

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2019-001572

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Master-In-Equity Court Judge

APPELLANT INTIAL BRIEF

Allutte Jones, Appellant,

v.

Mikell R. Scarborough, NBSC/SYNOVOUS BANK,
Judge DANIEL MARTIN JR, CASDELL SINGELTON,
Representative Andrew Sullivan
SRP 2011-6 LLC and others

RECEIVED
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SC Court of Appeals

I Am: _____

Authorized Representative
Allutte Jones, Appellant
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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. RP 2011-6 LLC Affidavit is contested for a lack of Procedural due process Mikell R. Scarborough; By a Breach of Trust caused me great injury as well through a wrongful foreclosure and abuse discretion. *Mikell R. Scarborough*, Repersentive, Andrew Sullivan, SRP 2011-6 LLC Using Fraud, Negligence, Slander, Breach of Trust, unprofessional Conduct and unfair practices deprived me of my constitutional secured rights to DUE PROCESS OF LAW, THE 14th amendment equal protection AND South Carolina Constitution Articles 1 Sections 1, 2, 3, 4, 22, 23; This court lack Jurisdiction they knew it and still went forward with the evidence filed in the case that there was not proper service to gain personal jurisdiction. There was no such right to foreclose without Jurisdiction
2. Affidavits submitted by a party must be made on personal knowledge and must set forth facts that would be admissible in evidence. Rule 56(e)(1), FRCP. Just as the requirements for the form of a statement should not be relaxed, evidentiary requirements also should be strictly enforced. Failure to analyze the substance of an affidavit, in light of the requirements of the Rules of Evidence, can undermine the integrity of the process.

FACTS

3. State of South Carolina Senate Bill 702 specifically states The Servicer, SRP 2011-6 LLC, *MBS/SYNOVOUS BANK and its representatives* owes the homeowner a duty of utmost care, honesty, loyalty and full disclosure of all material facts: also see Rule 26 of the Federal Civil Procedure. A form of practice may not defeat a federal right. *Brown v. Western Ry. of Ala.*, 338 U.S. 294, 70 S. Ct. 105, 94 L. Ed. 100 (1949). I have been denied my right to available remedies in state court because they refuse to review relevant evidence FRCP 401.

4. I was not personally served or told about the Mediation process. Mikell R. Scarborough has ordered the fraudulent sale of my property violating my Civil Liberties without a proper investigation of the evidence therefore any rulings, orders and judgements are void Ab Initio. And that inevitably leads to questions of who owes what? Who is the true holder is in due course? Merely having paperwork doesn't mean you have a legitimate claim or the right to foreclose 3. SRP 2011-6 LLC, *MBS/SYNOVOUS BANK and its representatives* never proved this after I Allutte Jones Contested the Jurisdiction and the Affidavit to obtain the material facts and other supportive evidence showing where the Court Jurisdiction came from did, SRP 2011-6 LLC actually have personal Jurisdiction without serving the Summons and complaint personally to I Alluette Jonse.

5. Using false or fraudulent evidence involves a corruption *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*. SRP 2011-6 LLC, *MBS/SYNOVOUS BANK and its representatives* have no valid claim. The fraud and deprivation of my constitutional rights by, abuse of discretion and negligence to follow the proper procedural Due process. I have a claim to sue the bond of Mikell R. Scarborough., and also SRP 2011-6 LLC, *MBS/SYNOVOUS BANK and its representatives* for engaging in unprofessional Conduct fraud and wrongful Foreclosure. 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 it 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 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 you bring a matter to court that must be an actual controversy and a plea for relief that can be legally granted. Article 1 section 23 of the state constitution is mandatory furthermore did they indeed have a personal financial injury? 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).

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 providing the service, upon information and belief, is not the sheriff or his deputy or any other duly constituted law enforcement officer, My action are out of necessity and not disregard. This is not only an injury to me and my family but to the public.

“The court is to protect against any encroachment of constitutionally secured liberties.” Frost v. Railroad Commission of California, 271 U.S. 583. Due Process must be invoked before removing rights secured under the constitutions, Citing State v. Earle, 44 S.E. 781 (S.C. 1903) Supreme Court of South Carolina. These principles are recognized and followed by the Supreme Court of the United States. In *Turpin v. Lemon*, 25 Sup. Ct. Rep., 20, the Court quotes with approval the following definition of due process of law found in *Hagar v. Reclamation Dist.*, 111 U.S. 701: "It is sufficient to observe here that by 'due process' is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and whenever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty or property which may result in the deprivation of either, without the observances of those general rules established in our system of jurisprudence for the security of private rights.

I Allutte Jones Am Contesting the Affidavit by authority of Rule 56(e)(1), FRCP 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.

6. The U.S. Supreme Court has apparently never retreated, from the precedent and merits set in federal rules of civil procedure 4 D this means that this issue was decided years ago, it is the law of the land and it overrides any state court that would rule otherwise.

