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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2019-001572

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

PETITION FOR WRIT OF SUPERSEDEAS OR OTHER EXTRAORDINARY RELIEF; S.C. App. Ct. R. 221, MEMORANDUM OF POINTS AND AUTHORITIES

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

v.

Nehemiah Bryant, Appellant.

IMMEDIATE STAY REQUESTED (of order prohibiting any further Proceedings during the pendency of this case, which calls for compliance starting on or before September 14th , 2020)

STATEMENT OF FACTS
NOTICE TO THE PRINCIPLE IS NOTICE TO THE AGENT NOTICE THE AGENT IS NOTICE TO THE PRINCEPLE!!!

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

I Nehemiah Bryant, Appellant respectfully move this Court to Inform me on the amount and to secure a Supersedeas Bond now files and PETITION FOR WRIT OF SUPERSEDEAS OR OTHER EXTRAORDINARY RELIEF; also pray the court grant S.C. App. Ct. R. 221, for an Stay to enjoin and Stay Respondents Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-C, Respondent(s),from any further Proceedings during the pendency of this case. This Motion for Stay is based on the following facts.

1. Master IN Equity abused his discretion upon errors of law; The Master in Equity did error in enforcing an order without determining if Jurisdiction was established and lawful consideration of the alleged contract. The Jurisdiction of the Court was not evoked because there was no Notice to Appellant or service of Process.

2. I have a right to my property and relief protected by our constitution, SC Con Article 1 Section3 and the United States Constitution 5th amendment due process of law, The CARES ACT, The State of South Carolina Judicial Foreclosure procedures, See; IN RE Mortgage Foreclosure Administrative Order (Order No. 2009-05-22-01); Executive orders 138192, Contracts, Trenchancy in Regulations and Guidance Documents.

3. The courts lack of jurisdiction The master has no power or authority except that which is given to him by the order of reference. See Rule 53(c), SCRCP ("[T]he order of reference to the master may specify or limit his powers and may direct him ... to do or perform a particular act...."); Bonney v. Granger, 292 S.C. 308, 356 S.E.2d 138 (Ct.App.1987) (a master has the same powers as a circuit judge unless the order of reference specifies or limits his powers); 76 C.J.S. References § 76 (1952) (a referee has no powers except those conferred by the order of reference).

Take Notice Citing: TRYON FED. SAVINGS LOAN VS. PHLEPS "A master may enter a final judgment without further order of the court if either the parties consent in writing, or the order of reference so provides. Rule 53(e)(1), S.C.R. Civ. P. Although the order may be appropriate, it is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are affected. *Insurance Co. of North America v. Hyatt*, 290 S.C. 159, 348 S.E.2d 532 (1986). If the judgment or order is taken without notice, the absent party may rightly ignore it and assume that no court will enforce it against his person. *Insurance Co. of North America v. Hyatt, supra* [citing *Koester v. Citizens' Publishing Co.*, 154 S.C. 154, 151 S.E. 452 (1930)].

RULE 62

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or

of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

II. PETITION FOR WRIT OF SUPERSEDEAS OR OTHER EXTRAORDINARY RELIEF; REQUEST FOR STAY

1. Petition for writ of Supersedeas is a matter of necessity do to irreparable harm that will incur from removing me from my home do to the following facts as stated above I was not properly Noticed or given full due process which caused Courts of ambush on all hearing(s) and order(s) causing bias for attorneys and Bidder. 2. Appellant likelihood of success on appeal is high do to multiple areas of procedural and Substantive Due process violation, Misconduct and issue of law; pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal and to prevent a contested issue from becoming moot. Rule 241(c)(2), SCACR. 3. Consent is needed by both parties and Maters powers are specified under order of reference and must be fulfilled in a timely manner according to law see above.

"Generally, the effect of a supersedeas or stay is to suspend proceedings and preserve the status quo pending the determination of the appeal or proceeding in error." *Melton v. Walker*, 209 S.C. 330, 336, 40 S.E.2d 161, 164 (1946).

A supersedeas or order lifting the automatic stay may be issued ex parte only where exigent circumstances require that action be taken before there is time for a hearing. An ex parte order shall issue only if: (A) it clearly appears from specific facts shown by affidavits or included in the verified petition that immediate and irreparable injury, loss or damage will result before the opposing party can respond; and (B) the moving party's attorney certifies in writing, as an officer of the court, the efforts which have been made to give notice, or the reasons supporting the claim that notice should not be required. Rule 241(d)(6), SCACR.

