RECEIVED
Feb 23 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Appellate Case No. 2019-000575
Charleston County Case No. 2010-CP-10-7838

Ditech Financial, LLC .....Respondent,

v.

Kevin G. Snyder, individually and
As Personal Representative of the
Estate of Mary Snyder .....Appellant.

BRIEF OF APPELLANT
(AMENDED)

Jason Scott Luck
P.O. Box 47
Bennettsville, SC 29512
843.479.6863 (o)
843.479.7222 (f)
jason@luck.law
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Treatises

ISSUES ON APPEAL

I. Did the Master-in-Equity err when he found that Ditech's predecessor's conduct complied with the Supreme Court's 2011 administrative order on mortgage foreclosures, when Ditech's predecessors' misconduct delayed foreclosure proceedings?

II. Did the Master-in-Equity err in refusing to compel the production of a mortgage servicer's records retained pursuant to a 2015 settlement on mortgage practices to a mortgage foreclosure defendant?

III. Did the Master-in-Equity err in amending the caption of this action when the moving party never provided notice of its motion, and the factual basis for amendment is unsupported by the record?

IV. Did the Master-in-Equity err in striking the Attorney Preference Statute defense of the Estate of Mary Snyder, despite the Consumer Protection Code's broad applicability?

V. Did the Master-in-Equity err in proceeding with the final hearing after a notice of appeal had been filed?

STATEMENT OF THE CASE

This is the appeal of a contested residential foreclosure. The Respondent is the purported successor to the original Plaintiff, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP. The Appellant is Kevin Snyder, in his individual capacity as a mortgagor of the property, and as personal representative of his late wife, who was also a mortgagor.[1] BAC filed the original foreclosure Complaint and Lis Pendens on

[1] During the pendency of this action, Snyder's profoundly disabled daughter died (December 22, 2014), and almost a year later his wife, former Defendant Mary Snyder, died of undiagnosed lung cancer (November 23, 2015).

September 23, 2010, and amended the Complaint and Lis Pendens on October 13, 2010. (R. pp. 35-39, 42, 45-49, 56-57). Kevin and Mary Snyder were served a Notice Foreclosure Intervention on December 17, 2012, which was denied. (R. pp. 59-60, 63). Undersigned counsel appeared for the Snyders on May 3, 2013, filing his notice of appearance with the Clerk of Court and serving it on BAC's counsel. (R. p. 66). BAC purportedly transferred the Snyders' loan at some point shortly thereafter to Green Tree Servicing, LLC,[2] and on June 17, 2013, the Snyders' counsel sent Green Tree a letter informing it of the Snyders' representation, and enclosing a copy of In re Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (2011) (the "Admin Order"). (R. p. 121). The Snyders' counsel followed up this letter with another letter on July 18, 2013, that enclosed a written authorization from the Snyders (requested by Green Tree) and another copy of the Admin Order. (R. pp. 144-45). BAC's attorney was copied on this letter. (R. p. 144). These opening communications inaugurated Green Tree's nearly six year period of bungled communications and foreclosure interventions, presented in detail in Argument I.

Pursuant to a September 30, 2013, status hearing, this action was stayed pending foreclosure intervention. The Snyders' counsel was not provided notice of this hearing or order. (R. p. 4). On March 12, 2014, the Master-in-Equity, without notice or hearing, granted BAC's motion to replace BAC Home Loans Servicing, LP with Green Tree Servicing, LLC as Plaintiff. (R. pp. 9-10, 179-87).

Green Tree substituted counsel on April 9, 2015, and again on July 2, 2018. The parties engaged in discovery, and Snyder filed a motion to compel on November 29, 2018 to compel Green Tree's responses to his discovery. (R. pp. 88-90, 179-87). Pursuant to a

[2] However, please see Argument III, *infra*.

December 10, 2018, status conference (where the motion to compel was heard without a court reporter), the Master-in-Equity issued a consent scheduling order and a consent order amending the caption to replace Green Tree Servicing, LLC with Ditech Financial, LLC. (R. pp. 13-16).

