

No.

IN THE

Supreme Court of the United States

MARTIN E. ROCK

PETITIONER,

V.

EXECUTIVE OFFICE PARK OF DURHAM ASSOCIATION, INC.

RESPONDENT,

ON PETITION FOR A WRIT OF CERTIORARI TO
THE NORTH CAROLINA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

MARTIN E. ROCK

Post Office Box 13404

Research Triangle Park, NC 27709

exec.park.files@gmail.com

In propria persona for the Petitioner

Questions Presented

The Properties are units subject to the North Carolina Unit Ownership Act, Chapter 47A of the North Carolina General Statutes (N.C.G.S.) and a Declaration of Unit Ownership Under the Provisions of Chapter 47A of the N.C.G.S. and of the Covenants, Conditions, and Restrictions and associated Bylaws, as amended ("Declaration"). Respondent ("EOP"), an incorporated, nonprofit and tax-exempt, unit owners association created on 09 November 1982, after being twice dismissed, filed an incorrect Claim that does not comply with the Association Declaration, which Declaration requires a judicial foreclosure by action under Article 8 of Chapter 44 of the N.C.G.S. EOP's Claim asserts being brought under Chapter 47C of the N.C.G.S. However, N.C.G.S. Chapter 47C is inapplicable to this matter, as any foreclosure by EOP must be brought under Chapter 47A of the N.C.G.S. as provided in the Declaration.

Hence, Power of Sale was not conferred on EOP by the Association Declaration, yet EOP, without power of sale authorization, filed notice of a non-judicial proceeding using an improper trustee, and attempted to sell the subject properties in a non-judicial proceeding. The "Contracts Clause" of the United States Constitution. Article 1, Section 10 of the Constitution provides that "No state shall . . . pass any Law . . . impairing the Obligation of Contracts." Through this Petition, Rock seeks to enforce the Declaration, which requires EOP to use a judicial foreclosure proceeding and which does not confer power of sale or allow EOP to use non-judicial foreclosure proceedings.

1. Whether the Contracts Clause of the U.S. Constitution permits the State to improperly allow EOP to use nonjudicial foreclosure proceedings, where power of sale was not conferred on EOP; where the Declaration (a publicly-filed contract) provides only use of judicial foreclosure by action proceedings; and where the North Carolina Rules of Civil Procedure, North Carolina Rules of Evidence, and Doctrines of Res Judicata and Collateral Estoppel, all of which normally serve to protect the owner's Due Process rights, do not apply to non-judicial power of sale proceedings in the State of North Carolina, thus abridging owner's rights.
2. Whether the trial court erred and lacked subject matter jurisdiction to enter an order of sale in power of sale proceedings, where power of sale was not conferred on the Claimant. Under the Due Process clauses of the U.S. Constitution and Sections 18 and 19 of Article 1 of the North Carolina Constitution the courts have a duty to protect a property owner against improper actions of an incorporated unit-owners association where these actions are not authorized by the Association Declaration; where the Claim was filed in under an inapplicable state statute; and where the state legislature and state courts created a non-judicial process that permits the permanent taking of the owner's real estate.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

(Note: Rock objects to the nominal substitute trustee and has not listed the trustee as a party, since the claimant's counsel was improperly named as trustee in the original Notice of Foreclosure and Rock timely objected to the improper Notice. Hence, the Claimant failed to file the original Notice by a proper trustee, which is normally a fatal procedural flaw leading to dismissal. Indeed, a similar trustee failure resulted in a prior dismissal of same Claimant, on the same included claims.

As of late 2017, North Carolina foreclosure law prohibits an attorney who acts as trustee from also representing the lender [here the claimant, EOP] while initiating a foreclosure proceeding. Prior to this change in North Carolina foreclosure law, a lender often could rely on its attorneys to simultaneously conduct the foreclosure and represent the lender's interests. Now, though, a North Carolina non-judicial foreclosure *must* involve both an independent trustee and lender's counsel, which should—in theory—ensure that the trustee is truly neutral. At least this appears to be the intent or spirit of the current law.