A. Parties
1. Nehemiah Bryant, Appellant

2. Dale van Slambrook, Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-C,, Respondents

B. Factual background

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 SCRCP 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 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.

C. Procedural background
1. June 25th 2019 Rule to show cause Hearing to contest Jurisdiction and recuse Judge.
2. September 2019 Filed Notice of Appeal
3. February 19th 2020 Filed Amended Initial brief Designation of Matter and Proof of Service
4. August 11th 2020
5. September 2 2020 27-37-80 Jury Trial Demand

1. My appeal raises substantial issues; I pray the court take note ad preserve my rights

    1. Contesting the affidavit for lack of service Supporting or opposing affidavits "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify to the matters stated." 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. Accordingly, practitioners should reexamine their affidavit forms and consider whether they are in compliance with the applicable rules and case law as to form. 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.

    2. Plaintiffs have filed a number of witness statements that Plaintiffs' counsel characterize as "affidavits," but they are not sworn to nor are they statements made under penalty of perjury.

    3. The plaintiffs' failure to present proper statements, made under penalty of perjury, warrant the court's disregard of the proposed "affidavits" and its granting of summary judgment in favor of the defendant/Appellant. Rule 60 (b) (4) is a matter of right and not in the discretion of the Judge.

    4. Personal Jurisdiction cannot be had without first being served the Summons and complaint; no notice or consent for Master IN Equity to hear Case from order of reference USC 28 636.

The Court has jurisdiction, and this petition is timely.
S.C. App. Ct. R. 241, (C) (3) and (D) (2); Section 18-9-170,see Wachesaw Plantation East Community Services Association, Inc., Respondent, v. Todd C. Alexander, Petitioner.

Our jurisprudence establishes that, despite the master-in-equity's issuance of a deed, an appellate court may reach the merits of the appeal. See Antrum v. Hartsville Prod. Credit Ass'n, 228 S.C. 201, 89 S.E.2d 376 (1955) (deciding on petition to set aside foreclosure sale and declaring deed to purchaser void); Nichols v. Andrews, 157 S.C. 334, 154 S.E. 305 (1930) (deciding appeal from foreclosure and sale of property where deed was issued and no bond posted) ; Ex Parte Andrews, 152 S.C. 325, 150 S.E. 313 (1929) (explaining that purchaser of property was entitled to possession of property pending appeal because no bond was posted; remanding the case to be heard on the merits); Muckenfuss v. Fishburne, 68 S.C. 41, 46 S.E. 537 (1903) (deciding defendant's appeal from order to set aside judgment of foreclosure where deed was executed to the purchaser); Scott v. Scott, 29 S.C. 414, 7 S.E. 811 (1888) (deciding an action to enjoin the foreclosure of a mortgage for the sale of a mortgaged property after a deed was issued to plaintiff); Heritage Fed. Sav. & Loan v. Eagle Lake & Golf Condominiums, 318 S.C.

535, 458 S.E.2d 561 (Ct. App. 1995) (deciding homeowners' association appeal from foreclosure and sale where a master deed was issued). Based on the above-cited cases, it is clear that the issuance of a deed does not moot the appeal of a foreclosure sale and an appellate court may reach the merits. Accordingly, we find the Court of Appeals erred in declaring the case moot because a deed was issued after the sale of the property.

I have filed my petition in the time allowed by the Appeal court of fifth teen days under Rules 241, Section 18-9-170.

G. Authenticity of exhibits

Most of the Exhibits are from District Court, State court, and Affidavits.

III. PRAYER FOR RELIEF

1. Nehemiah Bryant, Appellant States The following facts the fraud was an affront to the administration of justice and the proper function of the judicial system because the fraud was perpetrated on the court through the corruption of multiple officers, Private attorney(s) and Judge(s).

   Therefore I the Appellant Pray that this court Grant the Stay and other relief requested S.C. App. Ct. R. 221

C. A corrective writ of supersedeas is necessary to clarify the abuse of discretion of the judgment, though prohibitory actions, is mandatory in effect.

