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SC Court of Appeals

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORECHESTOR COUNTY

Court of Common Pleas

James E. Chellis, Circuit Court Judge

Case No. 2019-CP-18-00302

Ashley Tucker,

Appellant,

v.

Farmers & Merchant Bank of S.C.,

Respondent.

BRIEF OF APPELLANT

Ashley Tucker, Appellant
155 Shady Ln.
Summerville, South Carolina 29485
(843) 557-2729

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STATEMENT OF ISSUES ON APPEAL

1. THE TRIAL COURT ERR IN FAILING TO ADHERE TO THE 1868 SOUTH CAROLINA STATE CONSITUTION
2. THE TRIAL COURT ERR IN ADHEREING TO THE RULE 5.1 CONSTITUTIONAL CHALLENGE OF FORECLOSURE

STATEMENT OF THE CASE

Court Proceeding June 19th, 2019

1. June 19th, 2019 was my first court proceeding. I filed my Power of Attorney over my husband, at that point in time, the Defendant, Curtis Tucker. Accompanying my Power of Attorney was a certified copy of the 1868 South Carolina State Constitution, a Constitutional Challenge to a state statue of foreclosure, and a Notice of Special Appearance filed into the record on my behalf. When the proceeding began, Judge James Chellis stated that he received my documents named above but didn't put them on the record because they were not filed in the right time. **See pg 4 script 6 - pg 5 script 3.**
2. Judge James Chellis reviewed all of my documents and asked me to identify all of the evidence I filed. **See pg 5 script 12.**
3. Judge James Chellis had me explain what each document entailed, as well as where did I get each document from. **See pg 8 script 22 – pg 9 script 4-8.**
4. Judge James Chellis then proceeded to ask the lawyer of record Elizabeth Blackwell, whether she could authenticate my documents that were produced from the South Carolina State Archives. Judge Chellis stated he was going to mark them for authentication purposes. **See pg 12 script 12-14.**
5. Elizabeth Blackwell stated that I never responded to the past due notice, which in fact I did. **See pg 46-49 script 25.**
6. I told Judge James Chellis that I sent a money order to the Plaintiff, Farmers and Merchants Bank in good faith. Attorney Elizabeth Blackwell called her witness Brian West, Chief Credit Officer of Farmers and Merchants Bank. Judge James Chellis asked Bran West did the bank receive the payment and he stated, yes, they received a money order. **See pg 42 script 19.**
7. I explained to Judge Chellis that my husband at the time was incarcerated. Attorney Blackwell stated that I never told her the Defendant, Curtis Tucker was incarcerated but in fact when questioned by the judge she said I did. Attorney Blackwell stated that I never told her that her where Defendant Curtis Tucker was. Judge James Chellis as the witness Brian West, did I inform the bank that the Defendant, Curtis Tucker was incarcerated, he replied, "yes in fact she informed my colleague, Loan Officer, Zachary Sabac." **See pg 48-57 script 25.**

Court Proceeding June 19th, 2019 Cont.

8. Attorney Balckwell's firm along with Plaintiff, Farmers and Merchants Bank knew the whole the Defendant, Curtis Tucker whereabouts the entire time. Once Judge James Chellis told attorney Blackwell that it has been confirmed that I did inform the bank about Defendant, Curtis Tucker's custody status and the plaintiff referred the message to attorney Blackwell. **See pg 57 script 9 – pg 57 script 21-24.**
9. Attorney Blackwell decided to withdraw her objection to me submitting my Power of Attorney over Defendant Curtis Tucker in a timely manner so Judge Chellis could issue a ruling. Judge Chellis accepted and entered my Power of Attorney into the record. **See pg 65 script 18-25 – pg 66 script 1-5.**
10. I stated to Judge Chellis, "since Attorney Blackwell was able to withdraw her objection against my Power of Attorney, then all of my documents should be submitted into evidence." Judge Chellis asked Attorney Blackwell could my documents be entered into the record as evidence. Attorney Blackwell stated that she agreed but that she still stood by her objection as far as my evidence being relevant to the case. **See pg 67 script 19 – pg 68 script 1-7. See pg 68 script 6-8.**
11. Judge Chellis stated that exhibit 3, to my knowledge is my Notice of Special Appearance, that he was going to enter it into evidence but opted to change his mind stating that it was gibberish and couldn't understand it. Judge Chellis stated that he would enter my Notice of Special Appearance as evidence only but not as evidence of record, after he asked Attorney Blackwell if she would accept all of my documents as evidence. **See pg 68 script 2 – pg 69 script 16.**

Court Proceeding October 29th, 2019

1. Attorney Blackwell stated she produced a certified copy of the original Promissory Note. **See pg 7 script 7 – pg 9 script 3 – pg 7-10 script 3.**
2. I asked Judge Chellis if I could examine the Note and Attorney Blackwell stated that I couldn't because I wasn't on the Note. Judge Chellis over ruled Attorney Blackwell and allowed me to examine the Note. After reviewing the Promissory Note, I stated to Judge Chellis that the Note that Attorney Blackwell entered into evidence was not in fact an original or a certified copy of the original and could not be entered on the record as evidence. **See pg 10 script 7 – pg 13 script 25.**
3. Attorney Blackwell asked for my Rule 5.1 Constitutional Challenge to be stricken from the record even though I submitted it to be recorded into evidence via certified mail within the (5) day time frame. Judge Chellis stated he never received my Constitutional Challenge and that it was not put on file, even though the U.S. Postal Service tracking proves it was delivered to the courthouse in a timely manner. **See pg 16-19.**
4. My Special Appearance was filed after the order was entered into default even though the court told me I had (5) days to file once I received a notice. **See pg 17-18 script 1-10.**
5. I asked Judge Chellis to take Mandatory Judicial Notice to the South Carolina State Constitution along with my Rule 5.1 Constitutional Challenge. **See pg 22 script 1-23.**
6. Judge Chellis stricken my Affidavit of Non-U.S. Citizenship along with all of my instruments submitted from evidence from the record stating that they were all irrelevant to my case. **See pg 34 script 1.**

Court Proceeding October 29th, 2019 Cont.