Hence, the original Special Proceedings court and the Superior Court, in Durham County, had no subject matter jurisdiction under the improper Notice of Foreclosure Sale. The original lack of subject matter jurisdiction in this case has not been cured to date and is one of the bases of this Petition.)

**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner, Martin E. Rock, *pro se*, respectfully petitions for a writ of certiorari to review the judgment below.

OPINIONS BELOW

The orders entered by the North Carolina Supreme Court, the highest state court to review the merits appear at Appendix A to the Petition and is of record at the NC Supreme Docket for Case No. P17-912 and was published to Westlaw and Lexis.

The challenged order entered by the Superior Court, Durham County, North Carolina (Case No. 17 SP 1061) appears at Appendix C to the Petition and is unpublished.

JURISDICTION

The North Carolina Supreme Court entered its final order Granting Rock's Motion to Amend Supplemental Reply and Response and Motions on 05 March 2018 and denying Rock's timely-filed Petition for Writ of Supersedeas on 05 March 2018.

The North Carolina Supreme Court orders are of record at the NCSC Docket for Case No. P17-912, and these orders appear at Appendix A.

The Motion to Appeal *in Forma Pauperis* and Petition for Writ of Certiorari was timely filed by U.S. Mail on 01 June 2018.

This Court has jurisdiction to review the judgment pursuant to 28 U.S.C. section 1257(a).

RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

This Court has jurisdiction to review the judgment of the North Carolina Supreme Court pursuant to 28 U.S.C. section 1257(a).

- *U.S. Constitution, Article 1, Section 10, Clause 1* (in pertinent part):

“No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . “

Note: The United States Constitution's Obligations of Contracts Clause was drafted in order to keep states from interfering with private contracts.

- *U.S. Constitution, Fourteenth Amendment:*

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

- *North Carolina Constitution:*

Sec. 18. Court shall be open.

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Sec. 19. Law of the land; equal protection of the laws.

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

- *N.C.G.S., Art. 8, Ch. 44 – a copy is given in Appendix D*

INTRODUCTION: FACTUAL AND LEGAL BACKGROUND

The due process clause of the U.S. Constitution, Fourteenth Amendment, protects substantial rights but does not guarantee particular forms of procedure. States may legislate and regulate some elements of the relationship between creditors and debtors, including the provision of a reasonable and fair frame-work of rules which facilitate real estate lending practices.

Two main types of foreclosure proceedings are currently utilized in the United States. The more common type is judicial foreclosure or foreclosure “by action.” It may be used in all jurisdictions, and is the sole method of foreclosure permitted in about half of the states. This method utilizes a full judicial proceeding in which all persons having an interest in the real estate being foreclosed must be made parties. After a decree of foreclosure, the property is sold at a public sale. Although this method can be costly and time-consuming, it allows the owner the opportunity to assert his/her Due Process rights through normal judicial procedures including rights to a jury trial, appellate rights, and rights to avail herself of the Rules of Civil Procedure, the Rules of Evidence, and other law such as the Doctrines of Res Judicata and Collateral Estoppel.

The other foreclosure method, permitted in about half of the states, is power of sale foreclosure, also called non-judicial foreclosure. It has been written that power of sale procedures are written by lenders to benefit lenders. This procedure severely limits the Due Process rights of the property owner, and in states such as North Carolina, the Rules of Civil Procedure do not apply, the Rules of Evidence are relaxed, and the Doctrines of Res Judicata and Collateral Estoppel are inapplicable. See, e.g., *Matter of Lucks*, 369 N.C. 222, 794 S.E.2d 501 (2016); But see, *Vicks v. Ocwen Loan Servicing, LLC* Slip Copy 2017 WL 2490007 (W.D. NC) (June 8, 2017) and *In re Burgess*, 575 B.R. 330 (Bankr. E.D.N.C. 2017)

