue is preserved for review, which Respondent disputes, his argument fails because Appellant was not denied due process in this matter.

In his Initial Brief, Appellant presents the issue of whether he was denied due process. (Appellant's Initial Brief at p. 7). Appellant contends "The important issues raised by Hoffman were never addressed because he was denied due process, as guaranteed by the S.C. Constitution. There was no urgency to this matter, and yet the hearing proceeded leaving an elderly blind, unhealthy, litigant helpless to defend himself against a Bank trying to take his family farm." (Appellant's Initial Brief at pp. 9-10).

The Due Process Clause of the South Carolina Constitution provides that the privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. S.C. CONST. ANN. ART. I, § 3 (2012). The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (2002). "The fundamental requirement of due process is the opportunity to be

heard at a meaningful time and in a meaningful manner.” South Carolina Nat’l Bank v. Central Carolina Livestock Market, Inc., 289 S.C. 309, 313, 345 S.E.2d 485, 488 (1986).

The final foreclosure hearing was continued multiple times in this case. The first hearing was continued to allow Appellant to retain counsel, but Appellant was cautioned that there would not be any additional continuances. The second hearing was also continued at the request of Appellant’s attorney, Margaret A. Collins. (R. pp. 1-2; R. pp. 5-6).

On September 12, 2012, Ms. Collins filed a Motion to be Relieved as Counsel. (R. pp. 121-22). On December 14, 2012, notice of the January 10, 2013 hearings regarding the foreclosure action and Ms. Collins’ Motion to be Relieved were sent to all parties. (R. p. 115; R. p. 117). On January 2, 2013, four months after Ms. Collins’ Motion was filed and only after the hearing was scheduled, Appellant, appearing pro se, filed an objection to Ms. Collins’ motion to be relieved as counsel in conjunction with a motion to delay the foreclosure hearing. (R. pp. 78-114). On January 4, 2013, prior to the hearing, Court advised Appellant that it was not inclined to delay the matter further on the grounds that the matter has already been continued and that the Motion to be Relieved as counsel had been filed for four months, giving Appellant ample time to obtain counsel if he desired. (R. p. 9, ¶ 17). The court further advised Appellant that his counsel’s motion to be relieved as counsel and the foreclosure case were both scheduled for January 10, 2013 and that he should be prepared to proceed with the foreclosure matter regardless of what transpired with his counsel’s motion to be relieved. (R. p. 9, ¶ 17). In light of the foregoing, the Court ultimately advised Appellant to seek immediate legal counsel. (R. p. 9, ¶ 17).

The hearing scheduled for the January 10, 2013, also was continued due to Appellant's illness. (R. pp. 1-2). This Order provided that the Court was not inclined to delay this case any further and again advised Appellant to immediately seek alternate counsel or be prepared to appear without the assistance of counsel. (R. pp. 1-2). On January 22, 2013, a Notice of Hearing rescheduling the foreclosure hearing for February 12, 2013 was served upon all parties of record. (R. pp. 72-77). This Notice specifically stated that the Court was not inclined to delay this case any further and again advised Appellant to immediately seek counsel or be prepared to appear without the assistance of counsel. (R. pp. 72-77). As discussed herein above, at the hearing on the matter, Appellant was asked whether he objected to Ms. Collins' Motion. (R. p. 258, lines 20-25, p. 262, lines 1-3, p. 262, line 25-p. 263, lines 1-2). Appellant initially voiced no objection, but subsequently objected to Ms. Collins' motion. (R. p. 258, lines 20-25, p. 262, lines 1-3, p. 262, line 25-p. 263, lines 1-2). Ultimately, the Court granted Ms. Collins' Motion. (R. p. 263, lines 5-10; R. p. 14, ¶ 34).

