

*9 pages
to file*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

RECEIVED

Jun 24 2020

SC Court of Appeals

Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;
SC Housing Corp.; and Twin Creeks Homeowners Association,
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,
is the Appellant.

**NOTICE AND MOTION TO AMEND
PLEADINGS TO CONFORM TO PROOF**

Michelle Hodges, Pro Se Appellant
6 Young Harris DR
Simpsonville, SC 29681
864-714-5263
Certified mail to: PO Box 95
Mauldin, SC 29662

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1 AFFIRMATIVE DEFENSE

STATEMENT OF PRESERVATION OF CAUSES OF ACTION AND DEFENCE

Pursuant to Rule 6(b) of the SCRCP I am requesting this honorable court to allow me amend my Causes of action to conform to proof, and I mentioned in my initial brief, I was not allowed to Amend my 6th amended answer and the issue is preserved for review.

CAUSES OF ACTION AND DEFENSES

COUNT I - BREACH OF FIDUCIARY DUTY

1. I reiterate and hereby incorporate by reference all of the above statements and note that there is no dispute that the Note and Mortgage agreements existed and that the offer, acceptance, requirements and considerations are as stated, in this document. see Carolina Amusement Co., Inc. v. Connecticut Nat'l Life Ins. Co., 313 S.C. 215, 220, 437 S.E.2d 122, 125 (Ct. App. 1993). A valid offer "identifies the bargained for exchange and creates a power of acceptance in the offeree." Id. Further the performance on both parties demonstrates mutual acceptance.
2. The legal relationship of Agency arose under the Mortgage, whereby it requires that my Mother include the taxes and insurance items with the principle and interest payment and the lender is to segregate the escrow items into an account deemed to be the borrower's escrow account and the lender is to disburse those funds to the appropriate entities.
3. § 1.01 Agency Defined, Restatement (Third) Of Agency § 1.01 (2006)



Elements of agency. As defined by the common law, the concept of agency posits a consensual relationship in which one person, to one degree or another or respect or another, acts as a representative of or otherwise acts on behalf of another person with power to affect the legal rights and duties of the other person.

4. By signing the Mortgage and acting in accordance with its offer, acceptance, considerations and ascending to the Lenders authority to act on behalf of my Mother; my Mother became the Principal and Wells Fargo's payments to the proper entities, in accordance with the requirement, shows its acceptance of the roll of Agent.
5. Upon my Mother's passing , I became the Principal as the owner occupied Successor in interest, causing payments to continue to be paid to Wells Fargo and Wells Fargo continued to accept the payments on my behalf from SC Help and continued to disburse funds in accordance with the agreement, demonstrating its agreement to remain in the Agent roll.
6. Successor is defined by the US Consumer Financial Protection Bureau under its promulgate rules at 12 CFR § 1024.31 as: a person to whom an ownership interest in a property securing a mortgage loan subject to this subpart is transferred from a borrower, provided that the transfer is:
 7. (1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
 8. (2) A transfer to a relative resulting from the death of a borrower;
9. See ; *Fernander v. Thigpen*, 278 S.C. 140, 143, 293 S.E.2d 424, 426 (1982) ("
10. [A]gency may be implied or inferred and may be circumstantially proved by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal.").

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11. Due to the fact that Wells Fargo informed me of confidential information, concerning my Mother's loan balance and payment history, there were no prior problems with the loan, as the payments were properly credited, the taxes and insurance were properly paid and Wells Fargo gave my Mother an escrow refund, due to overpayment. I had reason to believe that Wells Fargo, would inform me, if there were problems with the loan and that it would act in good faith and with due regard to my interests.
12. So, I reposed a special trust in Wells Fargo by continuing to certify for assistance from SC Help, so that the payments would continue to go to Wells Fargo, as at all times my Mother, Daughter and I lived at the subject property, since the loan closing. My Mom passed away on 7/5/2015 and my Daughter and I still occupy the home.
13. Wells Fargo knew that I reposed a special trust in them, as I called them to inform them of my Mother's passing, provided them my Mother's death certificate, my Personal Representative document and explained that they would continue to receive payments from the SC Help program on my behalf and they did. Therefore, Wells Fargo knew it was no longer receiving payments on my Mother's behalf.
14. Because, I reposed a special trust in Wells Fargo, Wells Fargo had a fiduciary duty to inform me of any information they had that would be contrary to my rights and interests and a duty to act in good faith and with due regard to my interests.
15. Under the doctrine of respondeat superior, Wells Fargo is responsible for the acts of its employees, due to the legal relationship of master/servant. Wells Fargo is a corporation and has employees (names unknown) of the escrow department, whom were acting within the scope of their employment, when they used my escrow account to pay my property

