THE STATE OF SOUTH CAROLINA
In The Court of Appeals
1220 Senate St Columbia, SC 29201

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Diane S. Goodstein, Circuit Court Judge

Case No. 2014-CP-18-1007(Court of Common Pleas)
Case No. 2015-001543 (SC Court of Appeals)

Bank of New York Mellon Trust Co. N.A..not in its individual capacity but Solely as Trustee on behalf of the FDIC 2013-N1 Asset Trust,

Respondent,

v.

CORNELL RILEY,

Appellant.

APPELLANTS' FINAL REPLY BRIEF

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ARGUMENT IN REPLY

Without restating the issues or making redundant arguments which have been thoroughly set forth in their opening brief, the Appellants offer the following points of clarification and rebuttal to the arguments raised by Respondents.

1. Mortgage Contract section 1 and 18 between Appellant and Respondent

In their brief, Respondents argue and so state "that whether appellant received notice of default is irrelevant to the elements of appellant's claim for breach of contract" Respondents' argument rings false because it is impossible for appellant to receive required notice when respondent never placed such notice in the mortgage record or delivered such notice to any mail delivering service for appellant to receive by mail at all.

Respondent's failure to accept appellant personnel check is a breach of contract as is stated in the contract a personnel check is an acceptable form of payment.(R.pp 162-163) The non-acceptance of the check is refusal of agreed payment and therefore a breach, as conditions was not met to require certified funds according to the contract.(R.p 160 Line 19-25)

2. Real Estate Settlement Procedures Act (RESPA) 12U.S.C 2605(e)

Proof to be provided as to the existence of such notice is given by respondent's lack of compliance with (RESPA) 12U.S.C 2605 which provide that respondent is required by law to ensure resolution or notify appellant of its resolution of a QWR (Qualified Written Request) which as of February 08, 2016 respondent have still not replied to the QWR since May, 2014. This fact is also evident as to respondent's designation of matter as it does not list

respondent's reply to QWR.(R.pp 163-164) The lack of an argument and lack of proof of compliance with the federal act shows clearly that the case of (Baughman v. American Telephone and Telegraph Company, 306 S.C. 101, 410 S.E.2d 537 (1991). *Summary judgment is a drastic remedy and should be granted only upon clear and convincing evidence. Additionally, even where there is no dispute as to the evidentiary facts, but only as to the conclusions are inferences to be drawn from them, summary judgment should not be granted.*) applies and gives clear alternative inferences to be drawn as appellant did argue on Motion for Reconsideration (R.p113) Appellant argument is that certified funds were never sent to respondent to reinstate the loan because appellant never sent any such payment to respondent from any account of his own. The funds received was from the South Carolina Help.gov organization which appellant had to enter into a five year second mortgage contract to not Move, from or rent out home which damages appellant freedom to manage his property as freely willing along with all other destress and cost associated with filing a foreclosure. If such notice did exist and was in mortgage file why did it take from May, 2014 until March 2015 for respondent to reply to the court or to the QWR with the alleged notices which were claimed to be in file since January 2014.(R.p 137 Line 5-13). The lower court asked respondent for such notice in November 2014, and respondent could not provide it to the court at that time, yet it claims that it was in the mortgage file since January 2014, and since the filing for foreclosure May 27, 2014 until November 19th 2015 such a document could not have been made available for the court to review in November 2015.(R.p 137 Line 18-25; p 138 Line 1-8) Respondent's lack of evidence submittal to the lower court, and lack of compliance with (RESPA) 12U.S.C 2605 and S.C. Code Ann SECTION 37-22-190

Mortgage Next Lending even until this current date, is self-evident and is a matter for the jury to decide whether or not such notices were in the mortgage file which would lead to rejection of payment. Receipt of the notice is not the question for the appellant, the question of the appellant is that the notice was never a part of or ever entered into the mortgage file prior to receiving full payment by personal check from appellant.(R.p 162) As stated in ." Minter v. GOCT, Inc., 322 S.C. 525, 527, 473 S.E.2d 67, 69 (Ct. App. 1996). "If more than one inference can be drawn from the evidence, the case must be submitted to the jury." The time laps from May 2014 to March 2015 draws a serious question as to the existence of such notices after request for the same notices were asked and sought after from respondent, and therefore **"More than one inference can be drawn from the evidence"** Respondent offered affidavit of alleged employee of mortgage servicing company which is not party to the mortgage agreement and whose testimony has no relevance to if such notice was mailed out to any mail delivery service. It would prove more prudent that the individual that signed the affidavit submitted in support of respondent's summary judgement motion would also have been asked by respondent why there is no reply to appellant's QWR by law. Also further evident of lack of notice that this court should consider is. In all of its legal experience through its attorney; Why in all of respondent's brief was the issue of noncompliance with (RESPA) 12U.S.C 2605 never addressed or rebutted? (R.pp 1-1a) Appellant maintains that the ROA shows that respondent is in violation of (RESPA) 12U.S.C 2605 and that violation reflects the direct questionability of required notice being placed in the mortgage file or mailed at all to appellant, and that evidence in itself is enough for a jury to consider and it gives the appellant the moving party, triable issues that must go to the jury. Appellant

maintains that the lower court judge did not duly consider the facts as was argued that the direct violation of (RESPA) 12U.S.C 2605 and continue violation of the same along with time associated with producing said required notices raises the question of whether they existed at all or if they were placed in the mortgage file and alleged to be mail as required by law after rejection of appellant's full and up-to-date payment in May, 2014.

CONCLUSION

Based on the foregoing, in addition to the arguments made in the opening brief, as to whether the lower court granting of a summary judgment in favor of respondent did consider the respondent's violation of law both federal and South Carolina and still in violation of such laws, in the time frame in which it took respondent to provide such evidence to the lower court and even to consider an affidavit from respondent's employee whom also is a part of the law violation to current. The Appellant respectfully submit that this court consider the evidence submitted through the ROA which questions the existence of any such notices as a part of the mortgage record prior to May, 2014, as well as respondent's continual violation of the (RESPA) 12U.S.C 2605 and S.C. Code Ann SECTION 37-22-190 Mortgage Next Lending with still no reply to appellant's QWR after (60) days submitted since May 2014 as to why the original check was sent back even as within the QWR appellant questioned respondent's initial reason for rejection of full payment check. Wherefore, based on the foregoing, Appellant respectfully request that the Summary judgment granted the respondent by the lower court be reversed and remanded to a Dorchester county Jury.

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with SCACR rules regarding this Brief

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