The rights and Duties of South Carolina Constitution Mandatory and Prohibitory S.C. Constitution Article 1 Section 23; writ of supersedeas is necessary to clarify the abuse of discretion an error of Common law and Procedural Law; See, Ex parte Young 209 U.S. 123 (1908) the 11th amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. Ex Parte Young teaches that when a state officer acts under a state law in a manner violate of the federal constitution, he or She comes into conflict with the superior authority of the constitution, and he or she is in that case stripped of his or her official or repetitive character and is subjected in his or her person to the consequences of his or her individual conduct. The state has no power to impart to him or her any immunity from responsibility to the supreme authority of the United States.

E. In the alternative, the Court should exercise its broad discretion to issue the writ to prevent irreparable harm to the Appellant and the public trust.

c. The Court observed the "settled doctrine" that a party may obtain relief from a judgment where fraud prevents a fact from being a part of the original litigation when the fact "clearly proves it to be against conscience to execute a judgment.

d. "Where enforcement of the judgment is 'manifestly unconscionable,'" a court has the equitable power to grant relief-even after the term has expired.

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.

MEMORANDUM OF POINTS AND AUTHORITIES See Attachment A

3. Respondents' interests would not be harmed by a stay.

FURTHER, sayeth naught.

CONCLUSION

Therefore I Nehemiah Bryant, Appellant, files this motion, and makes all other motions and objections in this case whether or not specifically noted at the time of making of the motion or objection, on the following grounds and authorities: The Due process clause, the right to a fair trial by an impartial jury, the right to counsel, Equal protection, Confrontation and compulsory process, The right to remain silent and Appeal, and the right to be free from cruel and unusual Punishment, pursuant to the federal and south Carolina constitution generally, and specifically, The right to Stay of Judgment Rules 65(a), 62 (b), and ." Fed. R. Civ. P. 56(e)(1)., the first, fourth, Fifth, Sixth, Eighth, Ninth, tenth, Eleventh and Fourteenth amendment of the United states constitution, and Article 1, Section 3, 13, 19 and 23 of the state of south Carolina constitution and will not waive any of my Rights. I Motion to stay any further action in the case until a Judgement is made on appeal, and demand the court adhere to the rules of law according to the Supreme Court. Any Further action on the part of the parties will result in the further abuse and loss of my civil liberties, Due Process and deprivation of my constitutional protections in which I will/Am seek/seeking relief as stated above for offenders private or in their official capacity. For the reasons stated.

Respectfully submitted,

September ____ , 2020

Nehemiah Bryant, Appellant
151 Saint Jhons Bethal Street
Moncks Corner SC, 29461
(843) 813-8572

The use of notary below is for identification only, and such use does NOT grant any jurisdiction to anyone.

Subscribed and sworn, without prejudice, and with all rights reserved.

_____,

Principal, by Special Appearance, in Propria Persona, proceeding Sui Juris.

Nehemiah Bryant

Signature of Affiant

ACKNOWLEDGMENT

state of SOUTH CAROLINA

county of Berkeley

On this 14th day of September, 2020, before me

personally appeared Nehemiah Bryant, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed, for the purposes therein set forth.

Jennifer L. Every

(Notary Public)

My Commission Expires 3-20-28, 2028

ucc 1-207 1-308 1-103, 3-305, 3-306

THE STATE OF SOUTH CAROLINA
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PETITION FOR WRIT OF SUPERSEDEAS OR OTHEREXTRAORDINARY RELIEF; S.C. App. Ct. R. 221, MEMORANDUM OF POINTS AND AUTHORITIES

MEMORANDUM of LAW POINTS AND AUTHORITIES IN SUPPORT OF

See Carolina First bank vs BADD, LLC 2012 "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). "A mortgage foreclosure is an action in equity." U.S. Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) (internal quotation marks omitted). However, "[i]t is well settled that a guarantor's liability is an independent contractual obligation." TranSouth Fin. Corp. v. Cochran, 324 S.C. 290, 295, 478 S.E.2d 63, 65 (Ct. App. 1996). Accordingly, a claim to recover on a guaranty agreement is one at law, even if the plaintiff seeks a deficiency judgment resulting from the foreclosure of real property. See S. Bank & Trust Co. v. Harley, 295 S.C. 423, 424, 368 S.E.2d 908, 909 (1988) (noting that a plaintiff's case seeking a deficiency judgment on a guaranty agreement after the foreclosure of real properties "was a law case"); see also Johnson v. S.C. Nat'l Bank, 292 S.C. 51, 53, 354 S.E.2d 895, 896 (1987) (classifying a party's counterclaim for damages under a guaranty agreement as a "legal counterclaim"). "When a complaint raises both legal and equitable issues and rights, the legal issues are determined by a jury while equitable issues are for the judge." JASDIP Props. SC, LLC v. Estate of Richardson, 395 S.C. 633, 639, 720 S.E.2d 485, 488 (Ct. App. 2011).

