

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

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JUN 11 2020
SC Court of Appeals

Thomas E. Player, Jr., Special Referee

Case No. 2013-CP-43-153

Appellate Case No. 2018-001277

Donna Erickson,

v. Respondent,

Felicia Ruff

Appellant

APPELLANT'S RESPONSE
to
RESPONDENT'S MOTION TO STRIKE

Respondent, Donna Erickson, hereby moves to strike certain materials contained in

Appellant's Designation of Matter to be Included in the Record on Appeal and certain portions of Appellant's Brief, filed November 19, 2019.

In response to this Motion to Strike:

1. It has been stated that Appellant has filed three separate Designations of Matter. This is a fact. However, all three Designations of Matter, contain the same information, just in different references and in different number sequences. This Motion to Strike is a waste of time and tax payer dollars. The Respondent's own Motion to Strike, nos. 1-6, it clearly states that each designation of matter, (even though, alleged to be different), are similar. Had The Court of Appeals, any discrepancies, they would have been expressed, along with the time frame to correct any such errors or unaccepted documents. The Court of Appeals, governs itself in Truth and Justice.

2. Appellant also sent a Designation of Matter, dated December 19, 2019, to Respondent's trial counsel, who has never made an appearance in this court and is not counsel on record. ANS.- Every correspondence Appellant, has received from the Court of Appeals, throughout this entire process, has cc: the trial counsel of record, Joseph K. Coffey, Jr. Appellant also inquired with the clerk of courts, as to the sudden unfamiliar name of Lewis Babcock L.L.P; and was informed that the two (2); (Coffey and Babcock) are one in the same legal "group."

3. This Designation of Matter, December 19, 2019, does not appear to have been filed. ANS.-- Appellant inquired with the Appellant, the December 19, 2019 Designation of Matter, was an attachment of resent (after corrections were made), and did not have to be

filed with the lower court.

EACH MATTER THAT RESPONDENT SEEKS TO STRIKE ARE AS
FOLLOWS:

A. 1. Transcripts of Proceedings on November 8, 2011: Appellant fails to identify the court in which this hearing was held and parties involved.

ANS. - The transcript in question is directly related to this matter. A hearing was held in the Magistrate Court on November 8, 2011, which the Respondent brought forth.

Respondent alleged that Appellant was arrears in "rent." In this hearing, Respondent was found to have been holding several money orders made out to Respondent for monthly mortgages paid. Respondent was instructed by the presiding Justice, to understand the difference between "mortgage" and "rent." Respondent was also instructed to understand the consequences of "false accusations," in a court of law. One can not hold mortgage

paid and wrongfully allege it's not being received. This gets at the heart of the credibility of the Respondent. Perjury. FRAUD. Not only will these transcripts prove that at the time and date of this hearing, Appellant was current in mortgage, (to include \$1,000.00 down payment), it will reveal the Respondent's lack of credibility . This transcript, also, directly addresses the "equity."

"Equity," (\$16,000.00), was spoken to, on several levels, and confirmed, on this day, (November 8, 2011) in Magistrate Court. The transcript includes several revelations, that would expose truth and provide justice.

Respondent withheld this vital information at the hearing on May 22, 2018. Is this not

FRAUD? For these reasons, the transcript should be included in the Record on Appeal and this designation should not be stricken.

A.2 Proof that I, the Appellant, have paid for the said property, in full.” First,

Appellant is not sure how to address herself. Is she the Respondent or the Appellant?

Not allowing the Appellant to submit proof of payment of 1455 Hidden Oaks Drive, is an absurd motion. This (proof that agreed upon asking price has been met) is the exact reason for the Appeal. This information was “withheld” in the hearing on May 22, 2018, again, getting at the heart of the credibility of the Respondent. In the Appellant’s opinion,

~~this action of “withholding” vital information (documents), should constitute FRAUD.~~

Such information, would have changed the dynamics of the decision rendered by the lower court. There are court transcripts, bankruptcy court documents, as well as postal money order receipts (all federal documents), that will confirm, full payment received, totaling the agreed upon amount, of \$18,000.00, in the original Contract of Sale, by Respondent. There are also cashier’s checks, drawn from the Appellant’s financial institution, made out to Respondent, for taxes paid, to be included in this “proof” of payment. Thus, under Rule 201(c), all of these documents should be included in the

Record of Appeal and this designation should not be stricken.