(4)

taxes on 11/19/2016, per the mortgage agreement. The doctrine of respondeat superior rests upon the relation of master and servant. Lane v. Modern Music, Inc., 244 S.C. 299, 136 S.E.2d 713 (1964). A plaintiff seeking recovery from the master for injuries must establish that the relationship existed at the time of the injuries, and also that the servant was then about his master's business and acting within the scope of his employment. *Id.*”

16. Wells Fargo breached its Fiduciary duty to disclose to me that it had received a bill from the county tax collector's office to pay my property taxes at a 6% rate, which would change my legal relationship with Greenville County to one of being an owner of property, that was not occupied, as a primary residence.
17. see *Ellie v. Miccichi*, 358 S.C. 78, 100, 594 S.E.2d 485, 497, parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud.” *Ellie v. Miccichi*, 358 S.C. 78, 100, 594 S.E.2d 485, 497 (quoting *Anthony v. Padmar, Inc.*, 320 S.C. 436, 449, 465 S.E.2d 745, 752 (Ct.App.1995)).
18. Wells Fargo employees further paid the bill at a 6% rate breaching Wells Fargo's duty to act in good faith and with due regard my interests; as Wells Fargo knew on 11/19/2016, when it paid my property taxes at a non owner occupied rate; it had just credited the final payment from SC Help on 11/1/2016, for a total of all payments received of \$36,000.00 for an owner occupied property. And to that end, Wells Fargo knew that I had a right to pay my property taxes at a 4% rate and to keep my legal relationship with the County, as the owner occupant of a primary residence.

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19. A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one imposing the confidence.” In re Estate of Cumbee, 333 S.C. at 672, 511 S.E.2d at 394 (quoting Brown v. Pearson, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997)).
20. I did not condone Wells Fargo's conduct, as I had no knowledge of its Breach, until 5 months later when I went to the County of Greenville to discuss what appeared to be an over payment of property of my property taxes and got educated my rights to pay my property taxes at a 4% rate, instead of a 6% rate.
21. Wells Fargo cannot claim that I ratified their conduct, as all funds over my required tax payment, were returned to Wells Fargo. Further Wells Fargo cannot claim that I made a payment for April of 2017, ratifying their conduct, as I merely gave them back their own funds.
22. When an Agent acts adversely to the Pincipals interest, the Agent's actions are not imputed to the principal. See Little v. S. Cotton Oil Co., 156 S.C. 480, 483-84, 153 S.E. 462, 463 (1930) (“The general rule is that when an agent is engaged in a transaction in which he is interested adversely to his principal, the principal will not be charged with knowledge of the agent acquired therein.”). Under this exception, the wrongs of the agent would not be imputed to the principal and in pari delicto would not apply.
23. DAMAGES

24. Wells Fargo's conduct lead to my having to go the County and complete an application for legal residency to change my tax rate back to 4% and correct my legal relationship back to an owner occupant of a primary residence.

25. I lost time from work to research the matter

26. Punitive damages are in order

PROOF INCORPORATED BY REFERENCE

- a. Copy of escrow statement showing payment of property taxes at a 6% rate
breach of fiduciary not acting in good faith
- b. Copy of Legal Residency Application showing I had to reapply to change
Property tax rate back to 4%
- c. Last payments credited to the loan amounting to \$36,000.00 shows Wells received
payments from SC Help and Wells Fargo acceptance represents that it knew that it
was receiving payments on my behalf and is not disputed by Wells Fargo.