"A mortgage foreclosure is an action in equity." Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d 437, 440 (2014) (quoting Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997)). "In an appeal from an action in equity tried by a judge, appellate courts may find facts in accordance with their own views of the preponderance of the evidence." Id. at 328, 755 S.E.2d at 441. "However, '[w]hether a party is entitled to a jury trial is a question of law.'" Id. (alteration by court) (quoting Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010)). "Appellate courts may decide questions of law with no particular deference to the circuit court's findings." Id.; see Snow v. Smith, 416

S.C. 72, 85, 784 S.E.2d 242, 248 (Ct. App. 2016) ("[A] reviewing court is free to decide questions of law with no particular deference to the [master].").

Notice: Keels v. Pierce, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993). "In the absence of an express agreement or consent, a waiver of the right to a jury trial will not be presumed." Id.

The master has no power or authority except that which is given to him by the order of reference. See Rule 53(c), SCRCP ("[T]he order of reference to the master may specify or limit his powers and may direct him ... to do or perform a particular act...."); Bonney v. Granger, 292 S.C. 308, 356 S.E.2d 138 (Ct.App.1987) (a master has the same powers as a circuit judge unless the order of reference specifies or limits his powers); 76 C.J.S. References § 76 (1952) (a referee has no powers except those conferred by the order of reference).

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Note: I Nehemiah Bryant, Appellant never received notice of Order of Reference or seen evidence of it Filed in this Case. There is no proof of my consent to Master IN Equity waving my rights to a Jury trial further because I was not served I was not properly Noticed which is in fact what caused multiple irregulars in this case one being lack of personal Jurisdiction.

1. Supporting or opposing affidavits "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify to the matters stated." 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. Accordingly, practitioners should reexamine their affidavit forms and consider

whether they are in compliance with the applicable rules and case law as to form. 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.

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), the plaintiff argued that courts should be "lenient" in

accepting documents at the summary judgment stage, "as long as they are 'probative,' or at least 'evidence of evidence' that could later be introduced at trial."

2. I Nehemiah Bryant, Appellant submit this Memorandum of Law Supersedeas Bond and established Law Points and SCRP Rule 53 Master IN Equity (b) References. In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court. The clerk shall promptly provide the master or special referee with a copy of the order of reference.

(c) Powers. Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.

Notice: Administrative Order (Order No. 2009-05-22-01) applicable to mortgage foreclosure actions subject to the Home Affordable Modification Program ("HMP") instituted by the United States Treasury Department ("Treasury").

No foreclosure hearing or foreclosure sale may be held in the foreclosure action until the Mortgagee's attorney certifies the following:

(a) that the Mortgagor has been served with a notice of the Mortgagors right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation;

(b) that the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention;

(c) that the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagots loan or personal circumstances for consideration by the Mortgagee;

(d) that after completion of the foreclosure intervention process, the Mortgagor does not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process; and,

(e) that notice of the denial of loan modification or other means of loss mitigation has been served on the Mortgagor by mailing such notice to all known addresses of the Mortgagor; provided, that such notice shall also state that the Mortgagor has 30 days from the date of mailing of notice of denial of relief to file and serve an answer or other response to the Mortgagee's summons and complaint.

If within thirty days after having been served with notice of the Mortgagors 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.

A. Definitions:

For the purposes of this administrative order, the following definitions shall apply:

(1) "Mortgagor' shall include every owner, mortgagor, and debtor under the note and mortgage at issue.

(2) "Mortgagee" shall include the owner and holder of the note and mortgage, any party acting on behalf of the owner and holder of the note and mortgage for the purpose of receiving payments, dealing with the mortgagor, or administering the loan evidenced by the note and mortgage, and any party seeking foreclosure of the subject mortgage, or otherwise acting as the agent of the owner and holder of the note in connection with the loan or the foreclosure of the note and mortgage, except for the mortgagee's attorney.

(3) "Owner-Occupied dwelling" is defined as mortgaged real property that is the principal residence of any mortgagor.

(4) "Court" shall include any judicial officer having jurisdiction over the foreclosure action, including any Circuit Court Judge, Master-In-Equity or Special Referee.

