THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Thomas E. Player, Jr., Special Referee

Appellants Case No. 2022-000601

John Weible .....Respondent,

v.

Russell Self and Brandy Brunson ..... Appellants.

MEMORANDUM ADDRESSING THE ISSUE OF APPEALABILITY

The Court of Appeals has requested a Memorandum addressing the issue of appealability within ten (10) days of a May 13, 2022 letter.

Appellants' counsel had left for a vacation in Europe on May 9, 2022, and did not see or know about this May 13, 2022 letter until his return to the office on May 31, 2022. At that time, Appellants counsel contacted Tyler Clark in the Court of Appeals office and was advised that a response to the letter should be submitted as soon as reasonably possible.

The Appellants served a Notice of Appeal on Respondent by hand delivering said Notice of Appeal to Respondent's counsel, Michael Jordan on April 28, 2022. The Notice of Appeal and Proof of Service were submitted to the court by letter postmarked May 2, 2022.

This case involves the foreclosure of mortgages by the mortgage holder, John Weible, of the residential real estate of the mortgagors, Russell Self and Brandy Brunson.

The foreclosure case was thereafter referred to Thomas E. Player, Jr. as Special Referee and a hearing was held on September 19, 2019. An Order of foreclosure and sale was signed and entered on March 17, 2020 and a Motion for Reconsideration was filed that same day. After substitution of counsel, the undersigned submitted a Memorandum of Law to the Special Referee on June 30, 2021, (Appellant's Exhibit A) and the Special Referee signed an order on August 18, 2021. However, the Order was not filed in the case by the Clerk of Court until January 10, 2022 and therefore could not be appealed until filed by the Clerk of Court. SCACR Rule 203(b)(I)(". . . the time for appeal for all parties . . . shall run from receipt of written notice of *entry of the order* . . ." (emphasis added)). The Order on the Motion for Reconsideration was entered on January 10, 2022.

Appellant retained the undersigned to file an appeal in August of 2021. The time to appeal from an Order does not begin to run until the Order has been filed by the Clerk of Court. Upchurch v Upchurch 367 S.C. 16, 624 S.E.2d 643 (2006). As a result of being notified that the Special Referee intended to rule against Appellant, staff of the undersigned checked the Clerk of Court e-filing record at least every other day from mid-August until the Appellants' bankruptcy filing in September, and then continued to check the Sumter County Court website after the bankruptcy filing to see if the order had ever been filed. The order was not e-filed in the case by the Clerk of Court.

The Appellant filed a Chapter 13 bankruptcy on September 27, 2021 as case number 21-02498-dd to stop a foreclosure sale arising from the March 17, 2020 Order. During that bankruptcy proceeding, Appellant filed an objection to claim, and Respondent filed a copy of

an Order August 18, 2021, with the Bankruptcy Court in support of the claim. That copy showed that the order had been filed under the wrong case number. (Appellant Exhibit B)

Appellant filed a response in Bankruptcy Court noting that the Order had not been filed correctly and stating that the order could not be filed at this time because of the automatic stay obtained by the Debtor as a result of the Bankruptcy filing. (Appellant Exhibit C).

Respondent's counsel contacted the Clerk of Court for Common Pleas and had the August 18, 2021 order filed in the case anyway which the undersigned believed to be in violation of the automatic stay. That order was filed in the foreclosure case on January 10, 2022, the day before a scheduled bankruptcy hearing. Respondent could have requested relief from stay at that January 11, 2022 hearing to have the order correctly filed, but did not wait until that time. As a result of the filing of that order on January 10, 2022, as shown by the Clerk of Court filing record, (Appellant Exhibit D), Appellant's counsel on January 11, 2022, requested permission from the Bankruptcy Court to make a protective filing in State Court to preserve the right to appeal, pending the next bankruptcy hearing. As a result of permission being granted, Appellant filed a new Rule 59 Motion in State Court. (Appellant Exhibit E). The Bankruptcy Court indicted that it would conduct a hearing and receive testimony to determine the amount of debt based on the greatly different balances alleged to be due by Respondent and found to be due by the Special Referee, and as calculated by Appellant.

After the hearing on February 9, 2022, when Appellant was able to testify as to the amount of debt believed to be due, the Bankruptcy Court then issued its Order on March 31, 2022 denying the Debtor's objection to claim.

In the Upchurch case, the Court stated that "By its plain language, Rule 203(b) requires notice of entry of the order. Entry of the order occurs when the clerk of court files the order.

Delivery of the order to the clerk is not analogous to the entry of the order. Accordingly, we hold that the time to file a notice of appeal pursuant to Rule 203(b), SCACR, begins to run when written notice that the order has been entered into the record by the clerk of court has been received. Upchurch, 367 S.C. at 24, 624 S.E. 2d 643 (2006). A letter or email from the Judge that he had signed the order is not analogous to entry of the order.

The Upchurch Court also set forth the holding from Bowman as follows: "parties to an action are not provided notice of a judge's ruling at the time that the judge signed an order. Rather, only after the order is filed with the clerk of court are the parties given notice of the order. Bowman v Richland Mem'l Hosp. 335 S.C 88 at 92, 515 S.E.2d 259 at 261 (Ct. App. 1999). Until the order or judgment is entered by the clerk of the court, the judge retains control of the case. Bowman 335 S.C. at 91, 515 S.E. 2d at 260.

The Bankruptcy Court, in its Order of March 30, 2022, also set forth the timeline that the Court believed would constitute the appropriate time in which to file a Notice of Appeal, based on the Bankruptcy Court lifting the automatic stay for that purpose. That would have been thirty (30) days after entry of that Bankruptcy Order that lifted the automatic stay. (Appellant's Exhibit F). The Notice of Appeal was served within that timeline.

Therefore, it is respectfully submitted that if the issue that the Court of Appeals is seeking to have the parties address by a memorandum whether this appeal is timely, then it is respectfully submitted that the appeal was submitted timely based on the foregoing.

If the issue which the Court of Appeals in seeking to be addressed is whether this type of case can be appealed, the undersigned would submit that this is a foreclosure case and therefore, a final decision by the court is appealable. The decision of the Court was not final until the August 18, 2022 order denying the Rule 59 motion seeking a reconsideration of an

order which had been filed March 17, 2020, was properly filed by the Clerk of Court in the correct case, giving notice of the filing to Appellant. A subsequent Rule 59 motion seeking clarification of the August 18, 2022 Order was filed to prevent a possible running of time to appeal (based on the filing of the Order in the correct case on January 10, 2022), which motion was denied by the Special Referee on April 26, 2022. However, that order was filed on January 10, 2022, without obtaining relief from the automatic stay of the Bankruptcy Court, thus making the appropriate time to appeal begin after relief from stay was granted by the Bankruptcy Court in its March 30, 2022 order.

For the reasons set forth herein, Appellants respectfully request that the Court find that the Appeal should go forward.

RESPECTFULLY SUBMITTED:

June 6, 2022
Sumter, SC

A. Paul Weissenstein, Jr., Esq., SC Bar No : 6013
Attorney for Appellants
106 Broad Street
P.O. Box 2446
Sumter, South Carolina 29151
(803) 418-5700

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Thomas E. Player, Jr., Special Referee

Appellants Case No. 2022-000601

John Weible .....Respondent,

v.

Russell Self and Brandy Brunson ..... Appellants.

EXHIBITS

Exhibit A	-	Memorandum of Law
Exhibit B	-	Order Denying Motion to Reconsider dated August 18, 2021
Exhibit C	-	Debtor's Response to Creditor's Return to Debtor's Objection to Claim
Exhibit D	-	Clerk of Court filing record
Exhibit E	-	Notice of Motion and Motion
Exhibit F	-	Order on Objection to Claim

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
	)	CIVIL ACTION NO: 2018-CP-43-02005
John Weible,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM OF LAW
	)	
Russell Self and Brandilyn Brunson	)	
	)	
Defendants.	)	
	)	

This matter came before the court for hearing based on various Motions which had been filed by the Defendants concerning the entry of an Order for Judgment and Decree of Foreclosure filed March 17, 2020. As a result of this hearing, Thomas E. Player, Jr. as Special Referee requested a Memorandum of Law summarizing the position of the Defendants.