Ditech filed notice of its bankruptcy on March 1, 2019 (amended May 1, 2019). (R. pp. 199-288). All parties filed motions for summary judgment on March 11, 2019. (R. pp. 291- 433). These motions were heard at a pre-trial hearing on March 18, 2019. (R. pp. 561-601). The Master-in-Equity denied Snyder's motion, granted Ditech's motion in part, and denied Snyder's motion to compel by order dated March 27, 2019. (R. pp. 19-22). Snyder timely appealed this order on March 29, 2019. Though Snyder argued that the Master-in-Equity lacked jurisdiction due to the appeal (R. pp. 606-22), the Master-in-Equity proceeded with a final hearing. (R. p. 622-60). The Master-in-Equity issued his final order on April 23, 2019, ordering the foreclosure of the mortgage and the sale of 1752 Orange Grove Shores. (R. pp. 23-32). Snyder amended his notice of appeal to include this order and also filed a motion for supersedeas on May 2, 2019. (R. pp. 436-40).

STANDARD OF REVIEW

"'It is now well settled that this court has jurisdiction in appeals in equity cases to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the lower court in such cases when the appellant satisfies this court that the finding is against the preponderance of the evidence.'" Skipper v. Perrone, 382 S.C. 53, 674 S.E.2d 510 (Ct.App. 2009) (quoting Crowder v. Crowder, 246 S.C. 299, 301, 143 S.E.2d 580, 581 (1965)).

"In reviewing an order for summary judgment, the appellate court applies the same standard which governs the trial court under Rule 56 of the South Carolina Rules of Civil Procedure." M & M Grp., Inc. v. Holmes, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (Ct. App. 2008). "Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Id. (quoting Rule 56(c), SCRCP). A material issue is one that constitutes a legal defense or that affects the result of the action. PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., 297 S.C. 176, 375 S.E.2d 331 (Ct. App. 1988).

"On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below." Id. (quoting Willis v. Wu, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004)). Summary judgment should not be granted if further development of the facts would assist in the application of the law. Mosteller v. Cty. of Lexington, 336 S.C. 360, 362, 520 S.E.2d 620, 621 (1999). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony. Id.

"[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). The South Carolina Supreme Court has defined a "scintilla" as "'a gleam,' 'a glimmer,' 'a spark,' 'the least particle,' 'the smallest trace.'" Bethea v. Floyd, 177 S.C. 521, 181 S.E. 721, 724 (1935); see also Rogers v. Norfolk Southern Corp., 356

S.C. 85, 588 S.E.2d 87 (2003) (Burnett, J., dissenting) ("A scintilla is defined as 'a trace' of evidence.") (citing Black's Law Dictionary 1347 (7th ed.1999)). In cases requiring a heightened burden of proof (*e.g.* fraud), the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. Hancock at 330-31, 673 S.E.2d at 803.

Motions to amend and discovery orders (including discovery sanctions orders) are reviewed under an abuse of discretion standard. Soil & Material Eng'rs, Inc. v. Folly Assocs., 293 S.C. 498, 361 S.E.2d 779 (Ct. App. 1987); Evening Post Pub. Co. v. Berkeley Cty. School. Dist., 392 S.C. 76, 708 S.E.2d 745 (2011); Barnette v. Adams Bros. Logging, Inc., 355 S.C. 588, 586 S.E.2d 572 (2003). A lower court has abused its discretion when its ruling is either controlled by an error of law or based on a factual conclusion lacking evidentiary support. Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013).

ARGUMENT

I. There exists a scintilla of evidence that Ditech, through its predecessors-in-law, violated South Carolina Supreme Court Administrative Order 2011-05-02-01.

Snyder asserted a counterclaim for Civil Compensatory Contempt in his counterclaims, based on Ditech's predecessor's violations the Admin Order. This order states in relevant part:

> The Court having jurisdiction over the foreclosure action shall hear and determine any dispute concerning any party's compliance with this order, including without limitation, the failure of any party to act in good faith in complying with the terms of this order. In the event the Court determines that any party to the foreclosure action, or their acting agent, has failed to comply with the terms of this order, or has not attempted to reach an agreement for foreclosure intervention in good faith, the Court may, in its discretion, impose such sanctions as it determines to be reasonable and just

> under the circumstances, including without limitation, the assessment of reasonable attorneys' fees and costs against the culpable party.