B.1 From the January 15, 2019 attached as Exhibit B: Order of November 2011

Appellant fails to identify the court that issued this order:

ANS.- This is repetitious of the previous Motion to Strike (A-1). The relevance of this transcript is directly related to this Appeal. The fact that the Respondent withheld this information, with clear knowledge of the hearing that she, Respondent, brought forth, constitutes FRAUD. As this document was not issued by the Circuit Court, it was issued

by the Magistrate Court. As this designated document was not presented to the Circuit Court, is the fraudulent actions of the Respondent and should not be stricken.

2. All receipts = proof of payment made by Ruff. Respondent does not identify which receipts to which this designation refers.

ANS.- This is another repetitious Motion to Strike; which speaks to itself. The Respondent is clearly not attentive to the facts herein. There are several repetitive Motion's to Strike. The Appellant will answer them all as expected. ALL RECEIPTS. As stated in a previous answer to the same Motion (A.2). There are federal documents that will prove Appellant has met the agreed upon asking price of said property in the original Contract of Sale. As these documents are directly related to the Appellant's appeal, it is absurd for the Respondent to Motion to Strike. As Appellant was not aware of any

hearing on May 22, 2018, Appellant did not appear. However, the question still remains; How is property that has been paid for, foreclosed on? FRAUD. Omitting facts of a case that would change the dynamics and alter a judge's decision is FRAUD. Thus, under Rule 201(c), all of these documents should be included in the Record of Appeal and this designation should not be stricken.

3. Bank draft of certified cashier's checks (proving Property taxes paid to Respondent)(similar designation made in 11/19/2019 and 12/19/2019 designations). Respondent does not identify a document to which this exhibit was attached.

ANS- This designation is self explanatory. Appellant initiated Property tax payments (as requested by Respondent and is law with rent to own properties) when Contract of Sale asking price, was met. This information was withheld in a May 22, 2018 hearing. This,

again, constitutes FRAUD. Had the

Respondent revealed this information at the alleged hearing, (which doesn't produce any transcripts) Appellant believes the decision of "Foreclosure," would not have been rendered. Thus, under Rule 201(c), all of these documents should be included in the Record of Appeal and this designation should not be stricken.

4. Several correspondences between Erickson and Ruff pertaining to proof of payment. (similar designation in 12/19/2019 document).

ANS.- This designation maybe vague, but necessary. The hand written correspondence, (breakdown of payments made, request to arrange a closing,)

will provide the facts that the Respondent was being paid, and has been paid in full. This is

the very reason for the Appellant's Appeal. The Appellant did not appear at the hearing before the Special Referee and did not submit any correspondence as evidence, because, Appellant was not aware of any such hearing. However, even in the Appellant's absence, had the facts been presented by the Respondent, the decision would not have been

Foreclosure.

This addresses the heart of the credibility of the Respondent, again. FRAUD. Thus, under Rule 201 (c), all of these documents should be included in the Record on Appeal and this designation should not be stricken.

5. Bankruptcy documents (payments made) Respondent did not appear at the hearing before Special Referee and did not submit bankruptcy documents.

ANS. - Appellant did not appear at the hearing, before the Special Referee, as a result of not being aware of said hearing. (which does not produce any transcripts, leaving

question of the of said hearing). However, the wrongfully obtained foreclosure decision, is the reason for the Appeal forehand. The bigger issue is, "How does One foreclose on a home that has been paid for?" FRAUD. The bankruptcy documents are necessary. Not only are they an undeniable, vital proof of payment made to the Respondent, the facts therein, again, get at the heart of the credibility of the Respondent. The Respondent alleges that she was not monetarily satisfied, because, "payments haven't been made, and agreed upon asking price, has not been met." The bankruptcy documents are (Federal) "proof," of payment and required for Appellant to prove her case. To Motion to Strike such documents, is absurd. Thus, under Rule 201(c), all of these bankruptcy documents should be included in the Record on Appeal and this designation should not be stricken.

6. Documented proof of agreement made between Erickson and Ruff's bankruptcy attorney for continued payment. Appellant did not appear at the hearing before the Special Referee and did not submit bankruptcy documents or any agreement between Erickson and Ruff.

