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SC Court of Appeals

BRIEF OF RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

FROM LEE COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2019-000131

Benita Dinkins-Robinson

Appellant,

v.

Alan Ratner,

Respondent.

FINAL BRIEF OF RESPONDENT

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S.C. Code Ann. § 27-40-710

STATEMENT OF THE CASE

In February 2014, Alan Ratner (Ratner) sold real property to Benita Dinkins-Robinson (Dinkins) in the town of Bishopville, Lee County, South Carolina by way of owner financing. Both parties are and were, upon information and belief, citizens of South Carolina at the time of the transaction. Within a matter of a few months, Dinkins ceased paying her obligatory monthly payments to Ratner. Ratner retained the services of counsel, S. Bryan Doby (Doby), and foreclosure proceedings began in September 2014.

Dinkins and her attorney, Johnny E Watson (Watson), failed to render a timely response to the summons and complaint. On May 28, 2015, Doby and Ratner appeared before the Special Referee. Doby asked for and was granted judgment. An order of foreclosure was issued and a sale was set.

Subsequently, Ratner repurchased the property at a Special Referee sale held in December, 2015. On February 23, 2018, Appellant filed suit, alleging several causes of action. Respondent filed a motion to dismiss and, at a hearing on August 1, 2018, Appellant appeared without representation. Respondent moved for and was granted dismissal of the complaint. Appellant then filed this appeal.

STANDARD OF REVIEW

Abuse of Discretion standard- “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Arthur v. Sexton Dental Clinic, 628 S.E.2d 894, 898, 368 S.C. 326, 333 (S.C.App.,2006); *quoting Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

ARGUMENTS

1. DID THE TRIAL COURT ERR IN DENYING A CONTINUANCE BASED ON THE APPELLANT’S CLAIM OF HAVING RETAINED LEGAL REPRESENTATION

Appellant allegedly retained Watson to represent her in this matter on July 31, 2018. Neither Appellant nor any attorney filed notice of representation with the court. At the hearing, Appellant stated that she faxed a letter to the judge’s office stating that she retained Watson. Transcript of Record at 4, *Dinkins-Robinson v Ratner*. Appellant was informed by the judge that Watson had to file with the clerk of court that he was the attorney of record in this case. *Id.* Based on Watson’s and Appellant’s failure to file anything with the clerk of court, the judge refused to continue the hearing. *Id.* at 5.

Counsel may move for a continuance for good and sufficient reason, but it remains in the trial court's discretion whether to grant the motion. SCRPC Rule 40 (i)(1). Appellant bases her claim of insufficient legal representation solely on the court's discretionary act of denying her motion for continuance. Because this is a discretionary decision, the trial court was within her discretion to deny such a motion.

Further, Appellant has stated that she is represented by Watson in this matter. *Id.* at 4. Appellant has failed to provide any court order releasing Watson as her counsel. Appellant is also representing Project Reach, which was a corporation allegedly involved in this matter. According to S.C. Code Ann. § 40-5-320, corporations may not appear *pro se*. S.C. Code Ann. § 40-5-310 further prohibits persons without having been admitted to the bar from representing parties in a lawsuit. As Appellant is acting as a representative for a South Carolina corporation and she is not admitted to the South Carolina bar, Respondent requests that the court dismiss Appellant's appeal.

2. DID THE TRIAL COURT ERR IN DISMISSING THE CASE WHEN THE APPELLANT WAS PROVIDED DUE PROCESS IN REGARD TO THE FORECLOSURE PROCEEDING

Appellant cites to Nevada Revised Statute 40.255(1)(b) as the sole basis for this argument. Appellant has failed to make any cogent argument. South Carolina law does and should apply in this matter, not Nevada statutes. Respondent, therefore, asks the court to dismiss and disregard Appellant's second claim.

In addition, Appellant was afforded due process in the mortgage foreclosure proceeding as evidenced by the Transcript of Record for those proceedings, which is made a part of the Respondent's Matter to be Included in the Record of Appeal. Appellant makes no credible argument and offers no proof of a violation of her due process.

3. DID THE TRIAL COURT ERR IN FAILING TO GRANT THE APPELLANT'S MOTION TO RECONSIDER

Appellant has not filed with the trial court any proper request for reconsideration. Because there was never a motion to reconsider filed with the court, the court never considered it. As there is no motion to reconsider or court decision on record, there is nothing for this Court to consider in this regard.

4. DID THE TRIAL COURT ERR IN ALLOWING THE RESPONDENT COUNSEL TO CONTINUE AS COUNSEL

Appellant claims that S. Bryan Doby could not serve as counsel because of a conflict of interest. The undersigned did not represent the Appellant in connection with this underlying transaction nor any related transaction; nor did the undersigned have any involvement in the purchase

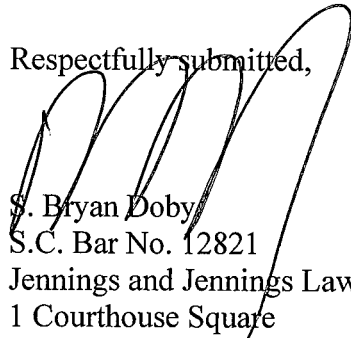
of the property in question and only became involved during the foreclosure process for the Respondent when Ratner retained the services of Jennings and Jennings, P.A. There is no conflict of interest and Appellant has not shown any proof or evidence of a conflict. Respondents assert all allegations to this end are untrue and should be disregarded by this Court.

CONCLUSION

The Appellant's claims are without merit and Respondent urges the Court to dismiss each one for the above stated reasons.

October 1, 2021

Respectfully submitted,



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