

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Honorable Jeffrey M. Tzerman, Master in Equity

**RECEIVED**

DEC 04 2019

**SC Court of Appeals**

Case No. 2018CP2800822

Appellate Case No. 2019-001269

Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-C.....Respondent

v.

Shaylyn R. Anderson; Kelsney Ridge Homeowner's Association, Inc.; SC Housing Corp., Defendants

Of Whom Shaylyn R. Anderson is the.....Appellant

BRIEF OF RESPONDENT

Albertelli Law

William S. Koehler  
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(803) 828-0880  
Attorneys for Respondent

December 2, 2019

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## **TABLE OF AUTHORITIES**

### **Cases**

Arrow Bonding Co. v. Warren, 399 S.C. 603, 607, 732 S.E.2d 622, 624 (2012)

Buist v. Buist, 410 S.C. 569, 574, 766 S.E.2d 381, 383 (2014)

NCNB S.C. v. Floyd, 303 S.C. 261, 264, 399 S.E.2d 794, 796 (Ct. App. 1990)

Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006)

Tiger, Inc. v. Fisher Agro, Inc., 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989)

Wells Fargo Bank, NA v. Turner, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008)

### **Rules**

SCACR 210

Rule 5, SCRCP

### **Other Authorities**

Administrative Order 2011-05-22-01

**STATEMENT OF ISSUE ON APPEAL**

After a default hearing the Master in Equity entered an order foreclosing on a note that was secured by a mortgage on Appellant's property. In the Master's findings, he held that Respondent complied with the South Carolina Supreme Court's Administrative Order 2011-05-22-01. Did the Master in Equity err in finding that Respondent complied with that Administrative Order?

## STATEMENT OF THE CASE

This case is a foreclosure of a Note and Mortgage given by Appellant Shaylyn R. Anderson to Respondent's predecessor on May 4, 2017 (Judgment of Foreclosure and Sale, Pp. 1-2). Respondent's predecessor initiated the foreclosure action with the filing of a Summons, Complaint, Lis Pendens and Notice of Right to Foreclosure Intervention on September 25, 2018 (Id., P. 1). At the time of the filing of the Complaint the Note and Mortgage were delinquent and due for the payment due April 1, 2018 and all payments due thereafter (Id. P. 5).

On September 28, 2018 Appellant was personally served with the Summons, Complaint, Lis Pendens and Notice of Right to Foreclosure Intervention (Affidavit of Service). Appellant was served at the property subject to the Mortgage and this action, 26 Saughtree Lane West, Elgin, SC (Id.). Appellant did not answer the Complaint, and Plaintiff filed a Certificate of Default on January 4, 2019 (Certificate of Default). On January 4, 2019 Plaintiff filed a Certificate of Exemption from Administrative Order 2011-05-02-01 stating that Appellant had "been served with the required Notice of Intervention ... and had failed, refused or voluntarily elected not to participate ... by failing to respond to Plaintiff or Plaintiff's counsel" (Certificate of Exemption).

The case was referred to The Honorable Jeffrey M. Tzerman as Master in Equity for Kershaw County by order dated January 7, 2019 (Order of Reference). A hearing was set for June 4, 2019. A Notice of Final Hearing was served on Appellant by U.S. Mail on May 24, 2019 (Notice of Hearing).

Appellant did not appear at the hearing, and the Court entered a Judgment of Foreclosure and Sale ("Judgment") on June 4, 2019 (Judgment). The Judgment found, *inter alia*, Respondent has fully complied with Supreme Court Administrative Order 2011-05-02-01 (Judgment p. 2, ¶ 7); Appellant received Notice of Hearing (Judgment, P. 2, ¶ 9); Payment due under the Note was not

made, and the loan was due for the April 1, 2018 payment and all subsequent payments (Judgment, Pp. 4-5, ¶ 17, 19).

On June 4, 2019 the Master in Equity also executed a Notice of Sale directing the property be sold on July 1, 2019 (Notice of Sale). The Notice of Sale was published in the Chronicle-Independent on June 14, June 21 and June 28, 2019 (Affidavit of Publication). The property was sold on July 1, 2019, and Respondent was the high bidder.

### **STANDARD OF REVIEW**

A foreclosure action sounds in equity. Wells Fargo Bank, NA v. Turner, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008). In such cases, this Court reviews the decision below based on its own view of the preponderance of the evidence. Tiger, Inc. v. Fisher Agro, Inc., 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989). Despite this latitude, the appellate court should "not disregard the findings of the Master, who saw and heard the witnesses and was in a better position to evaluate their credibility." Id.