The Defendants position is summarized as follows:

1. This action is for the foreclosure of mortgages given by the Defendants to the Plaintiff for their owner-occupied residential dwelling.

2. The Defendants have a meritorious defense to the allegations of the Complaint, especially as to the amount of the loan balance alleged by the Plaintiff and found to be due and owing by the Special Referee in that Foreclosure Decree. The Defendants believe the actual balance due is about $25,000.00.

3. The Defendants had previously filed a Motion to Strike Affidavit of Default, Require Compliance with Administrative Order, and Require Plaintiff to Accept Reinstatement, which was filed with this court on May 23, 2019. A Memorandum in

App Exh A

support thereof was filed with the court on October 3, 2019. Other than postponing the originally scheduled hearing date, it appears to the undersigned that the only action that was taken on that motion or any consideration given to the same prior to the Court scheduling and holding a hearing on the foreclosure or prior to entry of the Order for Judgment and Decree of Foreclosure filed March 17, 2020, was as set forth in paragraph 6 of the Foreclosure Decree. The Special Referee discussed that HAMP had expired and that the answers did not address the loan modification issues, and thus found that loan modification issues had been abandoned by the Defendants. However, the Special Referee did not address the failure of the Plaintiff to comply with the requirements of the 2011 Administrative Order, including the requirement on Plaintiff of serving a Notice of Right to Request Foreclosure Intervention. The relief that the Motion to Strike sought included being a motion to set aside default. Defendants' motion also set forth that Plaintiff was not permitted to schedule a hearing without first complying with the procedures set forth in the Supreme Court Administrative Order 2011-05-02-01, hereafter referred to as the 2011 Order, but the Special Referee did not appear to address that issue in his Order.

4. The Defendants had timely filed a request for loan modification upon their receipt of the summons and complaint as shown by their Acceptance of Foreclosure Intervention dated November 13, 2016 and filed on that date. In that Notice, the Defendants made reference to the South Carolina Supreme Court's Order 2011-05-02-01. This request for modification was filed even though Plaintiff failed to file and serve on the Defendants, the required notice of their right to request same.

5. The Plaintiff provided written notice that there is no loan modification available to the Defendants dated February 5, 2019 which notice was styled as an

Affidavit of Non-Eligibility under Home Affordable Modification Program, and filed on that date with the court. However, the Plaintiff did not give to the Defendants Notice of Right to request a Loan Modification as required by the South Carolina Supreme Court by its administrative Order 2011-05-02-01 filed in 2011 applicable to all foreclosure cases involving Owner-occupied dwellings in South Carolina. The Plaintiff thereafter (the next day) filed an Affidavit of Default on February 6, 2019.

6. In the Affidavit of Default submitted by the Plaintiff, the Plaintiff asserts that after service of process on October 31, 2018, the Defendants filed no Notice of Appearance or other responsive pleadings and were in default. In fact, the Defendants did file an Acceptance of Foreclosure Intervention as discussed above. The Affidavit of Default which was submitted is therefore not correct. In addition, the Affidavit of Default was submitted the day after the Notice denying the foreclosure intervention. No reference to the Administrative Order 2011-05-02-01 is made by Plaintiff in either his denial of foreclosure intervention, nor in the Affidavit of Default.

7. In that Affidavit of Non-Eligibility under the Home Affordable Modification Program, the Plaintiff made reference to the Supreme Court order of 2009-05-22-01 dated May 22, 2009. However, the Supreme Court also issued an order on May 2, 2011 as order number 2011-05-02-01 filed in 396 S.C. 209 (2011), 720 S.E.2d 908 which stated that "The terms and conditions of this order shall apply to all mortgage foreclosure proceedings concerning Owner-Occupied dwellings in this State." It also set forth that "No foreclosure hearing or foreclosure sale may be held in the foreclosure action until the Mortgagee's attorney certifies the following:", which can be summarized as follows: a) The "Mortgagor has been served with a notice of the Mortgagor's right to foreclosure

intervention"; b) the Mortgagee has "examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure invention"; c) "the Mortgagor has been afforded a full and fair opportunity to submit any other information ..." ; d) "that after completion of the foreclosure intervention process, the Mortgagor does not qualify ..." ; and, e) "notice of the denial of the loan modification or other means of loss mitigation has been served on the Mortgagor ... provided such notice shall also state that the Mortgagor has thirty (30) days from the date of mailing of notice of denial of relief to file and serve an answer or other response to the Mortgagee's summons and complaint,"

8. The Plaintiff filed and served a denial of the possibility of the Defendants to participate in loan modification or other loss mitigation, but that notice did not advise the Defendants of the right or requirement to file responsive pleadings within thirty (30) days of that denial, as required by the Supreme Court. Therefore, the Plaintiff failed to provide to the Defendants the proper notice and therefore was not entitled to ask the court to hold the Defendants in default. While HAMP has expired, the Supreme Court orders of 2009 and 2011 have not been rescinded and the requirements of those orders still must be complied with. Because the Plaintiff did not comply with the requirements of the 2011 Order, the Court did not have the right to hold a foreclosure hearing, and doing so was not in compliance with the Supreme Court 2011 Order. South Carolina Foreclosure Law *Manuel*, Fourth Edition, 2021, SC Bar, page 64.

9. A notice of hearing for the foreclosure was filed on February 7, 2019 with an Order of Reference submitted on February 8, 2019.

10. Defendants did file a Pro Se Answer with the court on May 20, 2019, and thereafter filed an Amended Answer through counsel. The date of filing of those answers was beyond the thirty days after the notice of denial of foreclosure invention, but because the Plaintiff did not file and serve the required notice of a deadline for the Defendants to file an answer or responsive pleading, the responsive pleading of the Defendants should be deemed to have been timely.

11. Thus, it is submitted that Defendants should not have been found to be in default and responsive pleading should have been provided due consideration by the Court.

12. The Defendants in their Motion to Reconsider filed March 17, 2020 clearly raised the issue that the hearing could not be held because mortgagee's attorney did not make the certification required by the 2011 Supreme Court Order. More importantly, the Plaintiff did not even provide the Notice of Right to Request Foreclosure Intervention, nor provide to Defendants the right to answer within 30 days after the Notice of Denial of Intervention. Instead, Plaintiff declared Defendants were in default the day after denying the foreclosure intervention. In that Motion to Reconsider, the Defendants also requested that the court set aside the default.

13. In denying the foreclosure intervention, Plaintiff made reference only to the Supreme Court Order of 2009-05-22-01 entered on May 22, 2009, and did not make any reference at all to the 2011 Supreme Court Order. In addition, the notice denying intervention did not comply with the terms of that 2011 Supreme Court Order that by its terms specifically said that it applied to all foreclosure cases involving Owner-Occupied dwellings.

14. The hearing held in this case did not comply with the requirements as specifically mandated by the S.C. Supreme Court 2011 order. Plaintiff failed to comply with the terms of that Order. Thus, any foreclosure hearing that was held in spite of the failures by the Plaintiff to comply with the provisions of South Carolina law should be deemed a nullity and the Order that was entered as a result of that hearing should also be a nullity. Thus, the Order that was entered on March 16, 2020 arising from the foreclosure hearing that was held without the Plaintiff being in compliance with the requirements set forth in Supreme Court Order 2011-05-02-01 should be vacated.

15. Prior to the hearing that was held and the issuance of the March 16, 2020 Order, Defendants Filed a Motion to set Aside Default and the Affidavit of Default and requested that the Plaintiff be required to comply with the 2011Administrative Order. That motion was submitted on May 25, 2019 prior to entry of the Order dated March 16, 2020 and filed March 17, 2020. In spite of the Motion having been filed by Defendants, Plaintiff still did not comply with the 2011 Administrative Order and still did not provide to Defendants the notice of their right to submit an Answer within thirty (30) days. The Plaintiff could have amended his pleadings to submit the required Right to Request Foreclosure Intervention, but failed to do so. The fact that the Defendants did submit an Answer does not remove the default by the Plaintiff of his failure to comply with South Carolina law and the 2011 Supreme Court Order governing South Carolina residential foreclosure actions specifically.