(5) "Foreclosure intervention" shall include any policy, process or procedure employed by a Mortgagee for the purpose of seeking a resolution of a foreclosure action by loan modification or other means of loss mitigation.

"In the civil context, there are three general exceptions to the mootness doctrine." Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). "First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review." Id. "Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." Id. at 568, 549 S.E.2d at 596. "Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." Id. at 568, 549 S.E.2d at 596

Citing: Wachesaw Plantation vs Alexander Case No. 2012-213400 " Our jurisprudence establishes that, despite the master-in-equity's issuance of a deed, an appellate court may reach the merits of the appeal. SeeAntrum v. Hartsville Prod. Credit Ass'n, 228 S.C. 201, 89 S.E.2d 376 (1955) (deciding on petition to set aside foreclosure sale and declaring deed to purchaser void); Nichols v. Andrews, 157 S.C. 334, 154 S.E. 305 (1930) (deciding appeal from foreclosure and sale of property where deed was issued and no bond posted) ; Ex Parte Andrews, 152 S.C. 325, 150 S.E. 313 (1929) (explaining that purchaser of property was entitled to possession of property pending appeal because no bond was posted; remanding the case to be heard on the merits); Muckenfuss v. Fishburne, 68 S.C. 41, 46 S.E. 537 (1903) (deciding defendant's appeal from order to set aside judgment of foreclosure where deed was executed to the purchaser); Scott v. Scott, 29 S.C. 414, 7 S.E. 811 (1888) (deciding an action to enjoin the foreclosure of a mortgage for the sale of a mortgaged property after a deed was issued to plaintiff); Heritage Fed. Sav. & Loan v. Eagle Lake & Golf Condominiums, 318 S.C. 535, 458 S.E.2d 561 (Ct. App. 1995) (deciding homeowners' association appeal from foreclosure and sale where a master deed was issued).

1. **SECTION 27-37-20.** Ejectment proceedings.

   Any tenant may be ejected in the following manner, to wit: Upon application by the landlord or his agent or attorney any magistrate having jurisdiction shall issue a written rule requiring the tenant forthwith to vacate the premises occupied by him or to show cause why he should not be ejected before the magistrate within ten days after service of a copy of such rule upon the tenant.

   HISTORY: 1962 Code Section 41-102; 1952 Code Section 41-102; 1946 (44) 2584; 1950 (46) 2305.

2. **SECTION 27-37-80.** Jury trial. Either landlord or tenant may demand trial by jury. In such case a jury shall be summoned and a jury trial had as in any other civil case. Upon the testimony offered, under instructions by the magistrate as to the law, the jury shall find for either the landlord or tenant as in any other civil case

See Meier v. Kornahrens, 102 S.E. 285 (S.C. 1920) Supreme Court of South Carolina Filed: February 23rd, 1920

Precedential Status: Precedential the nature of a special proceeding under a statute (section 3581, Civil Code 1912), which, as uniformly construed by this Court (with the single exception of Apeler's case, supra, of which more hereafter), givess to either party desiring it the right to a trial de novo by a jury in the Circuit Court of any issue of fact raised on such appeal, when the question is "will or no will." See the case next above cited; also, Ex parte Jackson, 67 S.C. 55, 45 S.E. 132, and Briggs v. Caldwell, 93 S.C. 268, 76 S.E. 616. And it is not within the discretion of the Court to refuse either party that mode of trial, where the appeal involves issues of fact as to the validity of a will, provided, of course, that it be demanded by the service of notice of motion for such issues, as required by rule 28; for the right of trial

by jury, as any other civil right, may be waived by the failure to claim it within the time or in the manner provided by law.

We say this to prevent any erroneous impression or misapprehension from what has been said hereinbefore with reference to the discretionary power of the Court to grant or refuse motions for the reference of issues to a jury in equity cases pending in the original jurisdiction thereof and on appeals thereto from the probate Court which involves issues of fact arising in cases of an equitable nature.

SECTION 27-40-130. Jurisdiction and service of process.

(a) The circuit courts and magistrate courts of this State shall exercise concurrent jurisdiction over any landlord with respect to any conduct in this State governed by this chapter or with respect to any claim arising from a transaction subject to this chapter. In addition to any other method provided by rule or by statute, personal jurisdiction over a landlord may be acquired in a civil action or proceeding instituted in the court of common pleas or magistrate court by the service of process in the manner provided by this section.