In re Mortgage Foreclosure Actions at 213, 720 S.E.2d at 910. Ditech's March 8, 2019, motion for summary judgment sought to dismiss this cause of action. (R. pp. 412-33). Ditech's motion was heard on March 18, 2019, and on March 27, 2019 the Master-in-Equity granted Ditech summary judgment as to the non-stayed portions of Snyder's counterclaim for civil compensatory contempt, but denied it as to Snyder's quiet title counterclaim and Ditech's foreclosure action. (R. pp. 19-22). The Master-in-Equity's order dismissing the counterclaim was in error, as there existed a scintilla of evidence supporting a violation of the Admin Order, as set forth below.

A. There is a scintilla of evidence supporting the argument that Ditech's predecessor did not act in good faith.

"Good faith" is defined as: "honesty in fact and the observance of reasonable commercial standards of fair dealing." S.C. Code § 36-1-201(20).[3] Documents authenticated by Ditech's Responses to Snyder's Requests to Admit establish multiple instances where Ditech did not act in good faith:

1. Failure to send correspondence to the correct address after notice.

Throughout the foreclosure intervention process, Ditech and its predecessors repeatedly mailed critical correspondence and documents to the wrong mailing address.[4] Snyder is aware of the following misdirected documents, but the true amount of lost correspondence is certainly greater:

[3] As the note and mortgage in this case are subject to articles 3 & 9 of the Uniform Commercial Code, this definition is appropriately used here.

[4] Ditech largely admits these mistakes. (R. pp. 103-15).

a) Green Tree's March 13, 2014, application deficiency letter (R. pp. 152-54) used an incorrect address;

b) Green Tree's May 7, 2014, August 7, 2014, and September 7, 2014, billing statements (R. pp. 157, 161-62) used an incorrect address;

c) Green Tree's August 6, 2014 acknowledgement letter (R. p. 160) used an incorrect address;

d) Green Tree sent an October 2014 foreclosure intervention application to an incorrect address, resulting in denial of a proposed modification (R. p. 163); and

e) Ditech's April 13, 2016 foreclosure intervention application (R. pp. 168-70) is addressed to the Snyders' counsel's prior address, despite being informed of the new address a year earlier (R. pp. 164, 168-70).

Snyder's counsel placed Ditech and its predecessors on notice of changes of address and/or incorrect addressing on October 22, 2014, March 4, 2015, and March 26, 2015. (R. pp. 163-64, 168). These failures, at a minimum, contributed to the excessive delays in processing the Snyder's multiple applications for foreclosure intervention/mitigation.[5]

[5] Though more of a technical than substantive violation of the Supreme Court's order, Ditech's predecessors also required the Snyders' counsel to repeatedly submit needless written authorizations. Undersigned counsel appeared of record in this action on May 3, 2013. (R. p. 118). Ditech's predecessor's attorneys were served with this notice of appearance the same day. (R. p. 119). Undersigned counsel informed Green Tree of his retention by letter dated June 17, 2013. (R. p. 121). Green Tree, however, demanded that the Snyders execute a separate authorization form (R. p. 145) before it would discuss this matter with the Snyders' counsel. While the Snyders did execute an authorization on July 9, 2013 (provided July 18, 2013) (R. pp. 143-45), Ditech's predecessor repeatedly demanded it be re-submitted. (R. pp. 142, 147).

2. Failure to timely respond to foreclosure intervention request.

Ditech's predecessor ignored Snyder's June 17, 2013, request for foreclosure intervention until Snyder's counsel repeatedly contacted Ditech's predecessor's counsel in August of 2013. (R. pp. 121, 128, 131-32). Ditech's predecessor's counsel provided the foreclosure intervention application on August 21, 2013. (R. p. 133). This also contributed to delays in foreclosure intervention.

3. Repeated contacts with represented mortgagors.

Ditech and its predecessors consistently, repeatedly, and flagrantly continued to contact Snyder via telephone and/or mail until approximately 2017, when Ditech began mailing all correspondence, including billing statements, to Snyder's counsel. The Admin Order mandates that foreclosure communications shall flow through the Mortgagor's attorney: "…the Mortgagee *shall* communicate with and otherwise deal with the Mortgagor through the Mortgagor's attorney" In re Mortgage Foreclosure Actions at 213, 720 S.E.2d at 909 (emphasis added). On June 17, 2013, Snyder's counsel contacted Ditech's predecessor directly to inform it of Snyder's representation, though Ditech's predecessor's attorney had been notified on May 3, 2013. (R. pp. 118-21). Included in the June 17, 2013, letter was a copy of the Admin Order. The Snyders' counsel notified Ditech and its predecessors on June 17, 2013, July 18, 2013, October 30, 2013, November, 6, 2013, November 12, 2013, June 4, 2014, and August 1, 2014, that the Snyders were represented by counsel and/or to cease communications with the Snyders. (R. p. 121, 137, 139-47, 158). Ditech and its predecessors repeatedly ignored the clear language of the Supreme Court's

order and the repeated requests of Snyder by attempting direct contact.[6] (*e.g.* R. pp. 136, 139-140).