16. Plaintiffs are required to offer foreclosure intervention to Defendants for owner-occupied dwellings. The Plaintiff failed to do so and therefore was not in compliance with the requirements of South Carolina law. The fact that Defendants filed a

request for foreclosure intervention does not absolve the Plaintiff from the requirement to provide notice of the right to request foreclosure intervention. The fact that the Defendants filed an answer does not absolve the Plaintiff from the requirement to give to the Defendants 30 days written notice of the right to do so. The Defendants have attempted to comply with the requirements of South Carolina law but the Plaintiff has failed to do so. At this point, by way of the Foreclosure Decree filed March 17, 2020, the Plaintiff has received from the Court by that Court order with the relief that he has requested, but the Defendants have not been provided with the rights and protections that they are entitled to pursuant to South Carolina law.

17. Although not previously cited or requested by the Defendants, Rule 41(b) SCRCP allows a Court to grant the dismissal of a case (including with prejudice) for failure to comply with a Court Order. Plaintiff has failed to comply with the 2011 Order of the Supreme Court. "The granting of the order was a discretionary matter" *Georganne Apparel, Inc. vs. Todd,* 303 S.C. 87, 92, 399 S.E.2nd 16, 19 (Ct. App. 1990).

18. In this case, Defendants put Plaintiff on notice of the 2011 Order beginning November 2018 when they requested foreclosure intervention, and again with the Motion to Strike in May 2019, the Memorandum in support of the motion filed September 18, 2019, and the Motion for Reconsideration filed on March 17, 2020. Plaintiff still has not attempted to comply with the 2011 Order, to Defendant's great prejudice.

19. Because of the failures of the Plaintiff to comply with the requirements of South Carolina law, especially as set forth in the 2011 Supreme Court Order specifically governing foreclosures of Owner-Occupied dwellings, the Defendants have had to employ counsel to a) answer the complaint; b) prepare and file a motion to set aside default and

request that Plaintiff be required to comply with that 2011 Order; c) prepare and file a memorandum in support of that motion; d) attend and try to participate in a hearing held in spite of the Plaintiff not being in compliance with the requirements of South Carolina law; le) prepare and file a Rule 59 motion; f) prepare for and attend a hearing to consider the motions after the foreclosure order was entered; and g) prepare and submit this Memorandum of Law summarizing Defendants' position.

All of the legal fees incurred by Defendants, as set forth above, except for preparation of the answer, were caused by the failure of the Plaintiff to comply with the requirements of South Carolina law in prosecuting a foreclosure proceeding for an Owner-Occupied dwelling.

Defendants request that the Court award to them reasonable attorney's fees for their efforts to require Plaintiff to comply with the requirements of South Carolina law.

20. The Court requested that Defendants offer case law on point for the enforcement of the 2011 Administrative Order. While several cases have discussed this 2011 order, Defendants were unable to find any on point regarding the requirement to give the notices set forth in that 2011 Order.

21. In summary, the plain language of the South Carolina Supreme Court Administrative Order 2011-05-02-01 provides that "No foreclosure hearing ... may be held" until the Plaintiff serves Defendants with a notice of right to foreclosure intervention and, when providing a denial of that loss mitigation, notifying Defendants that they have thirty (30) days to file an answer or other response. Plaintiff failed to comply with either of these required steps.

THEREFORE, it is respectfully submitted that the Court should either dismiss Plaintiff's case pursuant to Rule 41(b) SCRCP, or the Court should set aside the hearing held in spite of Plaintiff's failure to comply with the provisions of South Carolina Supreme Court Order 2011-05-02-01 and should set aside the Order filed March 17, 2020, whereby it is found that the evidence provided indicated that the Plaintiff was entitled to a judgment in the amount of $177,949.39, and to a foreclosure. If the Court does not dismiss Plaintiff's case, then Defendants respectfully request that the Court set aside its Order filed March 17, 2020, and that the Court reschedule a hearing on the merits so that each party can provide evidence of the actual amount of the debt and the amount of all payments that have been made to reduce that debt. If either event, Defendants request that the Court award to them reasonable attorney's fees.

Respectfully submitted,

s/ A. Paul Weissenstein, Jr.
A. Paul Weissenstein, Jr., S.C. Bar No: 6013
Attorney for Plaintiffs
P.O. Box 2446
106 Broad Street
Sumter, SC 29150
Telephone: (803) 418-5700
Facsimile: (803) 934-1505
E-Mail: pwlaw2@gmail.com

Sumter, SC
June 30, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
	)	C/A #: 2018-CP-43-02004
John Weible,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER DENYING MOTION TO RECONSIDER
	)	
Russell Self and Brandy Brunson, a/k/a Brandilyn Self,	)	
	)	
	)	
Defendants.	)	
	)	

A Final Order for Foreclosure was entered in this matter on March 17, 2020. Defendants' Motion to Reconsider was timely filed on the same date. A Memorandum of Law in support of the Motion was filed on June 30, 2021 after substitution of counsel for Defendants. After thorough consideration of the Motion and memorandum, for the reasons set forth below, the Motion is Denied.

FACTS

On November 5, 2010 Defendants executed a note (Note #1) in favor of Plaintiff for $115,000 with no interest and a term of 7 years. That note matured in December 2017 and is now due and payable in full. Said note was secured by a mortgage (Mortgage #1) in the amount of $65,000 dated the same date of November 5, 2010, and another existing mortgage (Mortgage #2) in the amount of $50,000 dated July 2, 2010. The underlying obligation was due and payable in December 2017, which was at least ten (10) months before the present action was filed. Accordingly, the Defendants seek to impose modification on a debt that has fully matured.

App Exh B

On July 3, 2014 Defendants executed another mortgage (Mortgage #3) securing existing debt of $48,923.00 to the Plaintiff. The existing debt stemmed from a note (Note #2) Defendants executed in favor of Plaintiff dated May 25, 2011 for $60,000 with an interest rate of 8% with a maturity date of 2 years, or June 2013. This debt has also fully matured.

An action for mortgage foreclosure was previously filed against Defendants on May 21, 2014. The parties reached a settlement agreement for loan modification at that time and as a result the action was dismissed by stipulation on July 14, 2014.

PROCEDURAL HISTORY

The instant foreclosure action was commenced on October 29, 2018 with Plaintiff's filing of a Lis Pendens, Summons and Complaint. Defendants filed an Acceptance of Foreclosure Intervention on November 13, 2018. An Affidavit of Non-Eligibility for loan modification was served February 5, 2019. An Affidavit of Default was filed on February 6, 2019. An Answer was filed on May 16, 2019. An Order referring this matter to Special Referee was filed on May 24, 2019. An Amended Answer was filed on June 27, 2019.

ADMINISTRATIVE ORDERS OF SOUTH CAROLINA SUPREME COURT

On May 22, 2009 the South Carolina Supreme Court issued its Administrative Order providing that ail foreclosure actions filed after May 4, 2009 must contain a short, plain statement facts regarding applicability of Home Affordable Modification Program (HAMP). HAMP expired on December 31, 2016 and thus this Administrative Order 2009-05-22-01 has limited applicability and mortgage lenders must voluntarily offer loan modification to borrowers. The Complaint in his matter alleged in paragraph 10 that the mortgages are not subject to HAMP

TP

and are not insured by any federal agency (Fannie Mae or Freddie Mac). Further said paragraph of the Complaint alleges that Plaintiff does not participate in the HAMP program.

On May 2, 2011 the South Carolina Supreme Court issued its Administrative Order providing that foreclosure actions filed after May 9, 2011 shall include a notice of the Mortgagor's right to foreclosure intervention. It further provided that no foreclosure hearing could be held until compliance with the order. Upon certification of compliance with the above the foreclosure action could proceed. This Administrative Order is procedural in nature. The Administrative Order makes clear that failure to issue the Affidavit only works to stay the action, not as a dismissal. At the time of issuance of this Administrative Order, the HAMP was still in effect. However, as stated above the HAMP has expired, and thus the underlying purpose of the Administrative order has been impacted.

