

THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Graverly, Circuit Court Judge
Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001565

INITIAL APPELLANT BRIEF

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SC Court of Appeals

Wells Fargo Bank, N. A.,

Respondent

v.

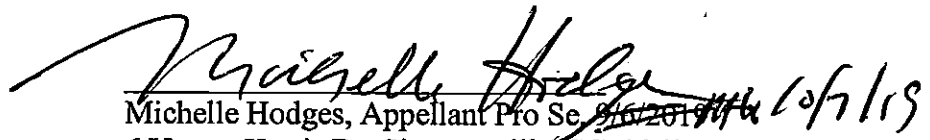
Michelle Hodges

Appellant

To the Clerk of the Court of Appeals –

This is my Initial Appellant, brief:

I have been aggrieved by all of the orders that I address in this brief, as deception, Fraud upon the court and the filing of sham documents have all occurred and I feel Defrauded. I have suffered loss of additional money and time spent on the case.



Michelle Hodges, Appellant Pro Se, 9/16/2019
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TABLE OF AUTHORTIES

South Carolina Rule 15 and Statute 15-15-920 under arguments under Judge Stilwells' Order

The preliminary order typed on 7/24/19

Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649(1999).
Concerning the issue of standing under paragraph A of this document

Dawkings v. Fields, 345 S.C. 23, 545 S.E.2d 15(Ct. App.2001) under Aruguments concerning
Discovery

The record from the circuit from the notice of appeal down to the 6th amended answer.

Harper v. Ethrige 290 S.C. 112 (1986) 348 S.E.2d 374 referenced for breach of contract
mentioned on page 7 of this document.

STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err in not allowing me to amend my 6th amended answer?
2. Did the Trial Court err in awarding Summary Judgment, when it knew that Discovery Admissions were outstanding?

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3. Did the Trial Court err in its jurisdictional analysis?
4. Did the Trial Court err in not recognizing the Plaintiff proceeded with the Note only?
5. Did the Trial Court err in not finding for fraud upon the court?
6. Did the Trial Court err in awarding Summary Judgment, as the Plaintiff did not put forth any evidence that I defaulted on the loan?
7. Did the Trial Court err in referring this case to the Master in equity

STATEMENT OF THE CASE

The Plaintiff committed the first half of a material breach of contract on 11/19/16, when it paid my property taxes at a non-owner occupied rate without my knowledge, In December of 2016 I applied for loan modification and due to a loss of one of my jobs, increase in financial obligations and lack of confidence in the Plaintiff, I withdrew the application in January of 2017. Shortly before I applied again for a loan modification in June of 2017, I received a notice that I had an escrow shortage that I needed to pay off or have an increase to my monthly of approximately \$280.00 per month. I called the Plaintiff several times to try to find out what the problem was after months of not being able to get into with the escrow department. I advised the preservation specialist to no avail. I continued to try to get in touch with the escrow department and then I looked in the County tax records and it was showing an over payment of property tax. I went to the county and they confirm that I occupy the property and refunded the overage to me. I in turn returned a portion of the funds to the plaintiff in the form a payment in order to get some of the funds back to the Plaintiff. I also remembered that previously we had an escrow overage and I decided to hold on the the additional funds until the matter could be resolved with the Plaintiff and it still has not been resolved to this dated. During discover, the Plaintiff stated under oath that the subject property was non owner occupied. I was floored, especially since the



