

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Dale van Slambrook, Master-In-Equity Court Judge

Appellate Case No. 2019-001572

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

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SC Court of Appeals

v.

Nehemiah Bryant, Appellant.

AMENDED APPELLANT INTIAL BRIEF

I Am: Nehemiah Bryant
Authorized Representative
Nehemiah Bryant, Appellant
151 Saint Jhons Bethal Street
Moncks Corner SC, 29461
(843) 813-8572

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGEMENT OF FORCLOSURE WITHOUT SUFFICIENT VALIDATING EVIDENCE?
2. DID THE TRIAL COURT VIOLATE MY CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW?
3. DID THE TRIAL COURT VIOLATE MY CIVIL RIGHTS BY ACTING UNDER AN ABUSE OF DISCRETION UPON AN ERROR OF LAW?
4. DID THE TRIAL COURT HAVE JURISDICTION?

STATEMENT OF THE CASE

1. On June 25 2019 I Nehemiah Bryant Motion for Recusal at the rule to show cause hearing. The Master- IN-Equity was biased and abused his discretion in his determination it is a fact before the court makes a ruling they are required first to find out there are any conflicts of interest, Dale Van Slambrook took it upon himself to ignore the facts that 1. He was named in a Law Suit filed in federal Court and 2. the fact that I made it clear that it was a conflict of interest for him to hear the case based on him being biased first by denying my Jury Trial request which is a guarantee under our constitutions, Second my discovery which under the rules SCRPC and FRCP 26 can ask for discovery before or even on the day of the trial and third there was no Notice that this would be a

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final trial. It is irrefragable that the constitutions protects my right to Due process before my property could be claimed See SWEEZER v. GREEN, 360 Mo. 1249 (Mo. 1950).

2. Proper Service requires personal service. See State v. Sullivan 127 S.C. BB&T v. Taylor An act is willful if done voluntary and intentionally with the specific intent to fail to do something the law requires to be done; with bad purpose either to disobey or disregard the law Wilson v. Walker furthermore, the person allegedly providing the service, upon information and belief, is not the sheriff or his deputy or any other duly constituted law enforcement officer, the Affidavit is not according to Law and I Contested its validity it must be properly sworn in under oath in Order to be relevant evidence Rule 401; My action are out of necessity and not disregard. This is not only an injury to me and family but to the public

. 3. Dale Van Slambrook (Master in Equity) made a summary JUDGEMENT on October 18 2016 and ordered the unlawful sale of my private property to commence on June 28 2019, without ever obtaining any documents that validated any loan was ever issued or that the alleged defendant was the holder in due course of the alleged documents.

FACTS

1. The facts of this case are that Dale Van Slambrook, By Virtute Officii, color of law and Breach of Trust caused me great injury through abuse of office and negligence according to law he was Obligated Under Law and the Judicial Cannons 3 to recuse himself for the conflict of bias and him being named in a ongoing federal Suit. Thomas A. Shook and Rocktop Partners I LP Using Fraud, Negligence, Slander, Breach of Trust, unprofessional

Conduct, Conflicts of interest and unfair practices deprived me of my constitutional secured rights to DUE PROCESS OF LAW, THE 5th, 6th and 9th amendments of The Constitution for The United States of America Republic and The South Carolina Constitution Article 1 Sections 1, 2, 3, 4, 10, 11, 13, 14, 16, 22, 23 by:

2. The State of South Carolina Senate Bill 702 specifically states, The Servicer Rocktop Partners I LP owes the homeowner the duty of utmost care, honesty, loyalty and full disclosure of all material facts, also see Rule 26 of the Federal Rules of Civil Procedure. I have been denied my right to multiple available remedies in state court. Furthermore as lawfully stated in Senate Bill 702, I was never given anything or told about any Mediation process.
3. The courts were made into a Court of Ambush denying me of rights that would not have placed an undue burden on the Plaintiffs or the court the holding is obvious who are the true holder is in due course. Merely having paperwork doesn't mean you have a legitimate claim. This is why I requested and demanded the Plaintiff produce discovery
4. In Carpenter v Longen it stated the requirements quite plainly. The Supreme Court decision "clearly supports the notion that the Plaintiff must own the Note and Mortgage at the time the Complaint was filed. South Carolina is a Lien Theory State the plaintiff has the Obligation of Showing Jurisdiction and that they have the right to collect a debt" Thomas A. Shook and

Rocktop Partners I LP never proved this after several of my attempts through original discovery Documents to obtain the material facts and other supportive evidence showing where the alleged money came from and factually did Rocktop Partners I LP actually lose anything.. Using false or fraudulent evidence involves a corruption, see United States v. Agurs , see also Miller v. Pate, Darden v. Wainwright, Improper Argument and Manipulation or misstatement of evidence violates due process, Cf. Mesarosh v. United States.