ANS. - The Motions to Strike, are now apparently, redundant. I will answer, respectfully, as required. The Appellant did not appear at the hearing before the Special Referee, because, the Appellant was not aware of the "said" hearing. However, the bankruptcy documents in question, are required; not only to provide proof of the agreement made

between Erickson and Ruff's bankruptcy attorney, it also again, gets at the heart of the credibility of the Respondent. The Respondent alleges that the Appellant has not met the monetary agreement, the Respondent alleges that there was no agreement between herself and Ruff's legal counsel. The bankruptcy documents will reflect different, proving payments made, and, an agreement of continued payments, after dismissal of the

bankruptcy chapter. These bankruptcy documents will provide truth. The Appellant's bankruptcy attorney herself, would be more than willing to comply. Had Respondent presented these documents in "said" hearing, on May 22, 2018, the decision would not have been foreclosure. How does one foreclose on a home that has been satisfied?

FRAUD. Withholding vital fact proving information, that would change the dynamics of one's decision, is FRAUD. Thus, under Rule 201 (c), any alleged proof of agreement should be included in the Record on Appeal and this designation should not be stricken.

7. Handwritten correspondence from Erickson requesting that she pays taxes and Ruff pay her; since taxes were in Erickson's name.

ANS. - The Respondent claims, this is too vague. Vague or not, is personal opinion.

It clearly states, "correspondence from Erickson to Ruff, requesting that Ruff allows Erickson to pay taxes, since property taxes were Erickson's name." This is actually the procedure (seller pays taxes), with rent to own (for sale by owner), properties.

The Court of Appeals, requires all relevant information to make a sound decision. With that, unlike the Respondent, the Appellant will not withhold the information required to make her case, and The Court of Appeals to make a sound and just decision in this Appeal. Thus, under rule 201 (c), this document should be included in the Record on Appeal and this designation should be not be stricken.

C. From the November 19, 2019 Designation:

1. Order of May 10th, 2018. Appellant fails to identify the court that issued this order.

ANS. - This date if May 10th, 2018, was an error of dates. The Appellant was definitely referring to the May 22, 2018 hearing. I apologize to The Court of Appeals. This

designation should be struck.

2. Transcripts of Proceedings held November 2, 2018. Appellant fails to identify the court in which this hearing was held.

ANS. - This was an error of dates . I apologize to The Court of Appeals. This designation should be struck.

3.Proof of “extension” of contract of sale. Respondent did not appear at the hearing before the Special Referee and did not submit any proof of extension of the contract of sale.

ANS. - ~~As Appellant was not aware of “said” hearing, she was absent. However, even in~~ Appellant’s absence, Respondent had knowledge of and access to, ALL vital information requested to be included in the Record of Appeal, by the Appellant. This same information, if presented at the “said” hearing, (held in the Circuit Court, on May 22, 2018), by the Respondent, would have changed the dynamics of the decision making process and would not have resulted in “Foreclosure.” This fact, and the Motion to Strike these designations, again, gets at the heart of the credibility of the Respondent.

Withholding information pertinent to ANY case, is a crime. FRAUD. Thus, under Rule 201(c), this document should be included in the Record on Appeal and this designation should not be stricken.

In the Respondent’s own admission, included in her Motion to Strike, clearly she states, “With regard to the December 19, 2019 designation, the items numbered 2-6 were included in the previously filed Designations of Matter, just in various forms. Same Designations of Matter. Nothing different about the Appellant’s Designations of

Matter, but the number sequence and this designation should not be struck as set forth above.

In response to the limitations of the Record on Appeal, a party “should not include information that is not found in the record.” Had the Respondent’s “new” counsel researched this case thoroughly, it would have been discovered, that there is information found on record, (directly related), dating back November 08, 2011, Magistrate Court, Sumter, S.C. The transcripts from the Magistrate Court, were never submitted by the Respondent. The Appellant was not aware of “said “ hearing, and was absent. However, the Respondent was very much in attendance. Again, the real question is, “How does one Foreclose on a satisfied property?” FRAUD. The Respondent’s “new” legal defense, (another issue to be addressed), repeatedly speaks to the Appellant’s absence at a presumed hearing. This hearing doesn’t yield transcripts. There was vital information withheld. There is a clear urgency to strike the Appellant’s entire Designation of Matter, which is absurd. Or is it? If FRAUD was on the table, and I was a likely suspect , I’d seek to Strike a victim’s entire Designation of Matter, equally. In the admittance of the Respondent, (pg.5, paragraph 5), Toal, Jean H. Appellate Practice in South Carolina, (2d Ed.) p. 213. “[Parties] often have much more information about the case than appears in the record: however, courts are bound by what is contained in the record.” Every article in the Appellant’s Designation of Matter, is contained in the Record. Id. Moreover, the facts about the case “should liberally reference the record” because “when the court studies the briefs, it will refer to the record and will not just rely on the assertions of the parties.” Id. at 214. This fact was implemented by the Respondent

and her own "new" legal counsel. Thus, this designation (page 3 continuing on through the end of the paragraph on page 4 of Appellant's brief) should be included in the Record of Appeal and should not be stricken.