Plaintiff had accepted funds from the State of South Carolina Hardest Hit funds via SC Housing. The program require that the property be owner occupied for the borrower to participate in the program. I contacted SC Housing and the Application with information of my Mother's passing away immediately after death. I had been advised by SC Housing that they were able to continue the program/grant since a family member occupies the home. Upon this news I called the Plaintiff to advise them that the payments will continue from SC Housing. The Plaintiff requested a copy of the Death Certificate and Letter of Appointment and Deed of Distribution and I explained that I did not have that yet and would provide it as soon as I could. In the mean time I had been denied the loan modification in 9/8/2017. The denial letter merely stated that the income that I had reported and no further reason for the denial. I began to search for the guidelines found a forbearance and thought that I qualified for that and after speaking with the Plaintiff and HUD learned that I did not qualify and I continued to search the guidelines for an answer and I found the waterfall guidelines just after the foreclosure was filed and I further found the other guidelines along with trying to defend this law suit and I learned per the consumer financial protection promulgated rules that I as a successor an interest was to treated as the borrower and borrower does not have to income qualify for a loan modification, as the waterfall guidelines call for the Plaintiff to lower the principal balance by approximately \$40,000.00 to bring the payment within a 31% debt ratio for the borrower and if the borrower makes the payment for 3 months the lender will offer a permanent loan modification. However, in my case I was just informed that I did not qualify and with my understanding of mortgage loans I contacted HUD and found that I am correct. The Plaintiff filed the foreclosure action on 12/22/17 and on 1/2/17 that plaintiff filed a sham document called the Certificate of non owner occupancy and I have found over twenty of these documents filed against different borrowers,

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which is a matter of public interest. From what I have read in the South Carolina Supreme Court Order 2011-05-02-01, to be considered for Foreclosure Intervention the property must owner occupied. Per the Mortgage under the St Germaine Act when the property transfer via death of borrower, it is a legal recognizable transfer of ownership of the property and is protected from any due on sale clause that the servicer/lender may want to invoke.

STANDARD OF REIVEW

De novo, since the court determined that there was not issue of a material fact

FACTS

See statement of the case above

ARGUMENTS

Concerning Judge Stilwells' Order dated 4/26/19

CONCERNING AMENDING ANSWER

Pursuant to Rule 15 while it is the court's discretion to allow amendments, it is to be freely given so long as it does not prejudice the other party. And SC Code 15-13-920 broadens the court's power to allow amendments to conform the pleadings to the evidence to prevent late stage amendments and to provide extensions to the nonmoving party. There was no prejudice to the Plaintiff, as discovery had not been completed, no trial date had been set and the Plaintiff had opportunity to respond.

Concerning Judge Gravely's Order dated 8/7/19

CONCERNIGN THE ISSUE OF DISCOVERY

A) Summary Judgment is not proper when discovery is not complete see *Dawkings v.*

Fields, 345 S.C. 23, 545 S.E.2d 15(Ct. App.2001) and the Court granted summary judgment

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when it knew that and Discovery had not been completed per the Order typed up on 7/24/19 by the Plaintiff's Attorney's office.

CONCERNING THE ISSUE OF STANDING

A) I stated in my 6th amended answer that the Plaintiff lacked an injury for standing and in my Opposition to the Motion for Summary Judgment, I stated under STANDING that a confirmation of standing would settle the issue as to whether or not I would be required to pay the Plaintiff. The Plaintiff did not address these issues with denial therefore we have an undisputed issue of material fact of lack of standing. Therefore summary judgment should not have been granted.

Standing to sue is a fundamental requirement in institution of an action. *Joytime Distributions & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649(1999) Under our current jurisprudence, that are three ways in which a party can acquire this fundamental threshold of standing: 1) by statute 2) Constitutional standing and 3) Under public importance exception). The Plaintiff's motion for summary judgment does not claim an injury nor does it claim a concrete and particularized injury that I caused.

CONCERNING THE ISSUE OF JURISDICTION

B) The Plaintiff proceeded on the Note (and not the mortgage) in its motion for Summary Judgment and this represents a Creditor's claim. And in my Affidavit in opposition to summary judgment I stated that the Plaintiff failed to timely file a creditor's claim and provided case law *re Estate of Tollison*, 320, S.C. 132, 135, 463 S.E. 2d 611, 613 (Ct. App. 1995) and the most recent decision reversing summary

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judgment by the Supreme Court in Gurnham v. Beach First national bank appellant case #2012-20747..

C) In Gurnham the court stated that a creditors claim refers to the entire debt (Note) and or a Deficiency judgment. Under the Trial Court's analysis 1) subject matter jurisdiction it simply states that "a secured creditor is not required to file a claim against the probate estate if it is solely seeking to foreclose the mortgage and is not attempting to the hold the estate liable for the deficiency. And as I stated above that the Plaintiff proceeded with Note as evidence and not the mortgage. ~~_____~~

~~_____~~
~~_____~~

The Plaintiff's Attorney's office typed up all of the orders, which does not feel like justice.