COMPLIANCE WITH ADMINISTRATIVE ORDER

The Plaintiff served his Affidavit of Non-Eligibility for loan modification on February 5, 2019 indicating that the loan was not eligible as the service (Plaintiff) had not executed an agreement under HAMP. The merits hearing in this matter was held on September 19, 2019 which was seven (7) months after Plaintiff served the Affidavit of Non-Eligibility for loan modification. The Defendants filed no counter affidavit as to contest eligibility for loan modification. In their Pro Se Answer filed May 16, 2019 the Defendants raised the issue of loan modification, stating they may be entitled to same under HAMP, which as set forth above had already expired. However, in the Amended Answer filed June 27, 2019 by counsel, the Defendants (or at least Defendant Brandilyn Self) abandoned their allegations as to potential loan modification under HAMP, obviously recognizing that HAMP had expired and offered them no

TPS

relief. The only loan modification for borrowers available at this time is optional through lenders that voluntarily participate in same and Plaintiff does not so participate.

DEFENDANTS' DEFAULT

The Defendants first served responsive pleadings on May 26, 2019 after an Affidavit of Default was already filed three (3) months earlier, as well as the Affidavit of Non-Eligibility for loan modification. The Defendants did not file their Answer within 30 days of either Affidavit. They filed an Amended Answer on June 27, 2019 without having obtained relief from the entry of default by the Court. Notwithstanding same, the Plaintiff's claim was for an unliquidated amount and the Defendants' could be heard regarding the proper amount of damages. Default would only serve to prevent the Defendants from contesting the validity of the debt and Defendant Russell Self admitted in his testimony to being indebted to the Plaintiff, but rather only disputed the amount of such debt. Therefore, the entry of default did not prevent Defendants from contesting the debt at the merits hearing and offering their own evidence as to the amount due and owing to the Plaintiff. Defendant Brandy Brunson did not testify.

To obtain relief from entry of default, the Defendants must comply with *Rule 55, SCRCP* and show good cause. *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 681 S.E.2d 885 (S.C. 2009) A defendant in default admits liability but not damages. *Wells Fargo Bank, N.A. v. Marion Ampitheatre, LLC*, 757 S.E.2d 557 (S.C.Ct.App. 2014) The Plaintiff submits that the Defendants have admitted the debt due to the Plaintiff and the only question is to the amount of the debt due and relief of foreclosure under the mortgages.

TB4

TOTAL AMOUNT OWED TO THE PLAINTIFF

The Plaintiff testified that the debt due was $179,444.39 as of the date of hearing. He had incurred $3500.00 in attorney's fees and costs. In his testimony Defendant Russell Self indicated that he did not owe the Plaintiff the balance as stated. He admitted to non payment on the $115,000 note, but said that the Plaintiff hindered his (Defendants') chance to refinance through Quicken Loans. Accordingly, he stopped paying. Defendant Russell Self did not provide any specific evidence of an amount or calculation different than what the Plaintiff testified to and as set forth in the Complaint. He submitted copies of the face page of checks made payable to the Plaintiff for the years 2014 through May, 2019. These checks do not indicate that each one has been negotiated and canceled.

Defendant Russell Self in his testimony admitted the loans from the Plaintiff. He admitted that he should repay the loans and that same should not be simply invalidated by the court. He only contested the amount due on the loan.

RULING

I find and conclude that the issues raised in the Motion do not warrant a change in the Order. The original hearing was postponed and then conducted and ruled upon and proper recognition given to those matters raised in the Amended Answer. Default in payment was not contested and no meaningful evidentiary challenge was as to the amount due.

Therefore, the Motion to Reconsider is denied.

And it is so ordered.

Thomas E. Player, Jr.,
SPECIAL REFEREE

August 16, 2021

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	)	
	)	CASE NO: 21-02498-dd
Brandilyn Denise Brunson,	)	CHAPTER 13
Debtor	)	
	)	
	)	

DEBTOR'S RESPONSE TO CREDITOR'S RETURN TO DEBTOR'S OBJECTION TO CLAIM

The debtor, Brandilyn Denise Brunson, who is also known as Brandilyn Self, by and through her undersigned attorney, responds to the Creditor's Return to Debtor's Objection to Claim as follows:

1. The debtor and her husband, Russell Self, borrowed funds from John Weible, secured by mortgages on their primary residence.

2. On March 17, 2020, An Order for Judgment and Decree of Foreclosure was entered by Thomas E. Player, Jr., as Special Referee granting foreclosure in favor of John Weible against Debtor and her husband, and setting forth a balance due of $177,949.39.

3. On that same date, Debtor through her then counsel filed a Motion for Reconsideration pursuant to Rule 59 (e), SCRCP attached as Exhibit B to Creditor's Return.

4. The foreclosure defendants later retained A. Paul Weissenstein, Jr. to assist them in the foreclosure, and a hearing on the Rule 59 motion was scheduled for July 14, 2020. However, Mr. Weissenstein was hospitalized with Covid on July 13, 2020, and the hearing was postponed. Thereafter, the parties attempted to negotiate a settlement of the action, without success.

App Exh C

5. A new hearing was then scheduled for June 10, 2021, and at that time the Special Referee requested that Defendant's attorney, Mr. Weissenstein, submit a Memorandum in support of Debtor's position. (A copy of that memorandum was filed with the Bankruptcy Court as an attachment to Debtor's Objection to Claim.).

6. After the Memorandum was filed with the Court of Common Pleas, the Special Referee signed an Order on August 18, 2021, denying the Rule 59 (e) Motion, but that Order has never been filed with the Court of Common Pleas. (A copy of the e-filing case register for the foreclosure action is attached hereto.)Debtor and her husband retained A. Paul Weissenstein, Jr. for the purpose of either filing a new Motion for Reconsideration or to appeal that decision, but because the decision was never entered, it did not constitute a final Order from which to appeal. See Upchurch v Upchurch, 367 S.C. 16, 624 S.E. 2d 643 (2006).

7. However, because the March 17, 2020, Order granted foreclosure and because the Special Referee signed a Notice of Sale, advertising the property for foreclosure sale to be held on October 6, 2021, the Defendant was required to file this bankruptcy to stop the foreclosure action and save the house.

8. Because of the bankruptcy filing, the Debtor is informed and believes that the August 18, 2021, Order of the Special Referee cannot now be filed in state court unless the Bankruptcy Court grants relief from the automatic stay.

9. As a result of payments made and services rendered by Debtor and her husband to the Plaintiff, Debtor and her husband, through their attorney, calculated the balance due on this mortgage debt as of about December 8, 2020, to be $23,867.23 and not the $177,949.39 alleged to be due by Plaintiff and found to be due by the Special Referee.

10. Because the Plaintiff proceeded with a Notice of Sale in spite of the State Court remedies before the Special Referee not having been fully exhausted, Debtor was

required to file bankruptcy in order to save the house from what Debtor believes would have been an improper foreclosure sale. Thus, Debtor has incurred attorney's fees and costs in having to file this bankruptcy proceeding and in having to assert and defend the Objection of Claim in the Bankruptcy Court.

11. Debtor's position, as set forth in that Memorandum provided to the Special Referee, was that the Special Referee had no jurisdiction over the matter because of the failure of Plaintiff to comply with the Supreme Court Administrative Order 2011-05-02-01. Therefore, any State Court action beginning with the Debtor having filed an Affidavit and Order of Default in the foreclosure action was a nullity. The Special Referee apparently disagreed as shown by the Order that he signed on August 18, 2021, but because the Order was not filed, the Debtor and her husband have been deprived of their ability to seek or to obtain a final order in the state court.

Therefore, Debtor requests that the Bankruptcy Court either:

a) Uphold Debtor's Objection and confirm the plan allowing Debtor to pay off this mortgage debt over the five-year plan period in order to pay the $23,867.23 balance due, plus interest thereon, or

b) Schedule a hearing in order to determine the actual balance due from Debtor and her husband to the Plaintiff, or

c) Issue an Order to require Plaintiff to comply with the Supreme Court Administrative Order 2011-05-02-01, remanding the case to the Sumter County Court of Common Pleas and Special Referee, requiring Plaintiff to comply with the Administrative Order and directing that a new hearing be held to determine the amount of damages due to Plaintiff.

d) Confirm the plan so that payments made by the Debtor to the Trustee can be disbursed to the Plaintiff and other parties in interest until the matter of the

actual amount owed can be resolved in this Bankruptcy Court or in State Court, and, at which time, if the amount due is found to be greater than Debtor believes, the plan could be amended to pay the greater amount due, and

e) Grant attorney's fees and costs to the Debtor, and

f) Grant such other and further relief to Debtor as may be just and proper.