(b) If a landlord is not a resident of this State or is a corporation not authorized to do business in this State and engaged in any conduct in this State governed by this chapter, or engaged in a transaction subject to this chapter, he may designate an agent upon whom service of process may be made in this State. The agent must be a resident of this State or a corporation authorized to do business in this State. The designation must be in writing and filed with the Secretary of State. If no designation is made and filed or if process cannot be served in this State upon the designated agent, process may be served upon the Secretary of State, but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail requiring a signed receipt to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section must be filed with the court of the county wherein the action is instituted on or before the return day of the process, if any, or within any further time the court allows.

HISTORY: 1986 Act No. 336, Section 1.

RULE 39
TRIAL BY JURY OR BY THE COURT

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the calendar and the clerk's filebook as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

(b) By the Court. Issues of law and issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court or may be referred to a master as provided in Rule 53; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or the court, with the consent of both parties may order a trial by jury whose verdict has the same effect as if trial had been a matter of right.

Note:

This Rule 39 is substantially the Federal Rule. Paragraph 39(b) preserves the State practice of reference to masters of appropriate non-jury cases. The Rule preserves State practice with no real change. Present Circuit Rule 28, and the substance of Code §§ 15-23-70, 15-27-90, 15-23-60 and 15-33-20 are retained.

Title 29 - Mortgages and Other Liens

CHAPTER 3 - MORTGAGES AND DEEDS OF TRUST GENERALLY

29-5-180 Amendment

The court may at any time allow either party to amend his pleadings as in other civil actions.

29-5-190 Notice to Owner

The court in which the petition is entered shall order notice to be given to the owner of the building or structure, that he may appear and answer thereto at a certain day in the same term or at the next term, by serving him with an attested copy of the petition, with the order of the court thereon, fourteen days at least before the tone assigned for the hearing. And the court shall also order notice of the filing of the petition to be given to all other creditors who have a lien of the same kind upon the same estate by serving them with a copy of the last mentioned order in like manner.

29-5-230 Jury

Every material question of fact arising in the case shall be submitted to a jury, if required by either party or deemed proper by the court, and the trial shall be had upon a question stated or an issue framed or otherwise, as the court may order. A jury shall be had before a magistrate only as in other civil cases.

29-5-120 Limitations

Unless a suit for enforcing the lien is commenced, and notice of pendency of the action is filed, within six months after the person desiring to avail himself thereof ceases to labor on or furnish labor or material for such building or structures, the lien shall be dissolved.

29-5-130 Magistrate's Court

When the amount of the claim does not exceed one hundred dollars the lien may be enforced by a petition to a magistrate. And such magistrate shall have like power and authority within his jurisdiction as herein conferred upon the court of common pleas, with like rights of appeal to the parties as exist in other civil cases.

It is not the duty of the court to be religious and mediate faith/Fiat claims deficient of empirical evidence. Men can claim anything, but the court has no duty to any Plaintiff lacking proof of claim. Even historic Christianity avoided fideism by providing many "infallible proofs" in its assertion that the Prophet Jesus Christ rose from the dead (John 20:25; Acts 1:3).

It is not the duty of the court to be involved in politics voting for their favorite party or to cast a vote for party slogans. The fact that the opposing attorney and the judge belong to the same commercial club called the BAR should alert the Court that the judge in the instant case is called to be fair, impartial, and non-prejudicial.

[Judges] are the **depositary** of the laws; the living oracles, who must decide in all cases of doubt, and **who are bound by an oath** to decide according to the law of the land. [Blackstone, 1 COMMENTARIES *69.]

It is the duty of the Court to insure that pleadings are sufficient to invoke judicial authority. Pleadings that lack evidence supported by fact can only be deemed as a "failure to state a claim upon which relief can be granted" (Rule 1-012).

It is the duty of the Court to seek the truth. Lady Justice is blind. She carries the scales of justice with a duty to make sure there is an "agreement between thought and reality;" between "faith claims and reality."

It is the duty of the Court and jury to determine the facts, the actual events or existence of an occurrence. Facts differ from truth in that facts are more related to specific events of an occurrence, while truth is a holistic, unified conclusion regarding a series of actual occurrences.

It is, therefore, the duty of the Court to discern the truth in a controversy by weighing the evidence.