However, it has been stated that "the Court of common pleas in the county where the property is located has subject matter jurisdiction; despite the Supreme Court's Order that I cited, whom reversed summary judgment for a creditor's claim.

BREACH CONTRACT WITH A FRAUDULENT INTENT, showing in my 6th Amended Answer as ACTUAL FRAUD pages 11 – 16 continued as Fraud in the performance

There is no dispute that the Note and Mortgage Contracts exists, 1) the Plaintiff did not adhere to HUD regulations, as stated in the Mortgage, as the Plaintiff did not provide an accurate loan modification analysis starting with a determination, as to whether or not I am one of the successors in interest to my Mother (Ruth Ladson Witherspoon). 2. The Plaintiff has fraudulently claimed that I do not occupy the property and 3. filed a certificate of non owner



occupancy with the Court. Those are there elements to claim a breach of contract, alleged in my 6th amended answer and and I occupy the property. 2)

I asserted the Elements required for a breach of contract with a fraudulent intent in my Memorandum in Opposition of the motion for summary judgment.

REFERRAL TO THE MASTER IN EQUITY

A) There has not been a determination by Court if the Plaintiff has properly offered Intervention, in this court or when I applied for loss mitigation. This is does not seem like a fair situation or justice. The attorney is allowed to type up orders for the judge with obvious errors and allowed to just certify that state requirement have been met. What does the Court do? This affects my substantial right to a jury trial.

B) DISMISSAL OF ALL OF MY CLAIM,

When I attempted to amend my 6th amended answer, I included a short and plain statement without which the court lacks jurisdiction over my claims. Therefore my claims should not be dismissed.

UNCLEAN HANDS ASSERT IN 6TH AMENDED ANSWER

A) Unclean hands was not addressed, therefore the issue of unclean hands is an issue of undisputed fact and on page 5 of 8/16/19 Motion to Alter amend, I called this to the court's attention on page 5.

FRAUD UPON THE COURT

A) The case should have been dismissed sua sponte by the Judge Gravely, when I filed a motion for sanctions, for failure to cooperate in discover, showed fraud upon the court. In the motion, I explained that the Plaintiff's Attorney, Mr. Laney delayed discovered for 4 months initially and I had to request a motion to compel and when discover did get under way for each set of interrogatories that I requested, the Plaintiff objected, even the



required interrogatories. After objecting after a few days Mr. Laney would send me a letter requesting additional time to provide verified responses. Shortly after sending out my 4th Set of Interrogatories, I became curious, as to why each time Mr. Laney was requesting addition time and I noticed that the responses seem to come from out of town and looking a little closer, I found that Mr. Laney was strategically providing me with verified responses that were not verified responses at all as the verified response was dated prior to the date of the document that it was to verify. Per Judge Gravely, well Mr. Laney will just have to live with those verifications and I had also informed the court in the motion for sanctions that Mr. Laney had not responded a set of Escrow Statement and Loan Mortgage statements and at the hearing Mr. Laney advised Judge Gravely that he would provide the admissions within 10 days of the hearing. Mr. Laney amount to breach of duty of candor with the tribunal, especially since he has reviewed the documentation first had that shows that I occupy the property and he had a hand in my not being able to be heard as far as the evidence and he intentionally withheld the admissions, so that I could not provide a scintilla of evidence to survive the motion for Summary judgment. However, according the Mr. Laney's own replay to the motion for summary judgment.

When I arrived at the hearing on 7/22/19, I explained to Judge Gravely that I had left home without my Notes. Mr. Laney then stood up and began to go through his case which objected to which lead to an overly expensive transcript that I could not afford. Therefore, I will not have a transcript and Judge Gravly did not make his decision on the day of the hearing, therefore the transcript would not be useful concerning the hearing held on 7/22/19.

