

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James E. Reeves, Special Referee

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MAR 06 2014

SC Court of Appeals

Appellant Case No. 2013-000965

SCBT, NA,..... 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

APPELLANT'S FINAL REPLY BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. THE ISSUE OF THE APPELLANT'S WRONGFUL FORECLOSURE IS NOT MOOT.

II. THE APPELLANT WAS DENIED DUE PROCESS

III. THE RESPONDENT'S ALLEGATION AS TO WHICH NOTE IS THE ISSUE OF THE FORECLOSURE IS A MOVING TARGET.

ARGUMENT

I. THE ISSUE OF THE APPELLANT'S WRONGFUL FORECLOSURE IS NOT MOOT.

The Appellant has asked this court to overturn the Order of Foreclosure, and to remand the case for further proceedings. By overturning the Order foreclosure, this Court would not be finding that the sale of subject property was void, but rather that it was voidable. Should further proceedings in the Court below find that the foreclosure sale did not result in the property being transferred to a legitimate third party, the lower Court could in fact void sale the property at that time. *LeConte v. Irwin* 19 S.C. 554(1883) *Eason v. Witcofskey* 29 S.C. 239,244(1888). Various courts have addressed when judgment is to be deemed voidable, as opposed to void. See *E.G., City Bank v. Saje Ventures II* 7 Haw. App. 130, 133(Haw. ct. app.1988); *Leisure Campground and County Club Limited Partnership v. Leisure Estates* 280 MD. 220, 223, 372(a) 2d 595, 598 (1977); *City Bank NA. v. Data Lease Fin. Corp.* 645, F 2d 333,336 (5th Circuit 1981)

Should the Order of Foreclosure be overturned, the Court could then hold further proceedings to determine whether or not the purchaser of the foreclosure sale was the bonafide purchaser under South Carolina law. If purchaser at the foreclosure sale was the mortgagee, or other party to the action, the purchaser's title is at risk in the event of reversal on appeal. See *LeConte v. Irwin* 19. S.C. 554(1883). Therefore, reversal of the Order of Foreclosure in this case would allow the Court below to make further inquiries into whether or not the purchaser at the foreclosure sale was in fact a bonafide purchaser. Should the Court determine that the foreclosure sale be upheld as to the bonafide purchase by a third party, the Court could address the issue of damages caused by the wrongful foreclosure.

II. THE APPELLANT WAS DENIED DUE PROCESS

The Fourteen Amendment to the US Constitution as well as South Carolina Constitution, gave litigates the right to Due Process, and extends cases involving valuable property rights. *Constitution of the United States of America Amendment Fourteen; SC Const. article 1 sec 3 (2012)*. The Appellant retained counsel to represent him. He opposed that counsel being

relieved as counsel, and was unable to obtain substitute counsel until after that matter had been resolved. The Court ruling the Appellant's counsel was relieved, above the Appellants objections and proceeding with the hearing that same day, deprived the Appellant Due Process.

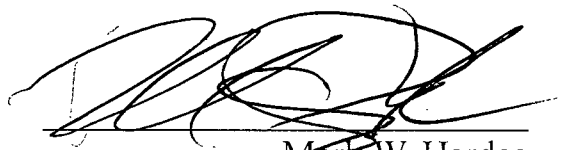
**III. THE RESPONDENT'S ALLEGATION AS TO WHICH
NOTE IS THE SUBJECT OF THE FORECLOSURE IS A
MOVING TARGET.**

The Appellant alleges in its Complaint that the Note dated October 21, 2003 is the note which evidences the debt which secured by the mortgage. The bank never made a Motion to amend the Complaint. The Bank concedes that the note has been paid in full. Therefore, the Order of the Special Referee should be reversed.

CONCLUSION

Based on the above, the Order of the Special Referee should be reversed, and the case remanded for further proceedings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark W. Hardee', written over a horizontal line.

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February 28th, 2014

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CERTIFICATE OF COUNSEL

The undersigned certified that this Appellant's Reply Brief complies with Rule 211(b),
SCACR.



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February 28, 2014

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Case No. 2013-000965

Shelton Hoffman)

a/k/a Shelton L. Hoffman)

Appellant,)

vs.)

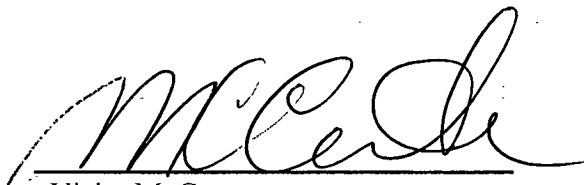
SCBT, NC)

Respondent.)

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of March, 2014, I served, via first class mail, at the address below, a copy of the Appellant's Final Reply Brief pertaining to the above-referenced action.

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Vicky McCarter
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Columbia, South Carolina

Date: 3-6-14