4. Inappropriate conduct in litigation.

On June 14, 2013, Ditech's predecessor served requests to admit on Snyder. (R. p. 123). Snyder timely served answers to these requests on July 15, 2013 (July 14, 2013 fell on a Sunday). (R. pp. 122-27). On August 13, 2013, Snyder's counsel spoke with Ditech's predecessor's counsel via telephone about the potential for settlement of this matter. (R. pp. 128, 587). On the same day, Ditech's predecessor's counsel executed an Affidavit of Default, stating that Snyder had failed to respond to its Requests to Admit. (R. pp. 129-30, 587). Not only was this affidavit false, it was never served on Snyder's counsel when it was filed with the court.[7] (R. pp. 129-30, 156). Snyder's counsel did not learn of this affidavit until March 27, 2014, when Snyder's counsel received a notice of the entry of a heretofore-unknown order amending the caption. (R. p. 155). Upon review of the docket online, Snyder's counsel discovered that he had not been informed of: (1) Ditech's predecessor's counsel's filing of the August 13, 2013, affidavit; (2) a September 30, 2013, status conference that Ditech's predecessor's counsel allowed to go forward without notice to Snyder's counsel; (3) a September 30, 2013 order staying this case pending foreclosure intervention; and (4) Ditech's predecessor's counsel's filing of a motion and proposed order to amend on February 20, 2014, which was granted without hearing. (R. pp. 129-30, 134-135, 148-150, 156).

---

[6] Because this debt was in dispute, Ditech's predecessors' acts also violated the Fair Debt Collection Practices Act. See 15 U.S.C. § 1692c(c). Because the Bankruptcy Court's order stays any action for damages, any potential action under this statute is stayed.

[7] Ditech is unable to deny that the affidavit is false, though it does admit it was never served on the Snyders' counsel. (R. p. 106).

Snyder's counsel immediately wrote Ditech's predecessor's counsel and demanded that Ditech's predecessor's counsel request the court strike the August 13, 2013 affidavit. (R. p. 156). Snyder's counsel referenced this request again on March 26, 2015 and April 28, 2015; the affidavit remained part of the record until struck/withdrawn at the motion for summary judgment hearing on March 18, 2019 (R. pp. 156, 168, 172-73, 587-88).

5. Spoliation of evidence.

On March 4, 2015, the Snyder's counsel requested that Ditech's predecessor preserve documents related to this action. (R. p. 164). Ditech, in its responses to Snyder's Third Set of Interrogatories, explains that it could not admit or deny several requests due to a lack of records from its predecessor. (R. pp. 99-101). The loss or destruction of these records have thus frustrated factfinding in this matter and have also contributed to the extreme delay in proceedings. The Master-in-Equity's refusal to sanction Ditech for spoliation (R. pp. 649-53) is reversible error.

B. The Master-in-Equity should have found a violation of the Admin Order at the final hearing.

While this action is subject to the automatic stay of 11 U.S.C. § 362(a), the Southern District of New York Bankruptcy Court has modified the stay to exempt claims that "have the sole purpose of defending, unwinding, or otherwise enjoining or precluding any foreclosure or eviction, and do not have an adverse effect on any of the Debtors' assets." In re Ditech Holding Co., No. 19-10412-jlg (Bankr.S.D.N.Y. Order dated February 13, 2019). Ditech has stipulated that Snyder's counterclaims for civil compensatory contempt and quiet title, and the affirmative defense of rescission, may proceed, provided they only "seek a stay or dismissal of Ditech's foreclosure action or a determination of the validity of Ditech's lien and do not seek [an] award of money damages…" (R. pp. 203-05).