January___, 2022
Sumter, SC

Benjamin R. Matthews
District Court ID No. 3332
Benjamin R. Matthews
2010 Gadsden St
Columbia, S.C. 29201
Phone (803) 799-1700
b.matthews@bklawsc.com

A. Paul Weissenstein, Jr., ID #4571
Attorney for Debtor
PO Box 2446
Sumter, SC 29151
(803) 418-5700
(803) 934-1505
pwlaw2@gmail.com

2018CP4302005 : John Weible VS Russell Self , defendant, et al

Common Pleas

Case Number 2018CP4302005
Case Subtype Foreclosure 420
Filed Date 10-29-2018
Status Judgment

Show/Hide Participants

Plaintiff	John Weible
Defendant	Russell Self et al
Assigned Judge	Clerk Of Court C P, G S, And Family Court
File Type	Non-Jury

Name	Description	Type	File Date
Brandy Brunson	NEF(10-04-2021 02:52:35 PM) Notice/Other	Filing	10-04-2021 02:53:33 PM
Brandy Brunson	Notice/Other	Filing	10-04-2021 02:52:35 PM
Russell Self	NEF(06-30-2021 03:25:19 PM) Memo/Memo in Support	Filing	06-30-2021 03:29:23 PM
Russell Self	Memo/Memo in Support	Filing	06-30-2021 03:25:19 PM
Russell Self	NEF(11-24-2020 01:58:07 PM) Consent/Consent	Filing	11-24-2020 02:20:32 PM
Russell Self	Consent/Consent	Filing	11-24-2020 01:58:07 PM
Russell Self	Notice/Notice of Appearance	Filing	11-24-2020 01:58:07 PM
Russell Self	NEF(03-17-2020 12:15:35 PM) Motion/Reconsider	Filing	03-17-2020 01:37:02 PM
Brandy Brunson	Motion/Reconsider	Motion	03-17-2020 12:15:35 PM
John Weible	Judgment/Foreclosure	Judgment	03-17-2020 09:26:01 AM
Brandy Brunson	Judgment/Foreclosure	Judgment	03-17-2020 09:26:01 AM
John Weible	Judgment/Foreclosure	Judgment	03-17-2020 09:25:58 AM
Russell Self	Judgment/Foreclosure	Judgment	03-17-2020 09:25:58 AM
John Weible	NEF(03-17-2020 09:14:54 AM) Special Referee/Order/Other	Filing	03-17-2020 09:15:00 AM
John Weible	Special Referee/Order/Other	Order	03-17-2020 09:14:54 AM
John Weible	NEF(03-17-2020 09:14:01 AM) Special Referee/Report of Sa...	Filing	03-17-2020 09:14:09 AM
John Weible	Special Referee/Report of Sale	Filing	03-17-2020 09:14:01 AM
John Weible	NEF(10-04-2019 04:12:35 PM) Memo/Memo	Filing	10-04-2019 04:27:19 PM
John Weible	Memo/Memo	Filing	10-04-2019 04:12:35 PM
Brandy Brunson	NEF(10-03-2019 07:18:55 PM) Memo/Memo in Support	Filing	10-04-2019 08:30:17 AM
Brandy Brunson	Memo/Memo in Support	Filing	10-03-2019 07:18:55 PM
Brandy Brunson	NEF(09-18-2019 03:55:51 PM) Memo/Memo in Support	Filing	09-18-2019 04:06:19 PM
Brandy Brunson	Memo/Memo in Support	Filing	09-18-2019 03:55:51 PM
John Weible	NEF(08-08-2019 02:09:03 PM) Notice/Notice of Hearing and...	Filing	08-08-2019 02:41:55 PM
John Weible	Notice/Notice of Hearing and Service	Filing	08-08-2019 02:09:03 PM
Brandy Brunson	NEF(06-27-2019 12:44:57 AM) Answer/Amended Answer	Filing	06-27-2019 08:32:04 AM
Brandy Brunson	Answer/Amended Answer	Filing	06-27-2019 04:45:07 AM
John Weible	NEF(05-24-2019 09:32:08 AM) Order/Referred to Master or ...	Filing	05-24-2019 09:32:15 AM
John Weible	Order/Referred to Master or Special Referee	Order	05-24-2019 09:32:08 AM
Brandy Brunson	NEF(05-23-2019 03:40:28 PM) Notice/Notice of Appearance	Filing	05-23-2019 03:59:26 PM
Brandy Brunson	Notice/Notice of Appearance	Filing	05-23-2019 03:40:28 PM
Brandy Brunson	Motion/Strike	Motion	05-23-2019 03:40:28 PM
Brandy Brunson	Certification/Certification of Indigent Representation	Filing	05-23-2019 03:40:28 PM
John Weible	NEF(05-23-2019 03:22:22 PM) Proposed Order/Referred to M...	Filing	05-23-2019 03:29:31 PM
John Weible	Order/Order Cover Sheet $25.00	Filing	05-23-2019 03:22:22 PM
Russell Self	Answer/Answer	Filing	05-20-2019 11:12:24 AM
Brandy Brunson	Answer/Answer	Filing	05-20-2019 11:12:24 AM
John Weible	NEF(05-16-2019 12:44:42 PM) Notice/Notice of Hearing and...	Filing	05-16-2019 01:30:44 PM
John Weible	Notice/Notice of Hearing and Service	Filing	05-16-2019 12:44:42 PM
John Weible	Notice/Notice of Hearing and Service	Filing	05-16-2019 12:44:42 PM
John Weible	NEF(02-08-2019 08:40:15 AM) Order/Referred to Master or ...	Filing	02-08-2019 08:40:24 AM
John Weible	Order/Referred to Master or Special Referee	Order	02-08-2019 08:40:15 AM
John Weible	NEF(02-07-2019 04:05:15 PM) Proposed Order/Referred to M...	Filing	02-07-2019 04:16:44 PM
John Weible	Order/Order Cover Sheet $25.00	Filing	02-07-2019 04:05:15 PM
John Weible	NEF(02-06-2019 01:59:00 PM) Affidavit/Default	Filing	02-06-2019 03:13:21 PM
John Weible	Affidavit/Default	Filing	02-06-2019 01:59:00 PM
John Weible	NEF(02-05-2019 06:32:09 PM) Affidavit/Eligible Home Affo...	Filing	02-06-2019 08:36:01 AM
John Weible	Affidavit/Eligible Home Afford Mod Prog & Cert Serv/Mail	Filing	02-05-2019 06:32:09 PM

ussell Self	Foreclosure/Other/Acceptance of Foreclosure Inter	Filing	11-13-2018	12:20:51 PM
ohn Weible	Lis Pendens Filed	Filing	10-29-2018	05:08:38 PM
ohn Weible	Summons & Complaint	Filing	10-29-2018	05:08:38 PM
ohn Weible	Summons & Complaint-EX_1	Filing	10-29-2018	05:08:38 PM
ohn Weible	Summons & Complaint-EX_2	Filing	10-29-2018	05:08:38 PM
ohn Weible	Summons & Complaint-EX_3	Filing	10-29-2018	05:08:38 PM
ohn Weible	Summons & Complaint-EX_4	Filing	10-29-2018	05:08:38 PM
ohn Weible	Summons & Complaint-EX_5	Filing	10-29-2018	05:08:38 PM
ohn Weible	Summons & Complaint-EX_6	Filing	10-29-2018	05:08:38 PM
ohn Weible	Summons & Complaint-EX_7	Filing	10-29-2018	05:08:38 PM

United States Bankruptcy Court
District of South Carolina

In re **Brandilyn Denise Brunson** Debtor(s)

Case No. **21-02498**
Chapter **13**

CERTIFICATE OF SERVICE

I hereby certify that on **January 6, 2022**, a copy of **Reply to Response of Creditor** was served electronically or by regular United States mail to all interested parties, the Trustee and all creditors listed below.