7. I asked Judge Chellis to take my documents into consideration and to file them on record and that he already prior to this date, but Judge Chellis told me he never received my documents and therefore he couldn't make a ruling on my behalf. I showed Judge Chellis the certified green card, proof of mailing of my documents to the court with a signature of the court clerk, as well as Attorney Blackwell who in fact did received them. **See pg 37 script 9 – pg 38 script 7.**

STANDARD OF REVIEW

“It is held in South Carolina Supreme Court that unless the real party in interest institutes the suit and is before the Court, the Court is without jurisdiction.” Hodges v. Lake Summit Co., 155 S.C. 436, 152 S.E. 658 (1928); Wilson v. Gibbes Machine Co., 189 S.C. 426, 1 S.E.2d 490 (1938). Rule 17(a), SCRPC, “Every action shall be prosecuted in the name of the real party in interest.” Fisher v. Huckabee “The defendants moved for summary judgment, claiming Fisher did not have standing to bring the survival action. The question of who may bring a civil action arose under Rule 17(a) of the South Carolina Rules of Civil Procedure.”

ARGUMENTS

I. BECAUSE RESPONDENT COULD HAVE PROVIDED PROOF OF BEING HOLDER IN DUE COURSE OF THE PROMISSORY NOTE/MORTGAGE PRIOR TO BRINGING THIS FORECLOSURE ACTION AGAINST APPELLANT, RESPONDENT IS BARRED BY RES JUDICATA FROM BRINGING THIS ACTION

“This Court concludes that the Debtor has the standing to challenge the validity of the foreclosure sale to the extent that there is an issue as to whether the entity conducting the foreclosure sale was the actual holder of the mortgage by way of assignment at the time of the notice and sale.” See - **Lacey v. BAC Home Loans Servicing, LP**, 480 B.R. 13 (2012)

“There must be proof that the foreclosure was carried out by a party that itself held the mortgage... the foreclosing entity must hold the mortgage at the time of the notice and sale in order accurately to identify itself as the present holder in the notice and in order to have authority to foreclose under the power of sale.” See - **Ibanez**, 458 Mass. At 651, 941 N.E.2d 40) (**Bailey v. Wells Fargo Bank, NA (In re Bailey)**)

II. BECAUSE RESPONDANT FAILED TO PROOVE THEY HAVE STANDING TO BRING THIS FORECLOSURE ACTION AGAINST APPELLANT, RESPONDANT IS BARRED BY RES JUDICATA FROM BRINGING THIS ACTION

“It is fundamental in American jurisprudence that in order to bring a lawsuit against an opposing party, one must have the standing to do so. Without standing, a party is not properly before the court to advance a cause of action” See - **Farm Bureau Ins. Co. of Ark. V Running M Farms, Inc.** 237 S.W.3d 32, 36 (Ark. 2006)

“Without evidence demonstrating the circumstances under which it received an interest in the note and mortgage, a Foreclosing Party cannot establish itself as the holder.” See - **Everhome Mortg. Co. v. Rowland** 10th Dist. No. 07AP-615, 2008-Ohio-1282, at ¶15

CONCLUSION

A certified copy and an authenticated copy of the 1868 South Carolina State Constitution was submitted for evidence into the case for Judge Chellis to take Judicial Notice to the supreme law of state's jurisdiction. A Rule 5.1 Constitutional Challenge was submitted for evidence to challenge South Carolina's State Title 29, Chapter 3, Article 7, Section 630 – Foreclosure. Hodges v. Lake Summit Co., 155 S.C. 436, 152 S.E. 658 (1928); Wilson v. Gibbes Machine Co., 189 S.C. 426, 1 S.E.2d 490 (1938). Rule 17(a), SCRPC, establishes that if the real party of interest does not institute the suit, the trial court lacks jurisdiction to adjudicate. Fisher v. Huckabee, establishes the position of standing in a court proceeding to institute a suit in the state of South Carolina. For the reasons stated, the Court should reverse the judgement of the trial court

April 4th, 2021

Respectfully submitted,

/s/



Ashley Tucker, Appellant

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PROOF OF SERVICE OF APPELLANT BRIEF

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM DORCHESTER COUNTY
Court of Master-in-Equity

James E. Chellis, Judge

Case No. 2019-CP-18-00302

Farmers & Merchant Bank of South Carolina, Respondent.

v.

Curtis R. Tucker; Ashley Tucker; SC Housing Corp.,
Acting through South Carolina State Housing Finance
And Employment Lending Program; and South Carolina
Federal Credit Union, Defendant,
of whom Ashley Tucker is the Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Brief on Farmers & Merchant Bank of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on April 12th, 2021 addressed to his attorney of record, Elizabeth Ann Blackwell & Carmelo Barone Sammataro, at:
ssammataro@turnerpadget.com.

April 12th, 2021


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