Lastly, during pendency of this case, Appellant signed and filed multiple, detailed, pro se motions and other documents, even though he continued to be represented by Ms. Collins, including a renewed Motion to allow his son, a non-attorney, to represent him in this action. (See e.g. R. p. 33-61). Furthermore, Appellant admits he consulted other attorneys who could have served as his counsel if he had consented to Ms. Collins' Motion. (See Appellant's Initial Brief at p. 9.) Appellant contends he was deprived of the opportunity to consult with new counsel because he was represented by Ms. Collins, but objected to Ms. Collins' request to be relieved. (R. pp. 78-114).

The preceding facts do not support Appellant's contention that he was deprived of due process in this matter. As evidenced by the foregoing, Appellant was given multiple notices and opportunities to arrange for alternate counsel prior to the hearing. In fact, the circumstances detailed above illustrate the Court's effort to accommodate Appellant in this case above and beyond the standard required to satisfy due process requirements. Additionally, Appellant's own version of the facts of the case signals he was afforded due process in this matter. (R. pp. 298-305). Accordingly, inasmuch as Appellant was clearly given the opportunity to be heard at a meaningful time and in a meaningful manner, the Court's decision to relieve his counsel did not deprive him of due process in this matter. Id., 289 S.C. at 313, 345 S.E.2d at 488.

IV. Even assuming, arguendo, the issue of whether Respondent proved a valid, existing debt is preserved for review, which Respondent disputes, Appellant's argument fails because Respondent established Appellant, for value received, made, executed and delivered a promissory note dated April 27, 2009 promising thereby to pay to SCBT the sum of \$92,568.00, which is not disputed by Appellant.

In South Carolina, a mortgage and a note are considered separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action. United States Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 374, 684 S.E.2d 199, 204, (Ct. App. 2009). "Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." Id.; see also Franklin Mortgage Mgmt. Corp. v. Nicholas, 73 Conn. App. 830, 812 A.2d 51, 57-58 (Conn. App. Ct. 2002) (holding that a party seeking foreclosure must prove by a preponderance of evidence that it was the owner of the note and mortgage and that the mortgagor had defaulted on the note.). After the debt and default are established, the burden falls on the

mortgagor to establish a defense to foreclosure such as lack of consideration, payment or accord and satisfaction. Bell, 385 S.C. at 374, 684 S.E.2d at 205.

Secondly, even if this issue has not been abandoned, which Respondent disputes, Respondent established at the hearing without objection that Appellant, for value received, made, executed and delivered the Note promising thereby to pay to SCBT the sum of \$92,568.00. (R. p. 10 at ¶¶ 21-22; R. p. 179; R. pp. 267, line 24-p. 270, line 16, R. pp. 214-15). In fact, Appellant admits signing the Note and never alleges, much less proves, any defense or claim in recoupment. Id.; See S.C. CODE ANN. §36-3-308 (2012). Pursuant to the express terms of the Note, Appellant agreed that the Note would be secured by a real estate Mortgage in Appellant's name dated October 21, 2003, and a Security Agreement dated November 13, 2008. (R. p. 10, ¶ 21; R. p. 11 at ¶ 26; R. p. 271, line 20-p. 272, line 1; R. pp. 350-351). Appellant never objected to the Note when it was offered into evidence at the hearing and even admits he signed the Note in his initial brief.⁶ (R. pp. 267, line 24-p. 270, line 16; Appellant's Initial Brief at p.5). Additionally, the only defense asserted by Appellant in his Answer to the underlying Complaint was that the subject loan was paid off by an alleged treasury bond.⁷

As discussed above, Appellant fails to cite any legal authority to support his position that the Mortgage was satisfied by the payment of the 2003 Note. Even if supported by the requisite legal authority, this argument is nevertheless meritless inasmuch as the Mortgage contains a future advance clause, securing all present and future obligations of Appellant to Respondent under any promissory note, contract,

⁶ By its terms, the Note can stand on its own as a negotiable instrument, and is not a renewal of the 2003 note referenced hereinabove.