While the Admin Order explicitly allows for awards of attorneys' fees, this relief is prohibited by the automatic stay. With no reported decisions detailing the exact types of other relief available under the Admin Order, this Court must consult analogous law. Snyder believes that case law interpreting violations of discovery orders can provide guidance under these circumstances. When issuing discovery sanctions under Rule 37, SCRCP, a circuit court has the ability to strike the pleadings of a litigant for "bad faith, willfulness, or gross indifference to the rights of other litigants." Karppi v. Greenville Terrazo, Inc., 327 S.C. 538, 489 S.E.2d 679, 682 (Ct. App. 1997). As set forth above, Ditech (through its predecessor) has repeatedly violated the terms of the Admin Order, despite having notice of these violations and of the applicable order. As it is in the business of mortgage servicing, it is fair to assume that Ditech was aware of the consequences of its years-long pattern of conduct (*i.e.* substantial accrued interest and fees), thus making its conduct willful or intentional.[8] See Restatement (Second) of Torts § 8A (1965) (Acts are intentional when the actor "desires to cause consequences of his act, or…he believes that the consequences are substantially certain to result from it."). Ditech's spoliation of evidence further supports sanctions. E.g. Kershaw County Board of Education v. U.S. Gypsum Co., 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990). Accordingly, the Master-in-Equity should have struck Ditech's Amended Complaint and Ditech's Reply to Defendant's counterclaims. The Master-in-Equity should have further entered default against Ditech and issued a default judgment on Snyder's counterclaims for civil

[8] If not willful or intentional, Ditech's conduct evidences gross indifference to the Snyders' rights and manifests disregard for Plaintiff's duties under the Supreme Court's order. Cf. Richardson v. Hambright, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988) ("Gross negligence is the intentional, conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.").

compensatory contempt and quiet title ordering either (1) dissolution of Ditech's lien/mortgage on 1752 Orange Grove Shores Drive or (2) rescission of the note and mortgage at issue in this action.

In the alternative, the Master-in-Equity should have struck Ditech's demand for damages of accrued interest, fees (including attorneys' fees), costs, advances, and a deficiency judgment, and barred it from offering any evidence of the same. Cf. Rule 37(b)(2)(B), SCRCP (providing for "[a]n order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence."). The chief injury Ditech has caused is the unnecessary delay, for approximately ten years, of the fair consideration of Kevin Snyder's application for modification. As of April 1, 2019, this loan accumulated $109,616.64 in accrued interest and $40,000.00 of advances and fees. (R. p. 26). This exceeds the principal balance of $137,020.25, and leaves a total debt as of April 23, 2019 of $293,930.69. (R. pp. 23-32). The property at issue in this action has a 2018 tax value of $152,600.00, but its value ("Zestimate") on the Zillow website on or about March 8, 2019 was $249,883.00. (R. pp. 427-33). The accrued interest and fees, caused by the acts of Ditech, have resulted in additional costs that will prevent Snyder from realizing any equity in the property. Accordingly, these costs and fees are not properly any part of Ditech's damages.

II. Snyder was entitled to the Green Tree records retained pursuant to its settlement with the Federal Trade Commission.

On or about March 26, 2018, Snyder served Ditech with his second interrogatories and second requests to produce. (R. p. 88). Ditech, under extension, served its responses to these discovery requests on July 23, 2018. (R. pp. 91-94). On or about August 15, 2018,

Snyder's counsel wrote to Ditech's counsel regarding his objections to certain requests, and requesting amended requests. (R. p. 88). Specifically, Snyder's counsel considered the following objections inappropriate:

> 25. A copy of the records Green Tree is required to keep pursuant to Section XIX, paragraph A of Federal Trade Comm'n v. Green Tree Servicing, LLC, 0:15-cv-02064-SRN-JSM (D. Minn. Order dated April 23, 2015) (the "FTC Order").
>
> RESPONSE: Plaintiff objects to this request on grounds that it is overly broad and seeks information that is not relevant to any cause of action or defense in this action.
>
> 26. A copy of the records Green Tree is required to keep pursuant to Section XIX, paragraph B of the FTC Order for the following:
>
> a. Cassandra Turner
> b. Michael Young
> c. Swarn [last name unknown]
> d. Xaiver A. (R. p. 96)
> e. All persons who interacted with Kevin Snyder, Mary Snyder, or their representatives (e.g. their attorney) regarding this loan or its collection
> f. All persons who reviewed the Snyders' loss mitigation applications
>
> RESPONSE: Plaintiff objects to this request on grounds that it is overly broad and seeks information that is not relevant to any cause of action or defense in this action. Plaintiff objects further as it seeks personally identifiable information of its employees.
>
> 29. A copy of the records Green Tree is required to keep pursuant to Section XIX, paragraph E of the FTC Order that would have been used in the collection of the loan at issue in this action.
>
> RESPONSE: Plaintiff objects to this request on grounds that it is overly broad and seeks information that is not relevant to any cause of action or defense in this action.
>
> 32. A copy of your fee agreement(s) with all attorneys who were retained to handle this mortgage foreclosure action.
>
> RESPONSE: Plaintiff objects to this request on grounds that this request seeks information protected by the Attorney-Client Privilege. Plaintiff objects to this request on the grounds that it seeks information that is not

> relevant to any cause of action or defense in this action. Plaintiff objects to this request as it seeks business confidential and proprietary information.

(R. pp. 91-97).

Ditech's counsel responded to Snyder's counsel's concerns via a letter dated August 31, 2018, stating: "…[Plaintiff] is standing on its objections which I understand will likely lead to a motion to compel." (R. pp. 89, 188-90). Snyder filed a motion to compel Ditech's responses, which was heard on December 10, 2018, at a status conference.[9] The Master-in-Equity denied this motion via a Form 4 order on March 18, 2019, and in his March 27, 2019 order. (R. pp. 17, 22).

The Master-in-Equity's decision in this matter is an abuse of discretion, as it does not compel the production of materials that are discoverable under South Carolina law. As an initial matter, Ditech's objections are impermissibly generic, and therefore waived. The Delaware Court of Chancery ably sets this concept forth:

> …numerous federal decisions made clear that "boilerplate, generalized objections are inadequate and tantamount to not making any objection at all." Summarizing the case law, one commentator observed that "[b]oilerplate objections have been considered prima facie evidence of a Rule 26 violation, which causes the objecting party to waive any legitimate objections that they may or may not have had.

In Re Oxbow Carbon, LLC Unitholder Litig., No. CV 12447-VCL, 2017 WL 959396 (Del. Ch. Order dated March 13, 2017) (footnotes and citations removed) (R. pp. 789-808); Curtis v. Time Warner Entertainment-Advance-Newhouse P'ship, No. 3:12-cv-2370-JFA, 2013 WL 2099496 (D.S.C. May 14, 2013) ("Objections that state that the discovery request is 'vague, overly broad, or unduly burdensome' are, standing alone, meaningless and will be found meritless by this court.") (R. pp. 663-67); Crescom v. Terry, No. 2:12-cv-63-

[9] There was no court reporter present at this hearing.

PMD, 2017 WL 2880866 (D.S.C. Order dated July 6, 2017) (citing multiple jurisdictions for the same proposition). (R. pp. 809-19). Further:

> For an objecting party to carry its burden, the objection must be specific, the party making it must explain why it applies on the facts of the case to the request being made, and if the party is providing information subject to the objection, the party must articulate how it is applying the objection to limit the information it is providing. In short, "[o]bjections should be plain enough and specific enough so that the Court can understand in what way the discovery is] claimed to be objectionable."

Id. at 5-6 (footnotes and citations removed).

Even if Ditech had not waived its objections, Snyder requested relevant information. The scope of discovery in South Carolina is very broad, allowing inquiry into any matter that "relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party…" Rule 26(b)(1), SCRCP. Snyder's counterclaims allege a wide variety of misconduct related to the foreclosure and collection of this loan (R. pp. 70-76), and other misconduct has been uncovered as litigation progressed (see Argument I). The personnel records of certain employees (R. p. 96) will provide information on the persons who interacted with the Snyders and their counsel. Likewise, training materials (R. p. 96) will determine how systemic the alleged misconduct is. Accounting records (R. p. 95) are needed to establish damages. Because Plaintiff has denied the allegations of paragraph 21 of the Counterclaims (alleging failure to make good faith efforts, &c.), the materials requested in requests 26 & 29 will be necessary for impeachment. Impeachment evidence is relevant and discoverable. E.g. Newsome v. Penske Truck Leasing Corp., 437 F. Supp.2d 431 (D.Md. 2006) (applying substantially similar federal rule). Ditech has custody of these documents, according to the April 23, 2015 order in a settlement with the Federal Trade Commission over mortgage servicing