COUNT II – FRAUD

28. I reiterate all statements from above and incorporate by reference here.

29. Well Fargo had a duty to inform me that it had received a bill from the county tax collector office, as the bill was not in accordance with what Wells Fargo previously projected in its escrow statement and Wells Fargo had been paying my taxes at a 4% rate since the inception of the loan and this bill was contrary to my interest as 6% represents a property that is not owner occupied.

30. Instead of Wells Fargo informing of the bill, Wells simply informed me 5 months later that I had an escrow shortage.



Damages Punitive and injunctive and loss of income

AFFIRMATIVE DEFENSE

31. I hereby reiterate the above statements and incorporate all of the above by reference here.
32. Wells Fargo and its agents/attorneys have not acted equitably concerning this foreclosure, as it changed my legal status with the County of Greenville, to non owner occupancy, initiating a scheme to prevent me from being eligible for Foreclosure Intervention, as Well Fargo attorneys show they were agreement by filing a "Certificate of Non Owner Occupancy" with the court on 1/2/2017.
33. The document is a sham document and frivolous as has no basis in fact or law but states that it was filed concerning the South Carolina Supreme Court Administrative Order 2011-05-02-01.
34. The Foreclosure Intervention program is designed to help people that occupy their homes as a primary residence and Wells Fargo and its attorneys seek to defraud of my property and usurp the courts power to recommend Foreclosure Intervention.
35. Relief south denial of foreclosure. Equitable remedies are discretionary and courts can refuse an equitable remedy when a party has failed to act equitably. Id., citing Ingram v. Kasey's Assocs., 340 S.C. 98, 531 S.E.2d 287 (2000).
36. The South Carolina Court of Appeals applied the doctrine of unclean hands in Wachovia Bank v. Coffey, Op No. 4685, (S.C. Ct. App. Filed May 5, 2010)

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(Shearouse Adv. Sh. No. 18 at 64), to prevent a mortgagee from foreclosing on a home equity line of credit, without attorney supervision.

Wherefore I have set for all of my causes of action and defenses, I pray that the court will review these matters Denovo and rule in favor as to the preponderance of evidence.

Respectfully submitted,

Handwritten signature of Michelle Hodges in black ink, with the date 6/23/2020 written to the right of the signature.

Michelle Hodges, Pro Se Appellant
6 Young Harris Dr
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0.25/2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually et al..

CERTIFICATE OF SERVICE

NOTICE AND MOTION FOR LEAVE TO AMEND
PLEADINGS TO CONFORM TO RPOOF

I hereby certify that a copy of the above mention document was sent via first-class mail, with property postage and served on the following parties:

S. Sterling Laney, III, Esquire
Womble Bond Dickinson
For Wells Fargo Bank, N.A.
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Greenville, SC 29601


Bryant S. Caldwell, Associate
For Wells Fargo Bank, N. A.
1221 Main ST
Suite 1600
Columbia, SC 29201

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Jun 24 2020

SC Court of Appeals

Note: All other parties defaulted and SC Help no longer has an interest in this case as they have filed a satisfaction of mortgage as of September 2019.


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864-714-5263

For certified mail: PO BOX 95
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**MICHELLE HODGES
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MAULDIN, SC 29662
864-714-5263**

June 23, 2020

Jenny Abbott Kitchings,
Clerk of Court, of South
Carolina Court of Appeals
1220 Senate ST
Columbia, SC 29201

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Jun 24 2020

SC Court of Appeals


RE: Wells Fargo Bank, N.A. v. Michelle Hodges
Appellate - Case No. 2019-001565

Dear Ms. Kitchings:

Attached are the following documents:

1. Notice and Motion for Leave to amend pleadings to conform to proof
Number of pages: 9
2. Certificate of Service

Sincerely,


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