John Weible
1266 Cherryvale Drive
Sumter, SC 29150

Michael McKinney Jordan
10 Law Range
Sumter, SC 29150

/s/ Benjamin R. Matthews
Benjamin R. Matthews 3332
Matthews & Associates, LLC
2010 Gadsden St
Columbia, SC 29201
803-799-1700Fax:803-728-6718
benrusmat@gmail.com

2018CP4302005 : John Weible VS Russell Self , defendant, et al

Common Pleas

Case Number 2018CP4302005
Case Subtype Foreclosure 420
Filed Date 10-29-2018
Status Judgment

Plaintiff John Weible
Defendant Russell Self et al
Assigned Judge Clerk Of Court C P, G S, And Family Court
File Type Non-Jury

⊞ Show/Hide Participants

Name	Description	Type	File Date
John Weible	NEF(04-26-2022 09:48:09 AM) Special Referee/Order/Other	Filing	04-26-2022 09:48:40 AM
John Weible	Special Referee/Order/Other	Order	04-26-2022 09:48:09 AM
Brandy Brunson	NEF(01-20-2022 10:55:45 AM) Motion/Reconsider	Filing	01-20-2022 10:59:36 AM
Russell Self	Motion/Reconsider	Motion	01-20-2022 10:55:45 AM
John Weible	Special Referee/Order/Other	Order	01-10-2022 09:09:00 AM
Brandy Brunson	NEF(10-04-2021 02:52:35 PM) Notice/Other	Filing	10-04-2021 02:53:33 PM
Brandy Brunson	Notice/Other	Filing	10-04-2021 02:52:35 PM
Russell Self	NEF(06-30-2021 03:25:19 PM) Memo/Memo in Support	Filing	06-30-2021 03:29:23 PM
Russell Self	Memo/Memo in Support	Filing	06-30-2021 03:25:19 PM
Russell Self	NEF(11-24-2020 01:58:07 PM) Consent/Consent	Filing	11-24-2020 02:20:32 PM
Russell Self	Consent/Consent	Filing	11-24-2020 01:58:07 PM
Russell Self	Notice/Notice of Appearance	Filing	11-24-2020 01:58:07 PM
Russell Self	NEF(03-17-2020 12:15:35 PM) Motion/Reconsider	Filing	03-17-2020 01:37:02 PM
Brandy Brunson	Motion/Reconsider	Motion	03-17-2020 12:15:35 PM
John Weible	Judgment/Foreclosure	Judgment	03-17-2020 09:26:01 AM
Brandy Brunson	Judgment/Foreclosure	Judgment	03-17-2020 09:26:01 AM
John Weible	Judgment/Foreclosure	Judgment	03-17-2020 09:25:58 AM
Russell Self	Judgment/Foreclosure	Judgment	03-17-2020 09:25:58 AM
John Weible	NEF(03-17-2020 09:14:54 AM) Special Referee/Order/Other	Filing	03-17-2020 09:15:00 AM
John Weible	Special Referee/Order/Other	Order	03-17-2020 09:14:54 AM
John Weible	NEF(03-17-2020 09:14:01 AM) Special Referee/Report of Sa...	Filing	03-17-2020 09:14:09 AM
John Weible	Special Referee/Report of Sale	Filing	03-17-2020 09:14:01 AM
John Weible	NEF(10-04-2019 04:12:35 PM) Memo/Memo	Filing	10-04-2019 04:27:19 PM
John Weible	Memo/Memo	Filing	10-04-2019 04:12:35 PM
Brandy Brunson	NEF(10-03-2019 07:18:55 PM) Memo/Memo in Support	Filing	10-04-2019 08:30:17 AM
Brandy Brunson	Memo/Memo in Support	Filing	10-03-2019 07:18:55 PM
Brandy Brunson	NEF(09-18-2019 03:55:51 PM) Memo/Memo in Support	Filing	09-18-2019 04:06:19 PM
Brandy Brunson	Memo/Memo in Support	Filing	09-18-2019 03:55:51 PM
John Weible	NEF(08-08-2019 02:09:03 PM) Notice/Notice of Hearing and...	Filing	08-08-2019 02:41:55 PM
John Weible	Notice/Notice of Hearing and Service	Filing	08-08-2019 02:09:03 PM
Brandy Brunson	NEF(06-27-2019 12:44:57 AM) Answer/Amended Answer	Filing	06-27-2019 08:32:04 AM
Brandy Brunson	Answer/Amended Answer	Filing	06-27-2019 04:45:07 AM
John Weible	NEF(05-24-2019 09:32:08 AM) Order/Referred to Master or ...	Filing	05-24-2019 09:32:15 AM
John Weible	Order/Referred to Master or Special Referee	Order	05-24-2019 09:32:08 AM
Brandy Brunson	NEF(05-23-2019 03:40:28 PM) Notice/Notice of Appearance	Filing	05-23-2019 03:59:26 PM
Brandy Brunson	Notice/Notice of Appearance	Filing	05-23-2019 03:40:28 PM
Brandy Brunson	Motion/Strike	Motion	05-23-2019 03:40:28 PM
Brandy Brunson	Certification/Certification of Indigent Representation	Filing	05-23-2019 03:40:28 PM
John Weible	NEF(05-23-2019 03:22:22 PM) Proposed Order/Referred to M...	Filing	05-23-2019 03:29:31 PM
John Weible	Order/Order Cover Sheet $25.00	Filing	05-23-2019 03:22:22 PM
Russell Self	Answer/Answer	Filing	05-20-2019 11:12:24 AM
Brandy Brunson	Answer/Answer	Filing	05-20-2019 11:12:24 AM
John Weible	NEF(05-16-2019 12:44:42 PM) Notice/Notice of Hearing and...	Filing	05-16-2019 01:30:44 PM
John Weible	Notice/Notice of Hearing and Service	Filing	05-16-2019 12:44:42 PM
John Weible	Notice/Notice of Hearing and Service	Filing	05-16-2019 12:44:42 PM
John Weible	NEF(02-08-2019 08:40:15 AM) Order/Referred to Master or ...	Filing	02-08-2019 08:40:24 AM
John Weible	Order/Referred to Master or Special Referee	Order	02-08-2019 08:40:15 AM
John Weible	NEF(02-07-2019 04:05:15 PM) Proposed Order/Referred to M...	Filing	02-07-2019 04:16:44 PM

App Exh D

John Weible	Order/Order Cover Sheet $25.00	Filing	02-07-2019	04:05:15 PM
John Weible	NEF(02-06-2019 01:59:00 PM) Affidavit/Default	Filing	02-06-2019	03:13:21 PM
John Weible	Affidavit/Default	Filing	02-06-2019	01:59:00 PM
John Weible	NEF(02-05-2019 06:32:09 PM) Affidavit/Eligible Home Affo...	Filing	02-06-2019	08:36:01 AM
John Weible	Affidavit/Eligible Home Afford Mod Prog & Cert Serv/Mail	Filing	02-05-2019	06:32:09 PM
Russell Self	Foreclosure/Other/Acceptance of Foreclosure Inter	Filing	11-13-2018	12:20:51 PM
John Weible	Lis Pendens Filed	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_1	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_2	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_3	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_4	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_5	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_6	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_7	Filing	10-29-2018	05:08:38 PM

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER)	CIVIL ACTION NO: 2018-CP-43-02005
John Weible)	
Plaintiff,)	NOTICE OF MOTION AND MOTION
vs.)	
Russell Self and Brandilyn Brunson)	
Defendants.)	

Defendants by their undersigned attorney hereby file this motion pursuant to Rule 59 (e) SCRCP on the following grounds:

1. The Defendants reassert each ground set forth in their prior Rule 59 motion and as supplemented in their Memorandum dated June 30, 2021, and filed with the Court.

2. The Special Referee signed an Order on August 18, 2021, but which order was not filed until January 10, 2022, thus making this motion timely. In that order, the Special Referee reported that "the underlying purpose of the Administrative order had been impacted" as justification for the Plaintiff not being required to comply with the Supreme Court Administrative Order 2011 -05-02-01. The Defendants request that the Special Referee either reconsider that Order and grant to the Defendants the relief that they have requested or issue a new order setting forth the reasons of what constitutes "the impact" to the 2011 Supreme Court Administrative Order such that the Plaintiff would not be required to comply with that order. Such reasons will create a more complete record so that Defendants can adequately appeal any unfavorable decision of the Special Referee if Defendants so desire.