Piecemeal practices, procedures and rules of administration of any court in south Carolina are void according to SC Con Article V section 1 also see Spartanburg County Dept. of Social Services vs Padgett (1988) 296 SC 79, 370 SE2d 872. See Ex Parte Tillman (1910).dealing with Due Process.

When interpreting pro se papers, the Court should use common sense to determine what relief the party desires. S.E.C. v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, United States v. Miller, 197

F.3d 644, 648 (3rd Cir. 1999) (Court has special obligation to construe pro se litigants' pleadings liberally); Poling v. K.Hovnanian Enterprises, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000).

Citing Ex parte Tillman (1910). Without pausing to apply the comprehensive definition of due process of law laid down in *Turpin v. Lemon*, 187 U.S. 51, 47 L.Ed., 70, it is sufficient to say here that it is universally understood that on the issue of custody — deprivation of liberty, or illegal restraint of children — due process of law requires judicial investigation and determination of the rights of parents and children under a writ of *habeas corpus* or by an appropriate proceeding in the Court of equity. *Prather* v. *Prather*, 4 DeS., 33; *ex parte Schumpert*, 6 Rich., 346; *ex parte Hewitt*, 11 Rich., 326; *ex parte Williams*, 11 Rich., 452; *ex parte Reed*, **19 S.C. 604**; *Anderson* v. *Young***54 S.C. 388,** 32 S.E., 448, 44 L.R.A., 277; *ex parte Davidge*, 72 S.C. 16, 51 S.E., 269; *ex parte Reynolds*, 73 S.C. 296, 53 S.E., 490; *Brown v. Robertson*, 76 S.C. 151, 56 S.E., 786, 9 L.R.A. (N.S.), 1173n; *ex parte Rembert*, 82 S.C. 336.

SUMMARY

The court's only duty is to weigh the Facts and evidence. Attorney's briefs and or verbal statements are not proof of anything and cannot be entered into the record as Discovery evidence. If there are no affidavits, there are not sufficient facts, if there are no sufficient facts, there is no evidence on record; if there is no Discovery evidence to support a claim, and multiple violations including consent/contract between Plaintiff and Defendant the claim must be dismissed. Citing Coleman v. Dunlap, 306 S.C. 491, 494-95, 413 S.E.2d 15, 17 (1992). "An abuse of discretion arises where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support.

PLEADING

Therefore, I Nehemiah Bryant, Appellant Pray the court to rule in my favor and grant my request and other extraordinary relief. Nehemiah Bryant, Appellant the real party in interest Pray that all my rights are to be preserved from any further encroachment. I Nehemiah Bryant, Appellant **motion** the court to rule in my favor for it is my Liberty and Rights under attack. It is the court duty to protect those State vs Montgomery.

Subscribed and sworn, without prejudice, and with all rights reserved.

_____,

Principal, by Special Appearance, in Propria Persona, proceeding Sui Juris.

Nehemiah Bryant

Signature of Affiant

ACKNOWLEDGMENT

state of SOUTH CAROLINA

county of Berkeley.

On this 11th day of September, 2020, before me

personally appeared Nehemiah Bryant, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed, for the purposes therein set forth.

Jennifer L. Every My Commission Expires March 20, 2028

PROOF OF SERVICE FOR PETITION FOR WRIT OF SUPERSEDEAS OR OTHER EXTRAORDINARY RELIEF; S.C. App. Ct. R. 221, MEMORANDUM OF POINTS AND AUTHORITIES

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2019-001572

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

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

v.

Nehemiah Bryant, Appellant

PROOF OF SERVICE

I certify that I Nehemiah Bryant, Appellant have served the PETITION FOR WRIT OF SUPERSEDEAS OR OTHER EXTRAORDINARY RELIEF; S.C. App. Ct. R. 221, MEMORANDUM OF POINTS AND AUTHORITIES on Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-C by depositing a copy of it in the United States Mail, postage prepaid, on September 12, 2020, addressed to Thomas A Shook, 1201 Main St, Columbia, SC 803-765-2935, Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-C 500 Delaware Avenue Wiilmington, Delaware 19801-(Rocktop Partners I LP) and Dale Van Slambrook, 300 CALIFONIA DR, # B, Moncks Corner, S.C 29461 on March 19th, 2020].

September11, 2020, I Nehemiah Bryant Certify that I have read all documents to the best of my knowledge Information and belief there is good grounds to Support it; and it is not interposed for delay

Nehemiah Bryant, Appellant
151Saint Jhons Bethal Street
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