

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Lisa Lee Smith, Special Referee

Case No. 11-CP-32-03945

RECEIVED
JAN 16 2019
SC Court of Appeals

Wells Fargo Bank, N.A. Ultimate Successor to First Union National Bank, Respondent,

v.

Albert J. Sanders, Jr.; AJS Properties, LLC; Branch Banking and Trust Company Ultimate
Successor to Southern National Bank of South Carolina; First Palmetto Savings Bank, FSB,
Defendants,

Of which Albert J. Sanders, Jr. and AJS Properties, LLC are the Appellants.

FINAL BRIEF OF APPELLANT

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Attorney for Appellant

January 14, 2019

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TABLE OF AUTHORITIES

Cases

Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010)

Administrative Orders

SOUTH CAROLINA SUPREME COURT ADMINISTRATIVE ORDER 2009-05-22-01

STATEMENTS OF ISSUES ON APPEALS

- I. THE FINDING THAT PLAINTIFF COMPLIED WITH THE SOUTH CAROLINA SUPREME COURT ADMINISTRATIVE ORDER 2009-05-22-01 (hereinafter, "the Administrative Order") WAS IN ERROR AS DEFENDANT PROVIDED AMPLE PROOF THAT PLAINTIFF DID NOT COMPLY DESPITE NUMEROUS REQUESTS BY DEFENDANT.

- II. THE ORDER GRANTING JUDGMENT TO THE PLAINTIFF WAS IN ERROR AS DEFENDANT'S TESTIMONY AND EVIDENCE SUBMITTED SHOWED PLAINTIFF ACTED WITH "UNCLEAN HANDS" IN THIS MATTER AND WAS NOT ENTITLED TO JUDGMENT.

STATEMENT OF THE CASE

This matter was filed on October 19, 2011 by Plaintiff, seeking foreclosure of real property owned by Defendant involving the construction of the home. The Defendant timely answered on November 18, 2011 denying the allegations of the complaint and raising numerous defenses including failure of the Plaintiff to comply with the Administrative Order and Unclean Hands. A final hearing was held in front of the Honorable Lisa Lee Smith on March 15, 2018. By an Order filed May 15, 2018, Plaintiff was granted the relief requested in the form of an Order of Foreclosure and Sale. Pursuant to the issuance of that Order, a timely appeal was filed to this court on June 13, 2018.

STANDARD OF REVIEW

This matter involves a Foreclosure heard by a Special Referee with direct appeal to the Court of Appeals. In equitable actions, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010).

ARGUMENTS

The court erred in finding the Plaintiff complied with the Administrative Order s there was no evidence presented by Plaintiff showing such compliance while Defendant testified adamantly that he made continued efforts to obtain loan modification. The Court found that Plaintiff complied with the Administrative Order. (R. p. 3, para.9)

The Defendant testified he sought loan modification numerous times, even contacting Plaintiff's attorney, but had received no response Tran. P.49 Lines 13-22. He further testified he received no documentation from the Plaintiff at any time regarding possible modification. (R. p. 74, lines 14-16)

In response, Plaintiff presented correspondence it purported was sent from the lender to Defendant dated November 15, 2011. (R. p. 94, lines 1-17)

The record suggests this correspondence was an application for assistance send by Plaintiff to Defendant. Tran. (R. p 95, line 25 and R. p. 96 Line 1) Though the Plaintiff initially entered this document into evidence as Plaintiff's Exhibit 11, it was later withdrawn. (R. p. 98, lines 12-16) (R. p. 100, lines 17-21)

With the withdrawal of this Exhibit, Plaintiff presented no evidence that they had even attempted to comply with the Administrative Order and the testimony of the Defendant was not refuted in any manner. The failure of the Plaintiff to follow the Administrative Order is one of the basis for Defendant's defense of Unclean Hands as alleged in his Answer. In *Straight v. Goss*, 383 S.C. 180,678 S.E.2d 443, 457-58 (Ct. App. 2009) (citations omitted), the Court stated as follows:

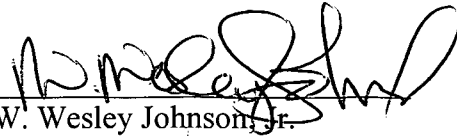
The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.

CONCLUSION

The Court's Order in this matter finds that Plaintiff complied with the Administrative Order regarding required attempts at loan modification though Plaintiff presented no evidence showing and attempt at compliance. This failure to comply with the Administrative Order despite Defendant's repeated entreaties for assistance constitutes Unclean Hands on behalf of the Plaintiff. Both of these contentions support a finding for the Defendant that Plaintiff is not entitled to an Order of Foreclosure and Sale in this matter.

Therefore, we respectfully ask this court to reverse the judgment in this case and to find for the Defendant, dismissing the Complaint of the Plaintiff with prejudice.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read "W. Wesley Johnson, Jr.", written over a horizontal line.

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App. Case No. 2018-001161

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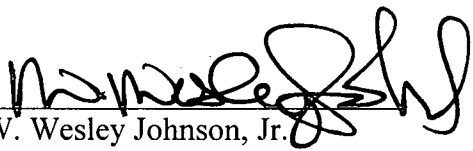
v.

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

Certification of Counsel

The undersigned hereby certifies that the Final Brief of Appellant complies with Rule 211(b) of The South Carolina Appellate Court Rules.

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