

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEALS

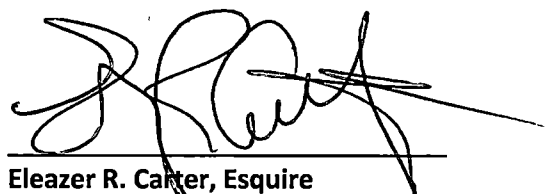
H. THAD WHITE, RESPONDENT,

v.

PETREL INTERNATIONAL, LLC, APPELLANT.

APPELLATE CASE NO.: 2014-002764

APPELLANT'S FINAL BRIEF



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Manning, South Carolina
October 27, 2015

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE NOTICE OF SPECIAL REFERENCE WAS FILED AND TIMELY SERVED UPON THE APPELLANT SUCH THAT THAT THE APPELLANT WAS ALLOWED SUFFICIENT TIME TO RESPOND TO THE OF SPECIAL REFERENCED ORDER PURSUANT TO SCRPC RULE 53 (S.C CODE ANN. SECTIONS 14-11-60 and 15-31-1500)?
- II. DID THE SPECIAL REFEREE ERR IN PROCEEDING WITH THE HEARING AFTER GIVING THE APPELLANT LESS THAN TEN (10) DAYS NOTICE OF THE HEARING IN VIOLATION OF THE SCRPC 6(d)?
- III. WHETHER THE FAILURE TO PROVIDE PROPER NOTICE VIOLATED THE APPELLANT'S DUE PROCESS RIGHT?
- IV. WHETHER THE SPECIAL REFEREE ERRED IN NOT HEARING THE POST TRIAL MOTIONS AFTER FINAL JUDGMENT?

STATEMENT OF THE CASE

The Appellant, Petrel International, LLC, (hereinafter Petrel), by and through its sole owner, Haiyan Lin, (hereafter Lin) purchased, and gave a note and mortgage to the Respondent, H. Thad White, on or about December 22, 2009. The Appellant became in arrearage with the monthly payments, and the Respondent filed a foreclosure action. The sole owner, Lin, of Petrel filed a Pro se answer and counter-claim. The Respondent moved to have the answer and counter-claim of the Appellant stricken and he moved for default judgment. The trial court Judge, Paul Burch, granted the default motion on December 9, 2013, and entry of judgment on December 17, 2013. The Appellant filed a motion to vacate the Order of default on March 17, 2014. The Appellant thereafter appealed the order of default, and the South Carolina Court of Appeals "**dismissed the appeal due to Appellant's failure to provide the name the lawyer representing the Appellant**" during the Appeal on September 10, 2014. An Ordered of Remittitur was also issued on September 30, 2014. After the matter was remitted back to the lower court the Appellant's motion to vacate was scheduled by the Darlington County Clerk of Court on November 13, 2014, for hearing set on December 18, 2014.

The Respondent then presented an Order of Reference to the Darlington County Clerk of Court which was executed and filed on November 17, 2014. The Darlington County Clerk of Court appointed Attorney Haigh Porter as Special Referee and scheduled a hearing for December 1, 2014. The Notice of hearing was deposited in the mail to the Appellant, via the

certificate of mailing on November 20, 2014. The Appellant received that notice on November 26, 2014, per certified mail signature stamp. The trial hearing proceeded with a five (5) day notice on December 1, 2014. The Appellant was not represented at the hearing, nor was its owner present.

The Special Referee entered an Order of Judgment in the amount of Three Hundred Five Thousand Six Hundred Fifteen and 54/100 (\$305, 615.54) dollars, which included principal, interest, attorney fees and court and trial costs. The Special Referee also Order a foreclosure and Sale of the property. The Appellant now appeals this decision.

ARGUMENT

I. WHETHER THE NOTICE OF SPECIAL REFERENCE WAS FILED AND TIMELY SERVED UPON THE APPELLANT SUCH THAT THAT THE APPELLANT WAS ALLOWED SUFFICIENT TIME TO RESPOND TO THE OF SPECIAL REFERENCED ORDER PURSUANT TO SCRPC RULE 53 (S.C CODE ANN. SECTIONS 14-11-60 and 15-31-150)?

Under South Carolina Code Section 14-11-60:

In case of a vacancy in the office of master-in-equity or in case of the disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity. The special referee must be compensated by the parties involved in the action. See Also Section 15-31-150, acknowledging the presiding circuit court judge authority to appoint special referee judges.

