

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

94241
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APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

SC Court of Appeals

Lisa Smith, Special Referee

Appellate File No.: 2018-001161

Albert J. Sanders,.....Appellant,

v.

Wells Fargo Bank, NA, Ultimate Successor to First Union Bank.....Respondents.

PETITION FOR REHEARING

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ATTORNEYS FOR RESPONDENT

INTRODUCTION

This is an appeal of a decision of the Honorable Lisa Smith, Special Referee, issued on March 15, 2018. The Respondent herein filed a foreclosure action on October 19, 2011 seeking foreclosure of real property owned by Appellant. Appellant answered and raised numerous defenses, including failure of the Respondent to comply with the Administrative Order of the South Carolina Supreme Court of May 2, 2011 dealing with foreclosures filed in South Carolina. The Order of the Special Referee granted the relief requested by the Respondent. On appeal, this Court affirmed the judgment of the Special Referee.

Appellant respectfully petitions the Court for a rehearing for reconsideration of this appeal on the grounds the Court overlooked or misapprehended the facts and law applicable to this appeal as follows:

ARGUMENT I

THE COURT MISAPPREHENDED OR OVERLOOKED THE CONTROLLING LAW AND FACTS IN CONCLUDING THE APPELLANT DID NOT ARGUE RESPONDENT DID NOT COMPLY WITH THE ADMINISTRATIVE ORDER

Appellant testified he sought loan modification numerous times throughout the foreclosure process but had not received any response from the Respondent. He further testified he received no documentation from the Respondent regarding loan modification. The Respondent initially entered a document into evidence purportedly showing

communication regarding loan modification from Respondent to Appellant dated November 15, 2011 but later withdrew this document

Appellant respectfully submits that Appellant's testimony in trial suffices as argument that Respondent did not comply with the Administrative Order and specifically challenged any assertion that they did. Further, the Respondent presented no evidence disputing these allegations as they withdrew the one document they claimed to support their defense to this claim.

Appellant respectfully submits the testimony of the Appellant and the failure of the Respondent to introduce any evidence which contradicts such testimony shows that Appellant did challenge Respondent's compliance with the Administrative Order and that Respondent did not comply with same.

ARGUMENT II

THE COURT MISAPPREHENDED OR OVERLOOKED THE CONTROLLING LAW AND FACTS IN NOT RULING APPELLANT DID NOT ARGUE UNCLEAR HANDS AND THE ISSUE WAS NOT PRESERVED THROUGH THE FILING OF A RULE 59(e) MOTION

Appellant alleges Respondent's failure to comply with the Administrative Order is the crux of its unclean hands. As Appellant testified to this failure, he would argue that the issue was raised at trial. Further, the Order of the Special Referee specifically found the Respondent did comply with the Administrative Order which Appellant would contend is a ruling on the issue of unclean hands.

Appellant would respectfully request the Court reconsider and issue an opinion finding this issue was argued by Appellant and ruled upon by the Special Referee and

then find that Appellant is entitled to have the judgment of the trial court dismissed with prejudice.

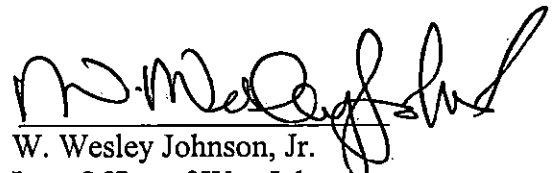
CONCLUSION

Appellant respectfully submits the Court misconstrued the facts and law in reaching its decision. Appellant testified in detail about the failure of Respondent to offer loan modification without contradiction by Respondent. Further, as the failure of the Respondent to offer loan modification as required is the basis of the unclean hands defense of Appellant, he would argue that the issue was properly before the trial court which issued a decision ruling on that specific issue.

For all of the above reasons Appellant would respectfully request the Court reconsider its Opinion in this matter to conclude Appellant is entitled to a reversal of the judgment of the trial court and dismissal of Respondent's Complaint.

May 26, 2021

Respectfully submitted,



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ATTORNEY FOR THE APPELLANT

CERTIFICATE OF SERVICE

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SC Court of Appeals

The undersigned does hereby certify one copy of the APPELLANT'S
PETITION FOR REHEARING was served in the foregoing action by regular mail on
May 26, 2021, to the following addresses:

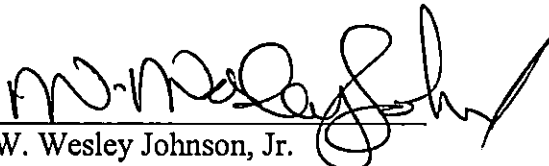
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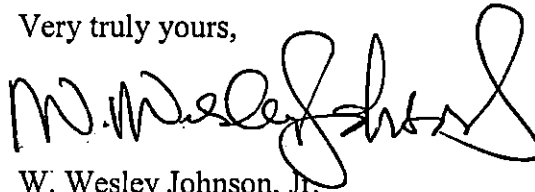
SC Court of Appeals

Re: Wells Fargo Bank, N.A., Ultimate Successor to First Union National Bank, Respondent
v. Albert J. Sanders, et. al; Appellants
Appellate Case No. 2018-001161

Enclosed, please find the original and six copies of the Petition for Rehearing in this matter along with our check in the amount of \$50.00 for filing. All counsel of record have been served with this Motion as evidenced by the Certificate of Service attached to the Motion.

Thank you for your consideration in this matter.

Very truly yours,


W. Wesley Johnson, Jr.

Enclosures

Chad Wilson Burgess, Esquire (w/ enclosures)
Alan Martin Stewart, Esquire (w/ enclosures)
Shelton Sterling Laney, III, Esquire (w/ enclosures)
Matthew Todd Carroll, Esquire (w/ enclosures)

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