Rocktop Partners I LP has proved no valid claim. I have claim to sue the bond of Dale Van Slambrook. Also bring suit against Rocktop Partners I LP, Thomas A. Shook for engaging in unprofessional Conduct, fraud and Negligence. Statute of Frauds SECTION 32-3-10. Agreements required to be in writing and signed.

No action shall be brought whereby:

- (1) To charge any executor or administrator upon any special promise to answer damages out of his own estate;
- (2) To charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person;

If the lawsuit is based upon a loan you must allege that the loan was made. If their action is based upon acquisition of the loan you still must allege that the loan was made and that they actually paid for acquisition of the loan. Otherwise the claim is speculative, fraudulent and cannot invoke the jurisdiction of the Court. Without that the second requirement is impossible to meet — that you have

suffered damages as a result of the making the loan and the borrower not repaying it. These are not mere empty recitals. Without them, no lawsuit can continue.

The basis for a trial in which the evidence would be presented would be the Sworn Affidavits and Complaint. If the Complaint requires that ownership of a real loan be present at the time the Complaint is filed then the Court's jurisdiction has never been invoked. The Court has no choice as it is plain on its face that there has been a deprivation of my rights and civil liberties. And the reason for this is that it is very well-settled that when you bring a matter to court that there must be an actual controversy and a plea for relief that can be legally granted.

- a. " Fed. R. Civ. P. 56(e)(1). A party who submits evidence in the form of affidavits must do so in the proper, authenticated form. Even at a preliminary stage of trial, courts should not permit admission of documents that do not strictly comply with procedural rules. It is imperative that a party's sworn submission be sufficient in execution and substance, as well as consistent with prior assertions, to ensure the integrity of the process.
- b. The Courts and Practitioners also should examine opposing counsel's submissions and move to strike any that do not meet the clear standards set forth for admissible affidavits and sworn statements.
- c. The mere signing of a statement in the presence of a notary, or a notary's placement of an "acknowledgment" on a statement, does not constitute a sworn statement or affidavit. In *Orsi v. Kirkwood*, 999 F.2d 86, 91 (4th Cir. 1993),

Furthermore *Harlow v. Fitzgerald* (points) inter alia= among other things. Executive officials in general are usually entitled to only qualified or good faith immunity. Such immunity is not available if the official asserting the defense took the action with malicious intention to cause a deprivation of constitutional rights or other injury see *Wood v. Strickland*.

Constitutional requirements of due process apply to garnishment and prejudgment attachment procedures whenever state officers act jointly with a private creditor in securing the property in dispute. *Sniadach v. Family Finance corp.*

The U.S. and State Supreme Court has apparently never retreated, from the precedent and merits set in the South Carolina Supreme and Appeals court Cases *See, e.g., Franklin Credit Mgmt. Corp. v. Nicholas*, 73 Conn.App. 830, 812 A.2d 51, 57-58 (2002) ("In a mortgage foreclosure action, to make out its prima facie case, the foreclosing party had to prove by a preponderance of the evidence that it was the owner of the note and mortgage and that the [defendant] had defaulted on the note.") (internal quotations omitted) (internal citations omitted); *Campaign v. Barba*, 23 A.D.3d 327, 805 N.Y.S.2d 86, 86 (N.Y.App.Div. 2005) ("To establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and mortgage note, ownership of the mortgage, and the defendant's default in payment."); *In re Foreclosure of Real Prop, for \$143,600.00*, 156 N.C.App. 477, 577 S.E.2d 398, 406 (2003) ("In a foreclosure proceeding, the lender bears the burden of proving that there was a valid debt, default, right to foreclose under power of sale, and notice."); 55 Am. Jur. 2d *Mortgages* § 604 ("[T]he burden of proof of any particular issue rests upon the party asserting the affirmative of that issue under the pleadings."); *cf. Paramount Fund, Inc. v. Cusaac*, 282 S.C. 497, 499, 319 S.E.2d 354, 355 (Ct.App. 1984) (holding the mortgagee has the burden of proving a disputed mortgage by the preponderance of the evidence).