Due to these major differences between a judicial foreclosure by action and a non-judicial proceeding by power of sale, the claimant must realize this is a binary choice, and the claimant bears the burden of proving power of sale is conferred on the claimant. In this

case, EOP clearly has not met this burden. EOP was previously dismissed twice because the Declaration does not confer power of sale on EOP and EOP has repeatedly failed to file a judicial proceeding as required. Where power of sale was not conferred on the claimant, the trial court lacks subject matter jurisdiction to order an unsupervised, non-judicial sale, and such a ruling requires strict judicial scrutiny and reversal.

While a power of sale provision is meant to function as a more expeditious and less expensive alternative to a foreclosure by action, *foreclosure under a power of sale is not favored in the law, and its exercise will be watched with jealousy. In re Bass*, 2011, 217 N.C.App. 244, 720 S.E.2d 18, review allowed 724 S.E.2d 517, reversed 366 N.C. 464, 738 S.E.2d 173. [*Emphasis added.*]

A. The Differences Between a Judicial and a Non-Judicial Foreclosure Proceeding Can Be Outcome Determinative

For example, once the clerk or trial court denies authorization for a foreclosure sale, as is the case here, a creditor may not seek a non-judicial foreclosure based on the *same included default*. *Lucks*, at 506-07. The creditor “may nonetheless proceed with foreclosure by judicial action” or “proceed with foreclosure based upon a *different default*.” *Vicks v. Ocwen Loan Servicing, LLC*, No. 3:16-CV-00263-FDW, 2017 WL 2490007, at *2 (W.D.N.C. June 8, 2017), *aff’d*, 704 F. App’x 241 (4th Cir. 2017). Here, EOP was dismissed twice, and in a judicial proceeding, EOP’s claim would likely be barred under the so-called “Two-Dismissal Rule” - *Rule 41, N.C. R. Civ. P.* (North Carolina Rules of Civil Procedure generally mirror the Federal Rules.) Therefore, the trial court error in failing to dismiss due to lack of subject matter jurisdiction was also outcome determinative.

B. Most Unit Owners Associations, including EOP, Do Not Have a Deed of Trust Conferring Power of Sale.

In some states utilizing the power of sale method, the deed of trust is the most commonly used mortgage instrument. Power of sale derives from the legal fiction that the property owner knowingly

waived his or her Due Process rights by signing a deed of trust containing a power of sale clause.

In the case of a Unit Owner Association, such as EOP, there is generally no deed of trust conferring power of sale. Instead, foreclosure procedures are described in the Association Declaration. In this case, the Declaration does not confer Power of Sale on EOP, and the referenced statute in the Declaration clearly invokes a judicial foreclosure proceeding referred to as a foreclosure “by action.” Hence, the trial court had no subject matter jurisdiction to invoke power of sale proceedings in this case as power of sale was not conferred on EOP by the Declaration. Moreover, since there was a prior order of dismissal based on the Declaration, which was not appealed by EOP, this prior Clerk’s Order became a judicial act and once the clerk or trial court denies authorization for a foreclosure sale, a creditor, such as the claim alleged by EOP, may not seek a non-judicial foreclosure based on the *same included default*. Lucks, at 506-07.

C. Since EOP was Created on November 9, 1982, N.C.G.S. Chapter 47C, on which EOP Bases its Entire Claim, generally is Inapplicable to a Unit Owners Association Created Prior to October 1, 1986 and is Specifically Inapplicable with Regard to Non-Judicial Foreclosures.

“This Chapter applies to all condominiums created within this State after October 1, 1986.”

N.C. Gen. Stat. Ann. § 47C-1-102 [Emphasis added.]

Recent constitutional litigation has focused on two common characteristics of power of sale foreclosure: limited notice requirements and the absence of an opportunity for hearing prior to the foreclosure. However, there is sparse legal precedent on the issue of whether power of sale was actually conferred on a unit owner association.