practices. See Federal Trade Comm'n v. Green Tree Servicing, LLC, 0:15-cv-02064-SRN-JSM (D. Minn. Complaint filed April 21, 2015); Federal Trade Comm'n v. Green Tree Servicing, LLC, 0:15-cv-02064-SRN-JSM (D. Minn. Order dated April 23, 2015). (R. pp. 668-777). Accessing these documents cannot be a burden. Finally, regarding request 32 (R. p. 97), Ditech has demanded attorneys' fees and costs as damages in this action, thus making this information relevant, and a fee agreement is not a privileged document. See In re Grand Jury Subpoena, 204 F.3d 516 (4th Cir. 2000); In re Grand Jury Investigation, 631 F.2d 17, 19 (3rd Cir. 1980).

Ditech's withholding of these materials has prevented Snyder from obtaining evidence relevant to all his causes of action, but particularly for his cause of action for the violation of the Admin Order. A court considering sanctions needs to know whether Ditech and its predecessors' repeated delays were a systemic problem, or the result of several deficient employees. Accordingly, the Master-in-Equity's March 27, 2019 and April 26, 2019, orders must be vacated and its March 25, 2019, discovery order reversed.

III. The March 20, 2014, motion to amend in this action was procedurally and substantively defective.

On February 19, 2014, Ditech's predecessor Green Tree filed a motion to amend the complaint (as a form motion) with an attached proposed "Order Amending Caption". (R. pp. 6-7). Snyder was never served a copy of this motion; thus it violated the notice provisions of Rule 6, SCRCP. (R. p. 109). This lack of notice prevented Snyder from exercising his right to object to the substitution of a party under Rule 17(a), SCRCP. Had Snyder been allowed to object, he would have, as the factual findings of the resulting order lack evidentiary support. According to the order:

> … this action was brought in the name of BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP in anticipation that an assignment into that entity would be placed of record, and it appearing that no such assignment has been placed of record, but by virtue of an assignment recorded September 9, 2013, in Book 0359 at Page 558, the loan was transferred from Countrywide Home Loans, Inc. to Green Tree Servicing, LLC…

(R. pp. 6-7). The public record does not reflect that this loan was actually transferred to Green Tree Servicing, LLC n/k/a Ditech Financial, LLC. The first assignment of this loan took place on September 25, 2007, when Mortgage Electronic Registration Systems, Inc., as nominee for Gateway Funding Diversified Mortgage Services (the originator of the loan) assigned the mortgage[10] to Countrywide Home Loans, Inc. (R. pp. 351-52). The next assignment took place on January 26, 2009, when Countrywide Home Loans, Inc. assigned the mortgage to Countrywide Home Loans Servicing, LP. (R. pp. 422-24). Countrywide Home Loans, Inc. then attempted to assign the mortgage again on September 9, 2013 to Green Tree Servicing, LLC n/k/a Ditech Financial, LLC. (R. pp. 425-26). However, the record reflects that Countrywide Home Loans, **LP** held the mortgage on September 9, 2013, not Countrywide Home Loans, **Inc.**, and therefore Countrywide Home Loans, Inc.'s second assignment had no effect. The record contains no subsequent assignments of the mortgage; therefore, Countrywide Home Loans, LP (now BAC Home Loans Servicing, LP) is the current owner of this mortgage. Accordingly, Green Tree / Ditech lacked the standing[11] to pursue this action at the time of the March 12, 2014 order amending the action,

---

[10] The record contains no evidence of who possessed the note after its initial signature and before the April 1, 2019 final hearing. (R. pp. 642-44). See S.C. Nat'l Bank v. Halter, 293 S.C. 121, 128, 359 S.E.2d 74, 77 (Ct. App. 1987) ("The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee absent some indication that the parties also intended to transfer the debt." (internal citations omitted)).

[11] Snyder expressly contested standing in this action. (R. p. 71).

and the action should have been dismissed; the Master-in-Equity should be reversed and Ditech's action dismissed.