App Exh E

3. The Defendants assert that because the Plaintiff did not comply with the Supreme Court Order 2011-05-02-01, any actions in the Court of Common Pleas beginning with the filing of an affidavit of default and the subsequent order of default would have been a nullity, a solution for which could be to schedule and conduct a new hearing on the merits to determine the mortgage balance due.

4. In addition, the Defendants assert additional grounds for reconsideration of the August 18, 2021, order.

5. In addition to the Order of August 18, 2021, the Special Referee also signed a Notice of Sale, requiring Defendant Brandilyn Brunson to file a Chapter 13 Bankruptcy case on September 27, 2021, to stop the foreclosure sale.

6. During litigation in the Bankruptcy case regarding the amount of Plaintiff's Bankruptcy Court claim, Plaintiff filed a return with the Bankruptcy Court attaching a copy of the August 18, 2021, order showing it appeared to have been filed with the Clerk of Court and alleging same to be an unappealed final order. However, the copy submitted to the Bankruptcy Court had not been filed, and it contained a Common Pleas court case number that was not the correct foreclosure case number.

7. Defendant Debtor filed a Response with the Bankruptcy Court attaching a copy of the Common Pleas Court register printed January 5, 2022, showing that the August 18, 2021, Order had not been filed in the foreclosure case. On Tuesday morning, January 11, 2022, before the Bankruptcy Court hearing on the objection to claim, the undersigned again checked the Common Pleas Court record from a different computer in his office which showed the August 18, 2021, Order having been filed on August 20, 2021.

8. The undersigned immediately called the Clerk of Court's office to inquire as to why that August 20 filing record had not been present the previous week, or at any

time prior thereto. The clerk's assistant advised that Plaintiff's counsel had contacted her on January 10 after he determined that the August 18 Order had been filed in the wrong case. The clerk of court's assistant then purportedly corrected the filing but showed August 20 2021, as the filing date (which the clerk's assistant stated was the date when the Order had been incorrectly filed in the wrong case), when in fact the Order was not filed in the foreclosure case until January 10, 2022, and Defendant did not receive notice of filing until January 10, 2022. Defendant's counsel advised the clerk's assistant that he did not have official notice of the filing until January 10, 2022, when the order was actually filed in the foreclosure case and received actual notice on January 11, 2022. The record created by the Clerk of Court on January 10, 2022 showing the filing on August 20, 2021, made it appear that Defendant's attorney missed all appeal deadlines.

9. The Clerk corrected the record to show that the August 18, 2021, Order was actually filed in the foreclosure case on January 10, 2022.

10. The August 18, 2021, Order was filed on January 10, 2022, without having Plaintiff first obtaining Relief from Stay from the Bankruptcy Court, and after Debtor's counsel in the Return filed with the Bankruptcy Court stated that the August 18, 2021, Order could not now be filed because of the Automatic Stay.

11. In addition, it appears the court register was modified by the Clerk of Court after a telephone request of Plaintiff's attorney without any motion being made by the party Plaintiff pursuant to Rule 60(a), SCRCP or subsequent court order pursuant to the motion requiring the correction.

12. Because the Order of August 18, 2021, has now been filed in State Court, the undersigned obtained verbal permission from the Bankruptcy Court to file a protective response in State Court in the event that it is determined by the Court of Common Pleas or

by an Appellate Court that the time for appeal (or to file this Rule 59 SCRCP motion) had begun to run from the January 10, 2022, filing of the Order. Pursuant thereto, the Defendants have filed this motion.

13. As a result of these actions by Plaintiff, Defendant has incurred attorney fees in filing a bankruptcy action to stop a foreclosure sale before the final order denying Defendant's pending Rule 59 (e) Motion had been filed with the Clerk of Court, attorney's fees thereafter incurred in Bankruptcy Court, and attorney's fees and costs in preparing and filing this Motion. As a result, Defendants believe that they are entitled to an award of reasonable attorney's fees.

Wherefore, Defendants move that the Court grant to the Defendants appropriate relief as set forth in this motion, including, a) reconsideration of the August 18, 2021 order to either require Plaintiff to comply with the South Carolina Supreme Court Administrative Order 2011-05-02-01 or setting forth the reasons that constitute an impact to that Administrative Order such that Plaintiff should not be required to comply with same; and b) granting reasonable attorney's fees to Defendants for the reasons set forth in this motion, and c) granting such other and further relief to the Defendants as may be just and proper.

January 19, 2022
Sumter, SC

A. Paul Weissenstein, Jr., ID #4571
Attorney for Debtor
PO Box 2446
Sumter, SC 29151
(803) 418-5700
(803) 934-1505

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re: Brandilyn Denise Brunson, Debtor.	Case No. 21-02498-dd Chapter 13 **ORDER ON OBJECTION TO CLAIM**

This matter is before the Court on the Objection to Claim of John Weible (the "Objection") filed by Brandilyn Denise Brunson ("Debtor") on November 23, 2021. (Dkt. No. 12). John Weible ("Weible" or "Creditor") filed a pro se Response to Objection to Claim on December 3, 2021 (Dkt. No. 13) and a Second Response to Objection to Claim through counsel on December 21, 2021 (Dkt. No. 18) with accompanying exhibits. A hearing was held on February 9, 2022, at which time the Court took the matter under advisement. Debtor appeared at the hearing and testified in support of her Objection. Weible appeared and both parties presented documentary evidence. Based on the testimony and evidence presented at the hearing, a review of the pleadings and applicable law, and after consideration of the arguments of the parties, the Court overrules the Objection (Dkt. No. 12) and finds as follows.

By way of background, Debtor and her husband, Russell Self, borrowed funds from Weible secured by mortgages on their primary residence (the "Property"). On March 17, 2020, An Order for Judgment and Decree of Foreclosure (the "State Court Order") was entered by Thomas E. Player, Jr., as Special Referee, granting foreclosure in favor of Weible against Debtor and her husband and setting forth a balance due of $177,949.39.[1] On that same date, Debtor, through her

[1] *Weible. v. Self, et al.*, C/A No. 2018-CP-43-02005 (C.P. Sumter Cnty.).

App Exh F

then counsel, filed a Motion for Reconsideration pursuant to Rule 59(e) (the "Rule 59(e) Motion"). The Special Referee signed an order on August 18, 2021 (the "August Order"), denying the Rule 59(e) Motion. Representations to the Court indicate all parties were aware of this ruling at that time.[2] However, the August Order was entered on the incorrect docket due to a clerical error. The clerical error was corrected when the August Order was properly filed under the correct case number on January 10, 2022.

Pertinently, Debtor asserts the balance due on the mortgage debt to be $23,867.23, not the $177,949.39 (with an interest rate of 9.5% per annum) determined by the Special Referee in the State Court Order. Debtor subsequently filed for chapter 13 bankruptcy relief on September 27, 2021. On October 21, 2021, Weible filed a proof of claim in the amount of $202,017.52, secured by the Property (the "Claim"). At the time of this order, Debtor has not appealed the State Court Order to the South Carolina Court of Appeals. Instead, Debtor filed a second motion to reconsider[3] on January 20, 2022, in the Sumter County Court of Common Pleas. Debtor's successive motion to reconsider appears to reserve the right to appeal the State Court Order. Consistent with principles of comity, the Court declines to speculate how the Special Referee will construe the second motion to reconsider or the Debtor's time to appeal. These matters are only peripheral to the narrow issue before the Court.

In the Court's view, Debtor's Objection is barred by the *Rooker–Feldman* doctrine, which divests this Court of jurisdiction since the Debtor is in essence seeking review by this Court of the State Court Order. *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923). The following requirements must be met for the *Rooker–Feldman* doctrine to

[2] It is unclear to the Court what, if any, manner of notice the parties received as to the August Order.
[3] Rule 59(e) in the South Carolina Rules of Civil Procedure and in the Federal Rules of Civil Procedure are practically identical.

apply: (1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgments; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state-court judgments. *Exxon Mobil v. Saudi Basic Industries Corporation,* 544 U.S. 280, 284 (2005).[4] If applicable, the federal court lacks subject matter jurisdiction over the federal plaintiff's claims and the claims must be dismissed. *See Feldman,* 460 U.S. at 476; *Rooker,* 263 U.S. at 416.