EOP relies on N.C.G.S. §47C-3-116 (Lien for Assessments). In addition to the general inapplicability of this statute under N.C. Gen. Stat. Ann. § 47C-1-102, Applicability. Power of sale is not

conferred on EOP by N.C.G.S. §47C-3-116, since such a statutory provision clearly conflicts with the Declaration provisions requiring a judicial foreclosure “by action.” Hence, the statute itself states §47C-3-116, the Section relied upon by EOP, cannot apply:

“Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.”

N.C. Gen. Stat. Ann. § 47C-1-102 [Emphasis added.]

D. The Declaration Explicitly Requires a Judicial Foreclosure Proceeding by Action Under Article 8, Chapter 44 of the North Carolina General Statutes. This Implicitly Precludes EOP from Using a Non-Judicial Foreclosure Proceeding.

The pertinent statute clearly requires EOP to commence “an action” to pursue foreclosure as provided in N.C.G.S. § 44-48(4):

§ 44-48. Discharge of liens

All liens created by this Chapter may be discharged as follows:

...

(4) By a failure of the claimant to commence ***an action*** for the enforcement of the lien within six months from the notice of lien filed.

N.C. Gen. Stat. Ann. § 44-48 [***Emphasis Added.***]

Again, there are only two types of foreclosure proceedings available in North Carolina, and by choosing one of these procedures in the Declaration, the other is precluded.

This choice is clearly stated in the Association Declaration.

The Declaration provides that:

Any sum assesses remaining unpaid for more than thirty (30) days shall constitute a lien upon the delinquent unit or units when filed of record in the Office of the Clerk of Superior Court of Durham County in the manner provided for by Article 8 of Chapter 44 of the General Statutes of North Carolina as amended.

Declaration § 15 (*emphasis added*).

E. The Provisions of N.C.G.S. Chapter 47C, Are Inapplicable Under the Contracts Clause of the United States Constitution and Under the North Carolina Constitution.

The “Contracts Clause” of the United States Constitution. Article 1, Section 10 of the Constitution provides that “No state shall . . . pass any Law . . . impairing the Obligation of Contracts.” Over the years, the courts developed a rule that *remedies* for default were distinct from the underlying contractual *obligation*. State laws could regulate remedies but they could not modify contractual obligations. See e.g., Samuel L. Olken, Charles Evans Hughes and the Blaisdell Decision: a Historical Study of Contract Clause Jurisprudence, 72 Or. L. Rev. 513, 522-35 (1993). However, North Carolina simply invokes the Law of the Land.

KEY CONSTITUTIONAL PROVISIONS

North Carolina Constitution “Law of the Land Clause”

Article I, Section 19 of the North Carolina Constitution “No person shall be . . . in any manner deprived of his life, liberty, or property, but by the law of the land.”

Federal Constitution “Contracts Clause” Article I, Section 10, Clause 1 of the United States Constitution

“No State shall . . . pass any . . . Law impairing the Obligation of Contracts...”

The Statute itself “grandfathers” pre-existing condominiums:

“. . . to make all provisions of this Act automatically apply to “old” condominiums might violate the constitutional prohibition of impairment of contracts. In addition, aside from the constitutional issue, automatic applicability of the entire Act almost certainly would unduly alter the legitimate expectations of some present unit owners and declarants.”

“Accordingly, the philosophy of this section reflects a desire to maximize the uniform applicability of the Act to all condominiums in the enacting state, while avoiding the difficulties raised by automatic application of the entire Act to pre-existing condominiums.”

N.C. Gen. Stat. Ann. § 47C-1-102 [Official Commentary Published by the North Carolina Legislature, but Written by the Uniform Laws Commission.] [Emphasis Added.]