⁷ Filed by a known member of Sovereign Citizens, which is an entity presently under indictment for conducting foreclosure scams. Respondent is informed and believes Mr. Hoffman was targeted by Sovereign Citizens.

guaranty, or other evidence of debt existing at or after the execution of the mortgage. S.C. CODE ANN. § 29-3-50 (2012); (R. pp. 352-361, R. p. 10, ¶ 22). Our Supreme Court has held that mortgages to secure future advances “serve a socially and economically desirable purpose.” Central Production Credit Assoc. v. Page, 268 S.C. 1, 8, 231 S.E.2d 210, 214 (1977); see also S.C. CODE ANN. § 29-3-50 (2012). Future advance clauses are recognized in South Carolina and operate to extend the life of a mortgage once the initial debt has been discharged. Page, 268 S.C. at 8, 231 S.E.2d at 214. A future advance clause allows a dormant mortgage to remain viable after the initial debt has been paid. Id.

It is undisputed that Appellant failed to make payment on the Note and Respondent, as the holder of the Note, elected to require immediate payment of the entire amount due thereon. (R. p. 11, ¶ 27). By its terms, the Note is secured by the Mortgage. Respondent presented uncontroverted testimony and evidence that Appellant owes a total debt of \$151,026.26 plus interest accruing at \$15.92 per diem. (R. p. 12, ¶ 29). Based upon evidence and testimony presented, the Court concluded the debt owed is due and owing and unpaid by or on behalf of Appellant. (R. p. 13, ¶ 31). The Court further concluded Appellant was in default on the Note which was secured by the Mortgage, and Security Agreement, and Respondent was entitled to foreclose the mortgage and seek judgment in the amount of the final debt owed by Appellant. (R. p. 13, ¶ 32).

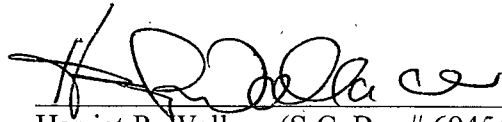
As evidenced by the foregoing, Respondent established the existence of Appellant’s debt and default at the hearing on this matter. Appellant never objected to the admission of the Note at the hearing, and never raised an issue as to the Note within his initial pleadings. Inasmuch as Appellant failed to establish any defense to foreclosure such as lack of consideration, payment or accord and satisfaction, Respondent has proved

a valid and existing debt in this matter and the Judgment of the Court must be affirmed.
S.C. CODE ANN. §36-3-308 (2012); Bell, 385 S.C. at 374, 684 S.E.2d at 205.

CONCLUSION

For the reasons stated above, this Court should affirm the Judgment of Foreclosure issued by The Honorable James E. Reeves.

Respectfully submitted,



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May 14, 2014

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
James E. Reeves, Special Referee

Case No. 2013-000965

SCBT, N.A.,Respondent,

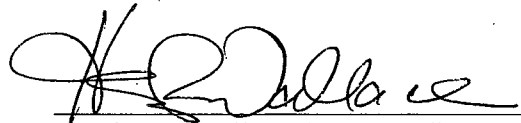
v.

Shelton Hoffman a/k/a Shelton L. Hoffman, South Carolina Department of Revenue,
Baird Transport, Inc., Defendants.

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is theAppellant.

RULE 211 CERTIFICATION

I certify that the **Final Brief of Respondent** complies with Rule 211(b), SCACR.



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STATE OF SOUTH CAROLINA
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APPEAL FROM ORANGEBURG COUNTY
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James E. Reeves, Special Referee

Case No. 2013-000965

SCBT, N.A.,Respondent,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman, South Carolina Department of Revenue,
Baird Transport, Inc., Defendants.

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is theAppellant.

PROOF OF SERVICE

I certify that I have served the **Final Brief of Respondent** on counsel for Shelton Hoffman a/k/a Shelton L. Hoffman by having a copy hand-delivered to the Law Office of Mark W. Hardee at the address below and by depositing a copy of it in the United States Mail, postage prepaid, on May **15**, 2014, addressed to:

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Columbia, South Carolina 29205


Missie Wessinger, Paralegal