Injury:

1. Due to the above mentioned facts the failure of the court to recognize that they must apply the rules of law resulted not only in the foreclosure of my property, but the foreclosure of my ability to negotiate a settlement with an undisclosed equitable creditor, or with the alleged legal owner of the loan in the property records. We (my family) have suffered extreme mental anguish and loss of time from work including but not limited to doctor visits and extreme migraines, I have also suffered from an extreme miscarriage of justice and inequity, being that Dale Van Slambrook has caused my home to be listed for sale by color of law. And my family has undergone tremendous stress and tension By Dale Van Slambrook fraudulent actions and Thomas A. Shook fraudulent, wanton and negligent practices. Everyone must have equal access to the courts under the Human Rights Act. There is also the right to a fair and public hearing. Citing: *Montgomery vs State*; The duty rest upon all courts, " State and federal, to guard, protect, and enforce every right granted or secured by the Constitution whenever such rights are involved in any proceeding before the court and the right is duly and properly claimed or asserted. | Nehemiah Bryant, Appellant claim my rights secured to me by Section 16-5-10 Conspiracy against Civil rights sections 16-5-20, 16-5-30 Duty and Liability, Section 16-5-60 Suits against County for Damages to person or Property resulting from violations of persons civil rights

Relief

WHEREFORE, I the Appellant (s) would like the court to grant a new, fair and impartial trial to have a chance to void and vacate the court order(s) based on the established precedents of the stare decisis voiding the Rule to Show Cause Order and resolve this Matter Peacefully if Possible, if Representing Rocktop Partners I LP cannot produce evidence that I did not produce proper evidence before the court to support they have no knowledge pertaining to the Conflicts of interest. And request/Pray judgment against defendant(s) Representing Rocktop Partners I LP, Dale Van Slambrook and Thomas A. Shook for economic, Civil Tort, damages and psychological damages as well as compensatory damages of \$150,000.00 plus costs and fees in the Amount of \$5000.00 and respectfully ask this Court for leave to move for punitive damages. I was violated by fraud, negligence, unprofessional Conduct and never contacted about any mediation process or given the proper notices that would have allowed me the ability to properly negotiate. Which caused a deprivation of my civil liberties; and constitutional secured rightst to Due process and a fair and impartial trial.

ARGUMENTS

- I. Respondent Thomas A. Shook Representing Rocktop Partners I LP has not proven that he/she/ or the Corporate organization has suffered any Personal Financial injury for which relief can be granted with any factual documentation to date.

- II. Respondent Thomas A. Shook Representing Rocktop Partners I LP has repeatedly violated my Civil Liberties and denied me my Constitutionally Secured Rights to Due Process by Testifying that they produced LEGAL and LAWFUL request made by Affidavits Rule 56 (e) issued under the

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FRCP.

III. Respondent Thomas A. Shook Representing Rocktop Partners I LP introduced a witness in this alleged matter to which I have no contract with as well as the court going forward on a rule to Show Cause hearing when the respondents and Judge are named in a ongoing federal Suit.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Master IN Equity Court and I pray grant me a New Trial.

Respectfully submitted,

February 19, 2020

I Am: Nehemiah Bryant
Authorized Representative
Nehemiah Bryant, Appellant
151 Saint Jhons Bethal Street
Moncks Corner SC, 29461
(843) 813-8572

PROOF OF SERVICE FOR MOTION TO EXTEND TIME

THE STATE OF SOUTH CAROLINA
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APPEAL FROM BERKELEY COUNTY
MASTER-IN -EQUITY COURT
Dale van Slambrook, Master-In-Equity Court Judge

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PROOF OF SERVICE

I certify that I have served the AMENDED APPELLANT INTIAL BRIEF to Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-C Rocktop Partners I LP and Dale Van Slambrook by depositing a copy of it in the United States Mail, postage prepaid, on February 20th, 2020, addressed to Rocktop Partners I LP and Dale Van Slambrook, 300 CALIFONIA DR, # B, Moncks Corner, S.C 29461 [by personally delivering a copy of it to his Clerk of record, _____, at her office at 300 CALIFONIA DR, # B, Moncks Corner, S.C, 29461 on February 20th, 2020].

February 20th, 2020

Nehemiah Bryant, Appellant
151 Saint Jhons Bethal Street
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