The Statute further states the specific provisions of N.C.G.S. §47C-3-116 (Lien for Assessments) do not apply to EOP:

“First, certain provisions of the Act automatically apply to “old” condominiums, but only prospectively, and only in a manner which does not invalidate provisions of condominium declarations and bylaws valid under “old” law.”

“Second, “old” law remains applicable to previously created condominiums where not automatically displaced by the Act.”

N.C. Gen. Stat. Ann. § 47C-1-102 [Official Commentary]

Since there are only two types of foreclosure proceedings available, allowing EOP to use a non-judicial foreclosure proceeding effectively would invalidate the Declaration, which is impermissible under N.C.G.S. 47C-1-102.

“Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.”

N.C. Gen. Stat. Ann. § 47C-1-102 [*Emphasis Added.*]

STATEMENT OF THE CASE

1. Petitioner, Rock, is a citizen and resident of Durham County, North Carolina.
2. Respondent, Executive Office Park of Durham Association, Inc. (“EOP”) is a tax-exempt, non-profit business association created on November 9, 1982, organized pursuant to the North Carolina Unit Ownership Act, Chapter 47A of the North Carolina General Statutes, for the operation of the Executive Office Park, in the City and County of Durham.
3. EOP lists the addresses for mailing and principal office as 1001 Wade Ave, Suite 300, Raleigh, NC 27605. EOP’s registered agent is listed as being Trademark Association Management, LCC, located at the same address.
4. The Properties are units subject to North Carolina Unit Ownership Act, Chapter 47A of the North Carolina General Statutes and a Declaration of Unit Ownership Under the Provisions of Chapter 47A of the General Statutes of North Carolina, and of the Covenants, Conditions and Restrictions, as amended (“Declaration”) (*Emphasis added.*). The Declaration is recorded in the Durham County Registry in Book 1097, Page 308; First Amendment in Book 1123, Page 766; Second Amendment in Book 1124, Page 61; Third Amendment in Book 1181, Page 195; and Fourth Amendment in Book 7911, Page 460. Pertinent excerpts of the Declaration are attached as **Exhibit C** and the full document (over 80

pages printed) is available for free download from the Durham County Registry property records website.

5. Rock is current owner of the Properties.

6. The Declaration provides that:

Any sum assesses remaining unpaid for more than thirty (30) days shall constitute a lien upon the delinquent unit or units when filed of record in the Office of the Clerk of Superior Court of Durham County in the manner provided for by Article 8 of Chapter 44 of the General Statutes of North Carolina as amended.

Declaration § 15 (*emphasis added*).

7. During 2015, EOP filed a claim alleging authority to foreclose under the Declaration (Case No. 15 SP 815). This claim was filed by EOP without naming a trustee as required by the governing statute and without alleging conferral of power of sale authority under the Declaration. The Clerk found no authority in the Declaration authorizing EOP's claim and ruled the case dismissed. An Order of Dismissal was entered by the Durham County Clerk of Superior Court in Case No. 15-SP-815 on November 10, 2015. Specifically, this Order of Dismissal found that COA "failed to show . . . [it] has the power to impose or collect sums of money denoted specifically as 'fines' or dues from it's [sic] association members." Order of Dismissal is attached as **Exhibit A**.

8. EOP failed to appeal the Order of Dismissal within 10 days of the Order date as required by the statute and the Clerk's Order of Dismissal remains in force as a judicial act:

"The act of the clerk in so finding or refusing to so find is a judicial act and may be appealed to the judge of the district or superior court having jurisdiction at any time within 10 days after said act."

N.C. Gen. Stat. Ann. § 45-21.16(d1)

9. During early 2016, EOP again filed a Claim and Notice of Foreclosure without naming a trustee as required by the pertinent statute (Case No. 16 SP 141).

“ . . . trustee shall satisfy the notice requirement of this section with respect to those parties not served or not timely served with respect to the original hearing.”

N.C. Gen. Stat. Ann. § 45-21.16(a).