"On page 4 of Appellant's brief:" - A verbal agreement was entered into with the Appellant's bankruptcy attorney and Respondent, Donna Erickson. The exact name, Donna Erickson, has been included in this entry, as a result of the various addresses in referring to "her." In this particular passage of the Respondent's motion to Strike, "she" is referred to as the Respondent, and a plaintiff. This seems to be repetitious in the behavioral pattern of the Respondent; i.e., the legal counsel for the Respondent, has been (on record) Joseph K. Coffey, Jr. Esq. It is now, LEWIS BABCOCK L.L.P. Please refer to cover page of Respondent's Motion to Strike. "Appellant also sent a Designation of Matter, dated December 19, 2019, to Respondent's trial counsel, (highlight the following) who has never made an appearance in this court and is not on counsel of record. Please find enclosed, documents from the lower court, and the Court of Appeals, clearly ~~addressing Joseph K. Coffey, Jr., as counsel on record for the Respondent.~~ The content of the Respondent's characteristics, speaks volumes to her integrity. The facts to have been included, however, withheld, in the "hearing" on May 22, 2019, gets at the heart of Respondent's credibility. In the absence of the Appellant, the Respondent knew the facts. FRAUD was committed on the day of May 22, 2018. Had the Special Referee been given the "honest truth," on this day, Foreclosure would not have been the decision. How do you foreclose on a property that has been satisfied? Consciously withholding facts of a case, at a hearing, before a Special Referee, is how. Withholding information in ANY

case, should be considered a crime. There was a verbal agreement made between Appellant's bankruptcy attorney and the Respondent. There is documentation to confirm this agreement. If necessary, the Appellant is willing to request facts (person/document) be subpoenaed. Thus, this portion of Appellant's Brief should be included in the Record on Appeal and should not be stricken.

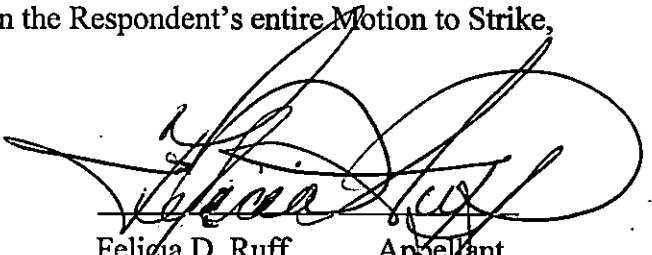
" Finally, page 5 of Appellant's Brief:" - Alleged phone call with an attorney (Joseph K. Coffey, Jr. Esq.) for the Respondent? Not an allegation. A phone conversation was had between the Appellant and this same attorney, as recent as February 23, 2020. A remittitur was sent to the Clerk of Sumter County on January 23, 2020. That remittitur was recalled on February 26, 2020. In between time, the Appellant was served by the Respondent, with a Writ of Assistance. In a brief conversation with Respondent's counsel on record (Joseph K. Coffey Jr., Esq.), Appellant was given until March 15, 2020 to vacate the premises. This fact directly addresses LEWIS BABCOCK L.L.P.'s, statement, "Respondent's trial counsel, who has never made an appearance in this court and is not counsel on record." Joseph K. Coffey, Jr., Esq., has been counsel on record from the start of these hearings, to as recent as March 2020 (please see enclosed documents). This is the Appellant's testimony. The Respondent's own "counsel on record," is the evidence in the record of this phone call and this portion of the Appellant's brief should not be stricken.

CONCLUSION

In violation of Rule 209, the Respondent, had knowledge and possession of filing materials or other evidences that was not presented to the Circuit Court, and "was not

presented to the lower court or tribunal.” This should constitute Fraud. The total confusion of who is on record as counsel for the Respondent, LEWIS BABCOCK L.L.P. or Joseph K. Coffey, Jr., Esq., should result in the Respondent’s entire Motion to Strike, dismissed, struck or disregarded.

June 3, 2020



Felicia D. Ruff Appellant
1455 Hidden Oaks Drive
Wedgefield, S.C. 29168
(803) 468-5364

1458 Hidden Oaks Ln.
Wedgetfield, S.C. 29168



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SC Court of Appeals

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
Post Office Box 11829
Columbia, South Carolina
29211