The present dispute meets all these requirements. Debtor did not prevail in the foreclosure action, where Debtor did not dispute being indebted to Weible, but contested the amount due and relief of foreclosure under the mortgages. Here, Debtor contests the amount due on the loan and asserts the balance owed is inaccurate. The relevant judgment was rendered by the State Court Order, which was entered by Thomas E. Player, Jr., as Special Referee prior to the commencement of this bankruptcy case. The State Court Order granted foreclosure in favor of Creditor against Debtor and her husband and set forth a balance due of $177,949.39. Currently, Debtor's Objection seeks to have this Court recalculate the debt owed, effectively abrogating the State Court Order. Debtor also posits the Special Referee had no jurisdiction over the matter because Weible allegedly

---

[4] In *Exxon,* the Supreme Court clarified that the *Rooker–Feldman* doctrine is a narrow doctrine. *Exxon*, 544 U.S. at 284. As explained by the Fourth Circuit following the issuance of the Supreme Court's *Exxon* decision, the "*Rooker–Feldman* doctrine applies only when the loser in state court files suit in federal district court seeking redress for an injury caused by the state court's decision itself." *Davani v. Virginia Dept. of Transp.*, 434 F.3d 712, 713 (4th Cir.2006). Prior to *Exxon*, the Fourth Circuit had interpreted the *Rooker–Feldman* doctrine broadly to provide that the loser in a state court adjudication was barred from bringing suit in federal court alleging the same claim or a claim that could have been brought in the state proceedings. *Davani v. Virginia Dept. of Transp.* 434 F.3d 712, 714 (4th Cir. 2006) (explaining the history of its interpretation of the doctrine). This broad interpretation arose out of the interpretation of the "inextricably interwined" language contained in a footnote in the *Feldman* case. *See Feldman*, 460 U.S. at 483 n. 16. (stating that "if the constitutional claims presented to [the district court] are inextricably intertwined with the state court's [ruling] in a judicial proceeding . . . , then the district court is in essence being called upon to review the state court decision."). The Fourth Circuit has explained that following *Exxon,* Feldman's "inextricably intertwined" language does not create an additional legal test for determining when claims challenging a state-court decision are barred, but merely states a conclusion: if the state-court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, "inextricably intertwined" with the state-court decision, and is therefore outside of the jurisdiction of the federal district court. *Davani,* 434 F.3d at 719.

failed to comply with South Carolina Supreme Court Administrative Order 2011-05-02-01. According to Debtor, any State Court action beginning with Debtor having filed an Affidavit and Order of Default in the foreclosure action was therefore a nullity. Nonetheless, this issue was already raised to and ruled upon by the Special Referee, who disagreed, as indicated by the August Order denying the motion to reconsider.

Debtor's Objection presents a dilemma for the Court. It must be recognized that while the appeal period remains open, the Claim remains somewhat in limbo. Because the *Rooker–Feldman* doctrine prevents this Court's review of the judgment, which must stand unless reversed by the South Carolina Court of Appeals, an appeal of the judgment is the only remedy available to Debtor if she wishes to contest the state court judgment. While *res judicata* and *Rooker–Feldman* may not bar this Court's consideration of the bankruptcy issues, there still exists the possibility of disparate results in the state and bankruptcy forums. Ostensibly, the time within which Debtor may appeal the State Court Order of March 17, 2020 has been tolled and has not expired.

First, the Court presupposes the appeal period for the State Court Order of March 17, 2020 has been tolled by the Rule 59(e) Motion. Rule 203(b)(1) of the South Carolina Appellate Court Rules governs appeals from the Court of Common Pleas and designates the commencement of the period in which to appeal as "receipt of written notice of entry of the order[.]" When a timely motion to reconsider under Rule 59(e) has been made, "the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion." SCACR 203(b)(1). It is unclear from the procedural history represented to the Court if the time to appeal began to run in August 2021 or January 2022. Given the extenuating circumstances surrounding the August Order denying the Rule 59(e) Motion, which by clerical

error was not entered on the docket until January 10, 2022,[5] as well as underlying principles of comity, this Court declines to make a determination of timeliness and will defer to the state court to fully adjudicate the issue.

Second, Debtor's filing of this bankruptcy case on September 27, 2021, extended the time for Debtor to file an appeal until 30 days after this Court grants Debtor relief from stay to pursue the appeal. *See* 11 U.S.C. § 108(c)(2). Allowing an appeal to go forward correctly prevents the Bankruptcy Court from being rendered an appellate court for state-court proceedings. Here, victory by Creditor would eliminate Debtor's objection to Creditor's claim, whereas victory by Debtor would eliminate dispute as well as benefit the estate. It is therefore appropriate to grant Debtor sua sponte relief to pursue litigation in state court by way of an appeal of the pre-petition judgment. Considering the lingering questions about Weible's Claim, the Court finds cause to lift the automatic stay sua sponte for purposes of filing and pursuing an appeal of the State Court Order.[6]

Accordingly,

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is modified to the extent necessary for Debtor to file a notice of appeal of the State Court Order of March 17, 2020, and

IT IS ORDERED that the automatic stay is modified for the purpose of allowing Debtor to pursue an appeal of the final order entered on March 17, 2020, by the Special Referee.

---

[5] The South Carolina Supreme Court has explicitly distinguished the *receipt of notice* of the entry of an order from receipt of the order itself. *Ackerman v. 3-V Chem., Inc.*, 349 S.C. 212, 215–16, 562 S.E.2d 613, 615 (2002) (noting that although Rule 203(d)(2)(B) requires the appealing party to file a copy of the order challenged on appeal if it has been reduced to writing, there was no reason petitioners could not have requested a copy of the order filed on the date they received the written notice of the entry of judgment).

[6] Although proceeding in this manner, the Court notes it previously held a hearing on the merits on February 9, 2022, at which time Debtor failed to proffer evidence of any probative value that was inconsistent with the State Court Order.

IT IS ORDERED that the automatic stay is modified as necessary for the purpose of allowing Creditor to defend the judgment of the state court.

IT IS FURTHER ORDERED that Debtor has thirty (30) days after entry of this order terminating the automatic stay under § 362 to file an appeal in accordance with South Carolina law of the state court's order of March 17, 2020. Debtor is barred from filing an appeal more than thirty (30) days after entry of this order.

IT IS, THEREFORE, ORDERED that Debtor Brandilyn Denise Brunson's Objection (Dkt. No. 12) to Claim No. 1 filed by John Weible is overruled.

AND IT IS SO ORDERED.

FILED BY THE COURT
03/30/2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

David R. Duncan
US Bankruptcy Judge
District of South Carolina

Entered: 03/30/2022

Weissenstein Law Firm, LLC
Attorney at Law
A. Paul Weissenstein, Jr.
106 Broad Street
Post Office Box 2446
Sumter, South Carolina 29151-2446
Telephone: (803) 418-5700
Facsimile: (803) 934-1505
E-Mail: pwlaw2@gmail.com

June 6, 2022

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

IN RE: John Weible, Respondent vs Russell Self and Brandy Brunson, Appellants
Case No: 2022-000601

Dear Ms. Kitchings:

I was on vacation out of the country beginning May 9th and returned to work on May 31, 2022. I did not see your letter of May 13, 2022 until I returned to work on May 31st. I spoke with Tyler Clark in your office and he told me to submit my memorandum as soon as reasonably possible.

Attached is my Memorandum Addressing the Issue of Appealability in the above referenced matter, along with the Exhibits in support of my Memorandum.

By copy of this letter, I am providing a copy of the Memorandum and Exhibits to the attorney for the Respondent.

Yours very truly,

A. Paul Weissenstein, Jr.

APW,jr/jab
Enclosure

Cc: Michael Jordan

WEISSENSTEIN LAW FIRM, LLC
POST OFFICE BOX 2446
SUMTER, SC 29151

$1.13[0]
US POSTAGE
FIRST-CLASS
FROM 29150
JUN 06 2022
stamps
endicia

RECEIVED
JUN 08 2022
SC Court of Appeals

THE HONORABLE JENNY ABBOTT KITCHINGS
Clerk, South Carolina Court of Appeals
PO BOX 11629
COLUMBIA SC 29211-1629