IV. The Estate of Mary Snyder is entitled to present a defense under the Attorney Preference Statute.

The Master-in-Equity's March 27, 2019, order struck one defense of the Estate of Mary Snyder: "The Court finds that Defendants cannot raise a defense to foreclosure on the basis of alleged noncompliance with S.C. Code § 37-10-102 ("Attorney Preference Statute") as to Mary Snyder, because Mary Snyder was not a "borrower" within the meaning of the statute, and the Court therefore strikes this defense." (R. pp. 21-22). The Answer and Counterclaims of Kevin Snyder and the late Mary Snyder asserted, on behalf of Mary Snyder, a violation of South Carolina's Attorney Preference Statute. See S.C. Code § 37-10-102. Mary Snyder was a signatory to the mortgage securing the loan at issue in this action (she was not a signatory to the note), and she was not given a choice of who to represent her at closing. (R. pp. 71, 188-90, 317-35). South Carolina's Attorney Preference Statue provides:

> The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction and except in the case of a loan on property that is subject to the South Carolina Horizontal Property Act (Section 27-31-10, et seq.) the insurance agent to furnish required hazard and flood property insurance in connection with the mortgage and comply with such preference.

S.C. Code § 37-10-102(a). Chapter 22 of South Carolina's Consumer Protection Code ("Mortgage Lending") defines a "borrower" as: "a natural person in whose dwelling a security interest is or is intended to be retained or acquired if that person's ownership interest in the dwelling is or is to be subject to the security interest." S.C. Code § 37-22-

110(7). Because Mary Snyder (now her estate) is a party to this lawsuit and to the mortgage, including her in the definition of "borrower" is consistent with the liberal construction and remedial nature of the Consumer Protection Code. See S.C. Code § 37-1-102 (Purposes; rules of construction). Mary Snyder's Estate has been prejudiced by not being able to assert this defense, which would have served as a setoff to Ditech's judgment. See S.C. Code § 37-10-105(A). Accordingly, the striking of this defense was reversible error.

V. The Master-in-Equity lacked jurisdiction over this case after the first notice of appeal.

Generally speaking, an order that affects an interest in property is immediately appealable, especially if there exists a risk that the underlying property could be lost. See Lebovitz v. Mudd, 289 S.C. 476, 347 S.E.2d 94 (1986) (order dissolving lis pendens immediately appealable); Va.-Carolina Chem. Co. v. Wilkins, 105 S.C. 291, 298, 89 S.E. 659, 661 (1916) (order dissolving an attachment to lumber immediately appealable); Kay v. Meadors, 216 S.C. 483, 486, 58 S.E.2d 893, 895 (1950) (order refusing to dissolve an attachment to automobile immediately appealable). Similarly, without an immediate appeal of the March 27, 2019 order, and the consequential automatic stay, the property at issue in this residential foreclosure could be lost at judicial sale and an appeal would not reinstate ownership.[12]

The March 29, 2019, notice of appeal was a valid appeal of an immediately appealable order. Accordingly, the Master-in-Equity lost jurisdiction of this matter and did

[12] This fact distinguishes this case from Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 393 S.E.2d 176 (1990), which did not involve a property interest. Ashenfelder v. City of Georgetown, 389 S.C. 568, 698 S.E.2d 856 (Ct. App. 2010), did involve an interest in real property, but there was no reasonable risk of the real property being lost after a final order.

not have the authority to conduct the April 1, 2019, hearing. Rule 241(a), SCACR; Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 533, 787 S.E.2d 485, 493 (2016) ("Pursuant to Rule 205, the service of a notice of appeal divests the trial court of jurisdiction over matters affected by the appeal…"). Further, the Master-in-Equity's determination that he did have jurisdiction (R. pp. 606-22) was likewise improper, as only this Court had the authority to determine the extent of the automatic stay. State v. Cooper, 342 S.C. 389, 536 S.E.2d 870 (2000) (citing Kearney v. Allen, 287 S.C. 324, 338 S.E.2d 335 (1985)). Reversal is mandated.

CONCLUSION

For the argument set forth above, Kevin Snyder asks this Court to reverse the decisions of the Charleston County Master-in-Equity, award him the relief requested under the Admin Order, and award him all such other and further relief as this Court deems just and proper.

Dated: February 5, 2021

/s/ Jason Scott Luck
Jason Scott Luck
P.O. Box 47
Bennettsville, SC 29512
843.479.6863 (o)
843.479.7222 (f)
jason@luck.law
Attorney for Appellant