On appeal, Appellant bears the burden of proving that the Master's findings were in error. Arrow Bonding Co. v. Warren, 399 S.C. 603, 607, 732 S.E.2d 622, 624 (2012)

### **ARGUMENT**

#### **I. NO ISSUES REGARDING THE JUDGMENT OF FORECLOSURE AND SALE WERE PRESERVED FOR APPELLATE REVIEW**

Appellant was served with the Notice of Hearing by mail on May 24, 2019. The Notice of Hearing was mailed to Appellant at the subject property, which was the same location she had been personally served with the Summons, Complaint and Notice of Foreclosure Intervention and the same address she has used in correspondence with this Court. "Rule 5(b)(1) SCRPC provides in pertinent part that where service is required upon a party, it shall be made by ... mailing it to

him at his last known address..." NCNB S.C. v. Floyd, 303 S.C. 261, 264, 399 S.E.2d 794, 796 (Ct. App. 1990) (*Internal quotation marks omitted*). Rule 5(b)(1) further provides "Service by mail is completed upon mailing" Rule 5, SCRCF.

Despite being served with notice of the foreclosure hearing, Appellant chose not to attend. Accordingly, Appellant did not raise any arguments or objections, so those issues are not preserved for review. "It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved." Buist v. Buist, 410 S.C. 569, 574, 766 S.E.2d 381, 383 (2014) *Citing* Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006).

## II. APPELLANT CANNOT INTRODUCE EVIDENCE FOR THE FIRST TIME ON APPEAL

In Appellant's Designation of Matter she identifies an alleged Loan Modification Agreement. This document was never provided to the trial court. "The Record shall not, however, include matter which was not presented to the lower court or tribunal." SCACR 210

## III. APPELLANT CANNOT CARRY HER BURDEN SINCE THE ONLY EVIDENCE IN THE RECORD IS CLEAR THAT RESPONDENT COMPLIED WITH ADMINISTRATIVE ORDER 2011-05-22-01

If the Court is inclined to conduct an evidentiary review, the Appellant cannot carry her burden because the only items in the record support the Master's conclusion that Respondent complied with Administrative Order 2011-05-22-01 (Judgment P. 2, ¶ 7).

The Administrative Order states "the Mortgagee's attorney shall serve on the Mortgagor, along with the summons and complaint, a notice of the Mortgagor's right to foreclosure intervention." Respondent did this as evidenced by the Affidavit of Service on Appellant. The Administrative Order continues, in relevant part "If within thirty days after having been served

with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify that fact to the Court, and the foreclosure action may proceed." Respondent certified this to the Court, through counsel, as required on January 4, 2019.

This is the entirety of the evidence available, and the Master ruled correctly.

**CONCLUSION**

The Court should affirm the Master in Equity's Judgment of Foreclosure and Sale because Respondent fully complied with the 2011 Administrative order, because all of the evidence before the Master in Equity supported his findings and because no legal or factual issues were raised by Appellant despite her receiving Notice of the Hearing. The Court should affirm for any or all of these reasons.

Respectfully submitted,

Albertelli Law



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Attorneys for Respondent

December 2, 2019

THE STATE OF SOUTH CAROLINA

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APPEAL FROM RICHLAND COUNTY

Honorable Jeffrey M. Tzerman, Master in Equity

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v.

Shaylyn R. Anderson; Kelsney Ridge Homeowner's Association, Inc.; SC Housing Corp., Defendants

Of Whom Shaylyn R. Anderson is the.....Appellant

CERTIFICATE OF MAILING

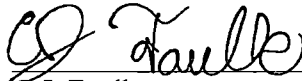
The undersigned hereby certifies that he is an employee of Albertelli Law and is a person of such age and discretion to be competent to serve papers.

That on the 2<sup>nd</sup> day of December 2019 he served copies of Respondent's Initial Brief and Designation of Matter by placing said copies in a postage paid envelope addressed to each of the following persons at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

Pleadings:  
Parties Served:

Respondent's Initial Brief and Designation of Matter

Shaylyn R. Anderson  
26 Saughtree Lane W.  
Elgin, SC 29045



---

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December 2, 2019

V. Claire Allen  
Deputy Clerk, The South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Wilmington Saving Fund v. Anderson  
Appellate Case No. 2019-001269

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Dear Ms. Allen,

Enclosed please find Respondent's Initial Brief, Designation of Matter and Certificate of Service for this case. Please do not hesitate to contact me if you have any questions.

Thank you,

A handwritten signature in cursive script that reads "William S. Koehler".

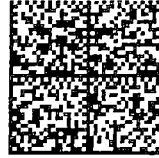
William S. Koehler


CC: Shaylyn R. Anderson

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**IF YOU ARE A DEBTOR IN BANKRUPTCY OR HAVE BEEN DISCHARGED IN BANKRUPTCY THIS IS NOT AN ATTEMPT TO COLLECT A DEBT FROM YOU PERSONALLY BUT AN ATTEMPT TO ENFORCE PLAINTIFF'S LIEN.**

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