In this case before the court the matter was remitted by this court on September 30, 2014, back to the lower court. The Respondent communicated with the Darlington Court Clerk of Court and obtained an ex parte Order of reference on or about November 17, 2014. On November 18, 2014 the Clerk of Court scheduled a dispositive hearing for December 1, 2014. After the matter was remitted to the lower court no proceeding was scheduled nor heard by any presiding circuit court judge. No written order or other communication was prepared by any presiding circuit court judge. The parties never met nor agreed to a special referee being appointed to dispose of his matter. Further, the Respondent did not provide any notice to the Appellant of his intention to seek an appointment of a special referee. The Appellant learned of the same after receiving the certified mail while on her way out of the country.

II. DID THE SPECIAL REFEREE ERR IN PROCEEDING WITH THE HEARING AFTER GIVING THE APPELLANT LESS THAN TEN (10) DAYS NOTICE OF THE HEARING IN VIOLATION OF THE SCRPC 6(d)?

Under South Carolina Rule of Civil Procedure 6(d) a written notice ... and notice of hearing thereof, shall be served not later than ten (10) days before the time specified for hearing, unless a different period is fixed by these rules or by an order of the court. After the Respondent received the notice of hearing date from the Darlington County Clerk of Court on November 17, 2014, the Respondent held the notice until November 20, 2014, and thereafter mailed the notice to the Appellant via certified mail wherein the Appellant received that the Notice on November 26, 2014. The Appellant was afforded only five (5) days notice to prepare and/or seek representation for the same. In proceeding with the hearing under these circumstances the special referee violate rule 6 (d) by not giving he Appellant the sufficient notice of time for the hearing. While a hearing time may be reduced or extended by court order this hearing date was not set or scheduled by the court order. Jackson v. Speed, 326 SC 289, 486 S.E. 2d 750 (1997), wherein this court ruled that a trial judge may issue an order reducing the time for a hearing to be set/heard.

Upon realizing that the service was defective the Special Referee should have continued the matter on its on motion. The Special Referee was aware Appellant was not present nor represented by counsel. The Special Referee should have inquired about the service of the notice and the lack of sufficiency of the time after service. The Special Referee possessed the authority to enlarge the period of time for a proceeding. See Maxwell v. Gerez 350 SC 363, 563 S.E. 2d 496 (Ct App 2002) Cert. granted (January 9, 2003).

III. WHETHER THE FAILURE TO PROVIDE PROPER NOTICE VIOLATED THE APPELLANT'S DUE PROCESS RIGHT?

The South Carolina Rules of Civil Procedures creates an orderly process for proceeding in a civilized court. Any violation of these procedures without order or directions from the court places a party litigant at a disadvantage. In the case before this court the Appellant was denied its due process rights to a hearing when the Respondent received a notice of hearing from the Darlington County Clerk of Court, and the Respondent held the notice of hearing for several days before serving it on the Appellant. United States Constitution 14th Amendment.

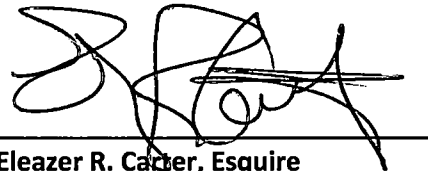
V. WHETHER THE SPECIAL REFEREE ERRED IN NOT HEARING THE POST TRIAL MOTIONS AFTER FINAL JUDGMENT?

After the South Carolina Court of Appeal remitted this matter back to the lower Court, the Darlington County Clerk of Court, on November 13, 2014, scheduled a hearing on the pending dispositive motion to vacate default judgment. The same was set for December 18, 2014. Notice of the same was sent to both Respondent and Appellant and filed in the records of the case. The Special Referee did not address this pending motion despite it being in the file of record. This court held in Murray Properties Part v. L.P. Cox Co., 293 SC 170, 171 359 S.E. 2d 279, 280 (1987), that a Special Referee erred when it did not hear the post trial motions after a final judgment. After the Court of Appeals remitted this matter, the Special Referee should have dispose of all pending motions first before proceeding with the final dispositive proceedings. In-fact the Special Referee could have retain jurisdiction and address the matter even after his dispositive rulings. See First Sav. Bank v. McLean 314 S.C. 361, 4444 S.E. 2d 513 (1994)

CONCLUSION

The Appellant hereby request that the Order and Judgment of the Special referee be vacated and the Appellant be allowed to participant in the damages aspect of the action.

Respectfully Submitted,



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CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

I certify that I have read Rule 211(b) and have complied with the directions of final brief preparation and submissions.

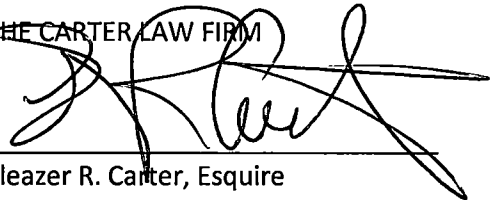
Document(s) Served:

Final Brief, Certificate of Compliance and Proof of Service

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