10. After failing to find or allege conferral of power of sale authority and failing to name a trustee, EOP voluntarily dismissed its second claim and notice of foreclosure in a notice of voluntary dismissal signed by James M. Waters on 20 September 2016. Notice of Voluntary Dismissal attached as **Exhibit B**.
11. On November 4, 2016, EOP filed a Claim of Lien Pursuant to N.C.G.S. § 47C-3116 and Declaration recorded in Book: 1097; Page 308 Durham County Registry (16-M-1341) in the amount of \$56,890.37, in addition to attorney's fees and costs of \$1,074.50, plus such amounts as may become due on a monthly basis (“Claim”). Claim is attached as **Exhibit D**.
12. As part of it Claim, COA states “Said [EOP] is entitled to file this Lien against the present owners of the property pursuant to the Declaration and N.C.G.S. § 47C-3-116.” Claim ¶ 8.
13. In addition, EOP appointed Hope Derby Carmichael with Jordan Price Wall Gray Jones & Carlton as trustee to conduct the foreclosure.
14. This Claim is not correct in that it does not comply with Article 8 of Chapter 44 of the North Carolina General Statutes as it does not properly contain the basis for such lien. Specifically, this Claim asserts being brought under Chapter 47C of the North Carolina General Statues. However, Chapter

47C is inapplicable to this matter as any foreclosure by COA must be brought under Chapter 47A of the North Carolina General Statutes.

15. Contemporaneously with filing the Claim, on November 4, 2016, a Notice of Hearing Prior to Foreclosure Sale (16-SP-1061) was filed by J. Matthew Waters, also with Jordan Price Wall Gray Jones & Carlton (“Notice”). Notice is attached as **Exhibit E**.
16. Jordan Price, is EOP’s litigation counsel, is not a neutral party and should not have been appointed substitute trustee or filed Notice of Hearing on Foreclosure.
17. On January 25, 2017, the Clerk of Superior Court entered an Order Authorizing Sale specifically finding, among other things, that (i) EOP was the holder of a valid lien, (ii) Rock was in default of the Declaration and Chapter 47C of the North Carolina General Statutes, (iii) Rock received notice “pursuant to N.C.G.S. §47C-3-116(b) and (e) or N.C.G.S. §47F-3116(b) and (e)” (“Sale Order”).
- 18.** On March 16, 2017, an Order Affirming Order Authorizing Sale was entered by Superior Court Judge Beecher Gray making essentially the same findings contained in the Sale Order. Order attached as **Appendix C**.
19. On May 9, 2017, Rock filed a Motion to Set Appeal Bond Under N.C. R. App. P., Rule 8(a).
20. Judge Gray set the bond at \$50.00 and Rock paid this amount presuming the sale would be stayed. Motion to Set Appeal Bond, Order, and receipt attached as **Exhibit F**.
- 21.** This Claim, or at least a significant portion, was the subject of a prior Order of Dismissal entered by the Durham County Clerk of Superior Court in Case No. 15-SP-815 on November

10, 2015. Specifically, the prior Order of Dismissal found that EOP “failed to show . . . [it] has the power to impose or collect sums of money denoted specifically as ‘fines’ or dues from it’s [sic] association members.” Order of Dismissal is attached as **Exhibit A.**

22. Because this Claim is based upon an Order of Dismissal entered by the Durham County Clerk, EOP is required to seek foreclosure through judicial action. See *In re Foreclosure of a Deed of Tr. Executed by Lucks*, 369 N.C. 222, 223, 794 S.E.2d 501, 503 (2016) (“While the creditor may not proceed with non-judicial foreclosure on the same default, it may proceed on the same default through foreclosure by judicial action.”)