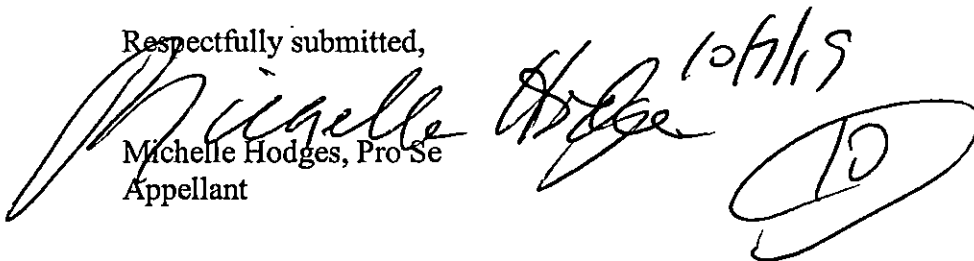


I initially responded to the order dated 7/24/19 on 8/5/2019 as it stated that that order would become final. I then responded to the order dated 8/7/2019, as there is a substantial difference between the 2, as the Order dated 8/7/19, addresses jurisdiction on 8/1919 I filed another motion to alter/amend. I call this to the court's attention, as the Final order dated 8/22/19 makes note that I addressed both orders. I timely responded to Judge Gravely's signed order dated 8/7/2019 with the Notice of Appeal dated 9/6/2019.

I am proceeding on an individual basis pro se and I cannot legally represent the Estate, nor have I attempted to do so. The clerk of the supreme court changed the caption of the case from what I had on the notice of appeal and referred the case to the court of appeals despite the fact that I am taking an immediate appeal of an interlocutory order pursuant to section 14-3-330, as the case for referred to the Master in equity, changing the mode of trial, affecting my substantial rights to a trial by jury, which will be determined based on my causes of action. The Plaintiff's attorneys have continued to use the Estate in this case, in order to claim that the property is non-owner occupied, despite the evidence. And if the Plaintiff can claim that the property is non owner occupied then the Plaintiff will not have to over home retention options or explain why it didn't. I pray that I am allowed to amend my answer , summary judgment is reversed and allow my claims to proceed and remand for additional testimony, so that claims will be in the pleading and pleadings conform to the evidence, since discovery is not complete; which hopefully will lead to a fair process. The Plaintiff's Attorney Mr. Laney, did not reply to all admissions and he indicated to the court that he would, in the order typed by his office dated 7/24/19.

Respectfully submitted,

Michelle Hodges, Pro Se
Appellant

Handwritten signature of Michelle Hodges, dated 10/11/19, and a circled '10'.

ATTORNEYS AND PARTIES OF RECORD SERVED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	
)	
Wells Fargo Bank, NA)	
)	
Plaintiff)	
)	
Michelle Hodges, Individually: Michelle Hodges)	
as Personal Representative of the Estate of Ruth)	
Ladson Witherspoon: Stanley Witherspoon : SC)	
Housing Corp.: Twin Creeks Homeowners)	
Association, Inc.;)	
)	
Defendants,)	CASE O. 2017CP208016
)	CERTIFICATE and proof SERVICE

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I the undersigned defendant, Michelle Hodges, do certify that I have served the below parties, via first class mail as shown below.

Certified Mail
S. Sterling Laney, Attorney
Womble Bond Dickinson
550 S. Main Street #400
Greenville, SC 2960

H. Guyton Murrel, Attorney
Tracey C. Easton, Attorney
SC Housing Corp
300-C Outlet Pointe Blvd
Columbia, SC 29210

Twin Creeks HOA
3104 Grandview Dr
Simpsonville, SC 29680

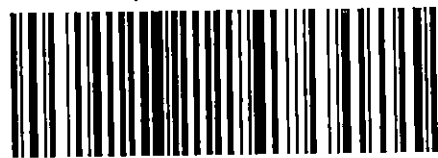
Stanley Witherspoon
PO Box 95
Mauldin, SC 29662

Michelle Hodges
Michelle Hodges, Appellant
10/7/19

(Signature)

10 Boy 95
Mauldin, SC 29462

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