7. In order to establish standing, three elements must be established. First, the party must have suffered an injury in fact---an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of---the injury has to be fairly traceable to the challenged action of the adverse party and not the result of independent action of some third party not before the court. Third, it must be likely as opposed to merely speculative, that the injury will be redressed by a favorable decision. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992); *Chambers Medical Technologies of*
8. An abuse of process and malicious prosecution by SRP 2011-6 LLC, *MBS/SYNOVOUS BANK*, its representatives and Judge Mikell R. Scarborough Charleston County Clerk of Court, The Trier of Fact, And the Trier of the Case willfully filed an alleged civil action in conspiracy with an agent for alleged "Plaintiff", with no valid Affidavit or evidence to support the claim is clear "Fraud by the Court" and its officials which is unlawful and void. The Plaintiff cannot meet the requirements to establish Standing, and did not take an oath according to Rule 603 of the federal civil procedure and South Carolina Civil procedure Rule 30. Therefore the Affiant has not entered any valid testimony or factual injury. Judge is charged to know without Full Due process of law, evidence or factual testimony in connection to the alleged claim the court order is void. And is a violation of I Alluette_Karen Jones Civil and personal Liberties.
9. I Alluette_Karen Jones Object to the Testimony without Discovery and a proper investigation, Notice, Service and Judicial review Article 1 Section 22 SC CON, Further Though I am not an Attorney I have in the past had Valid pleadings and notices to show the plaintiff's representation which were ignored by the Master IN Equity. See. *Boag vs Mcdougall*.
10. I found fraud in the instruments called Contract it does not identify a valid debt by its own written testimony states the plaintiff gave credit which is not money or valid to satisfy a contract. No one has yet produced an evidence of Moneta being exchanged that has obligated me. I have on occasions produced Notices of my concerns and desires about not getting a valid Discovery. I have found through research and study That Mers Was the assigner which is clear fraud.
11. SC Con Article 1 Section 3 the privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

12. Where a party submits an affidavit to the court that contains information inconsistent with the party's prior deposition testimony or other sworn submission, courts hold that these contradictory affidavits should be disregarded as "shams" or "competing affidavits." See *Margo v. Weiss*, 213 F.3d 55, 63 (2nd Cir. 2000); *Rohrbough v. Wyeth Labs. Inc.*, 916 F.2d 970, 976 (4th Cir. 1990); *Martin v. Merrell Dow Pharms., Inc.*, 851 F.2d 703, 705 (3rd Cir. 1988). C Further a federal and State agency cannot in manner through administrative convenience adopts a regulation or through nonfeasance permits under the color of State and federal law inferior authorities to deny my secured Constitutional rights or ignores Congress' intent.

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*.

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:

Due to the above mentioned facts the failure of the court to recognize that they must apply the rules and laws that apply resulted not only in no personal Jurisdiction, the wrongful 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 have suffered extreme mental anguish further including but not limited to doctor visits and extreme migraines caused by a smoke do to the stress and the fire on the alleged day of Service. We have also suffered from Slander Mikell R. Scarborough has caused my home to be listed for sale, by color of law. And my family and I have undergone tremendous stress and tension By the defendants fraudulent actions and negligent practices.

Relief

WHEREFORE, the Appellant (s) would like the Affidavit to be Stricken and disregarded by the court granting a new fair and impartial trial to cause the plaintiff to prove their burden of proof, also void and vacate the court order(s) based on the established precedents of the stare decisis voiding the sale of my home and resolve this Matter Peacefully if Possible And I request/Pray judgment against defendant(s SRP 2011-6 LLC, MBS/SYNOVOUS BANK, its representatives and Judge Mikell R. Scarborough, for Restitution, economic Civil Tort, and psychological damages as well as compensatory damages plus costs and fees and respectfully ask this Court for leave to move for punitive damages. I was violated by fraud, negligence unprofessional Conduct, lack of service and never properly noticed or contacted about the 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 rights. To Due process and a fair and impartial trial.fair and impartial trial.

ARGUMENTS

- I. Respondent Mikell R. Scarborough, NBSC/SYNOVOUS BANK, Judge DANIEL MARTIN JR, CASDELL SINGELTON, Representative Andrew Sullivan SRP 2011-6 LLC and others has not proven that he/she/ or the Corporate organization has Properly Served the Appellant gaining Personal jurisdiction or suffered any Personal Financial injury for which relief can be granted with any factual documentation to date.

- II. Respondent Mikell R. Scarborough, NBSC/SYNOVOUS BANK, Judge DANIEL MARTIN JR, CASDELL SINGELTON, Representative Andrew Sullivan SRP 2011-6 LLC and others have repeatedly violated my Civil Liberties and denied me my Constitutionally Secured Rights to Due Process by falsely Testifying that they produced LEGAL and LAWFUL request made by Affidavits Rule 56 (e) issued under the FRCP.

- III. Respondent Mikell R. Scarborough, NBSC/SYNOVOUS BANK, Judge DANIEL MARTIN JR, CASDELL SINGELTON, Representative Andrew Sullivan SRP 2011-6 LLC and others introduced a fraudulent evidence in this alleged matter to which I have not been served as well as the court going forward on a rule to Show Cause hearing when the respondents and Judge have both denied the evidence I have and provided the court on a Rule 60 (b) (4) motion which is a matter of right and not a Judges Discretion.

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,

March 7, 2020

Allutte Jones, Appellant

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