23. Despite these known issues including a pending appeal with bond paid and hence with no known authority for doing so, the nominal substitute trustee sold Rock’s Properties on August 22, 2017 for \$60,513.79. [Both EOP’s trial attorney and the nominal substitute trustee have been referred to the State Bar of North Carolina for disciplinary action related to this and other misconduct.] Report of Foreclosure Sale attached as **Exhibit H.**

23. In summary, there have also been significant abnormalities in this foreclosure proceeding that warrant review, including but not limited to:

- a. Power of sale was not conferred on EOP by the Declaration and the statutory basis of EOP’s alleged claim is inapplicable;
- b. A non-neutral party, Jordan Price, being named substitute trustee and serving the Notice of Hearing on Foreclosure;
- c. The foreclosure sale being authorized and proceeding under the wrong North Carolina General Statute;
- d. The foreclosure sale being held despite Rock having paid a bond to appeal this matter to the North Carolina Court of Appeals; and
- e. Proceeding under Article 2A Sales under Power of Sale despite a prior dismissal in direct contravention of a North Carolina Supreme Court ruling.

24. Because EOP proceeded to sell the Properties despite a pending Notice of Appeal and despite Rock's posting of the appeal bond in accordance with Judge Gray's order setting the bond amount, Rock filed a Petition for Writ of Supersedeas and Motion for Temporary Stay with the North Carolina Court of Appeals (COA). The Court of Appeals issued an order for temporary stay while considering Rock's Supersedeas Petition. **Appendix E.**

25. When Rock obtained the Order of Stay, EOP requested sanctions against Rock before a different trial court judge who was unfamiliar with the case. EOP alleged that Rock had incorrectly requested an extension of time to prepare the trial court hearing transcript. However, in truth, there was a technical glitch causing an error in the uploading of the audio file to the transcriptionist, and Rock obtained an affidavit from an IT expert corroborating Rock's version of the events. Rock also obtained an email from the transcriptionist indicating they had difficulty receiving the audio file, despite the upload software showing a complete upload.

EOP sought these same senseless sanctions at the North Carolina Court of Appeals and at the North Carolina Supreme Court, and all such motions were either denied or dismissed by the state appellate courts.

26. Rock filed a record on appeal with the COA and a Petition for Writ of Certiorari with the COA. Both were denied.

27. Rock then filed a Petition for Writ of Supersedeas with the North Carolina Supreme Court, but the court declined to hear the case and denied the Petition on 05 March 2018. Order Denying Petition is attached as **Appendix A.**

REASONS FOR GRANTING THE WRIT

Power of Sale was not conferred on the Respondent, EOP, and the trial court lacked subject matter jurisdiction to order a non-judicial sale. The Declaration requires a judicial foreclosure by action under Art. 8, Ch.44 of the North Carolina General Statutes, and an order of a state court allowing a non-judicial sale invalidates the Declaration in violation of the Contracts Clause of the United States Constitution and the related Sections of the North Carolina Constitution.

The "Contracts Clause" of the United States Constitution. Article 1, Section 10 of the Constitution provides that "No state shall . . . pass any Law . . . impairing the Obligation of Contracts." Through this Petition, Rock seeks to enforce the Declaration, which requires EOP to use a judicial foreclosure proceeding and which does not confer power of sale or allow EOP to use non-judicial foreclosure proceedings. To allow a tax-exempt, nonprofit Association to file a non-judicial proceeding alleging authority under N.C.G.S. Chapter 47C violates the Contracts Clause of the federal Constitution and the related provisions of the North Carolina Constitution.

Again, the trial court erred and lacked subject matter jurisdiction to enter an order allowing a non-judicial sale, where power of sale was not conferred on the Claimant. Under the Due Process clauses of the U.S. Constitution and Sections 18 and 19 of Article 1 of the North Carolina Constitution the courts have a duty to protect a property owner against improper actions of an incorporated unit-owners association where these actions are not authorized by the Association Declaration; where the Claim was filed in under an inapplicable state statute; and where the state legislature and state courts created a non-judicial process that permits the permanent taking of the owner's real estate. The decision to allow a non-judicial sale where power of sale was not conferred on the Claimant casts a cloud on the title of countless properties nationwide.