In The

Supreme Court of Virginia

RECORD NO. 180979

GLORIA B. LANE,

Appellant,

v.

BAYVIEW LOAN SERVICING, LLC's EQUITY TRUSTEES, LLC, as SUBSTITUTE TRUSTEE, and ERIC CHARLES VON ALLMAN,

Appellees.

BRIEF OF APPELLEE

Christy L. Murphy (VSB No. 73253)
BISCHOFF MARTINGAYLE, P.C.
208 East Plume Street, Suite 247
Norfolk, Virginia 23510
(757) 965-2793 (Telephone)
(757) 440-3924 (Facsimile)
clmurphy@bischoffmartingayle.com

Counsel for Appellee

THE LEX GROUP ♦ 1108 East Main Street ♦ Suite 1400 ♦ Richmond, VA 23219
(804) 644-4419 ♦ (800) 856-4419 ♦ Fax: (804) 644-3660 ♦ www.thelexgroup.com

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I. STATEMENT OF FACTS

This case is about homeowners who fell behind on their mortgage and the property went into foreclosure. When the foreclosure sale was scheduled, Mrs. Lane filed suit to enjoin the sale by filing a "Petition for Injunction" in Mecklenburg Circuit Court case CL16-991 (the "Prior Case") against BWW Law Group, LLC ("BWW"). (JA 68-69). In the Prior Case, Mrs. Lane asked the trial court to enjoin the foreclosure sale due to lack of notice in the newspaper, lack of certified mail receipt, and lack of notice pertaining to a letter of default (acceleration notice). *Id.* She did not ask for a temporary injunction. *Id.* At her request, the trial court granted Mrs. Lane a full evidentiary hearing on January 3, 2017 at 3:00 pm. (JA 78). Mrs. Lane provided notice of the hearing to counsel for BWW and the hearing was held on January 3, 2017. (JA 84). Mrs. Lane filed a number of documents with the trial court including letters from Bayview, a note and security agreement, pleadings from another case filed in Hanover Circuit Court, and various written objections she asked the court to take notice of. At the hearing, the Plaintiff presented three exhibits (JA 113-116) and BWW introduced five exhibits. (JA 117-181). The third exhibit from BWW was a "Notice of Default and Intent to Accelerate" sent to Mrs. Lane and Randolph Lane, Sr. by certified mail from Bayview Loan Servicing, LLC

with tracking information from the USPS. (JA 126-137). Both notices were dated August 9, 2016, months before the foreclosure sale on January 4, 2017. (JA 2, 126-137).

After the full evidentiary hearing was conducted by the trial court, the court declined to enjoin the foreclosure sale and denied Mrs. Lane all of the relief sought in the petition. (JA 50-51). In the final order entered in the Prior Case on January 10, 2017, the trial court made specific findings of fact including that "Bayview Loan Servicing, LLC sent the Plaintiff a pre-acceleration notice in compliance with paragraph 17 of the Deed of Trust." *Id.* The final order in the Prior Case also stated "This matter is ended." *Id.* Mrs. Lane did not appeal that decision and it became final.

More than eight months later, Mrs. Lane filed this action. In it, Mrs. Lane attempts to take her second bite at the very same apple by again alleging she did not receive a proper acceleration notice. (JA 7-9). This issue was already directly addressed by the trial court in the Prior Case. Mrs. Lane also makes a claim that the appointment of substitute trustee was improper; a claim that, while denied, existed when Mrs. Lane filed the Prior Case on December 29, 2016. (JA 14-17, 73). The appointment of substitute trustee was executed on December 2, 2016. (JA 150).

In the amended complaint, Mrs. Lane alleges that Bayview became the servicer of Mrs. Lane's loan as of November 5, 2015. (JA 4). She also alleges that Equity Trustees was appointed as substitute trustee. (JA 10).

Mrs. Lane had her day in court when she filed the Prior Case and she needed to "make the most of [her] day in court." *Funny Guy, LLC v. Lecego, LLC*, 795 S.E.2d 887, 890 (Va. 2017). Based on the principles of *res judicata*, including both claim preclusion and issue preclusion, Mrs. Lane is precluded from raising the same issues again. The trial court correctly granted the plea of *res judicata* and properly dismissed the matter as to Bayview.

II. STANDARD OF REVIEW

Bayview Loan Servicing, LLC ("Bayview") agrees with the standard of review stated in the Opening Brief (the "Opening Brief").

III. PRINCIPLES OF LAW, ARGUMENT, AND AUTHORITIES

The trial court correctly granted the plea in bar as Mrs. Lane's claims are barred by *res judicata*. First, all of her claims are barred by claim preclusion. In addition, all of her claims that the foreclosure sale was invalid due to Bayview's alleged failure to provide a proper 30-day pre-acceleration notice are barred by issue preclusion. The trial court did not err in granting the plea in bar based on *res judicata*.

A. Denial of the Relief Sought by Mrs. Lane in the Prior Case Serves as Claim Preclusion Regardless of the Injunctive Relief Sought

Mrs. Lane did not ask for a temporary injunction in the Prior Case. Instead, she asked for the foreclosure sale to be enjoined permanently. That is, there was no limitation on the requested relief to a temporary injunction. This serves as claim preclusion in this suit. Even if she only asked for a temporary injunction, this suit is barred by claim preclusion as the effect of the trial court's final order was the same regardless of the classification of the type of injunctive relief sought.

1. Mrs. Lane did not seek a temporary injunction in the Prior Case

In the Prior Case, Mrs. Lane called her pleading a Petition for Injunction and asked for a hearing and an order to enjoin the foreclosure sale scheduled for January 4, 2017. (JA 45). She asked for nothing else and she did not ask that any injunctive relief granted be temporary.

Mrs. Lane argues in the Opening Brief that the pleading in the Prior Case contains indicia of a request for temporary relief, but that position ignores the pleading she filed and the evidence presented at the plenary hearing conducted. When Mrs. Lane filed her Petition for Injunction, she asked for nothing other than an order from the trial court enjoining the foreclosure sale. She did not ask that the injunction be for a limited period

of time. After the hearing on January 3, 2017, Mrs. Lane sought no further relief.

Mrs. Lane was the party in complete control of the timing of this matter. She waited until December 29, 2016 to do anything about what she calls an improper acceleration of her loan. Mrs. Lane had plenty of time prior to December 29, 2016 to challenge the foreclosure sale. She had notice of the acceleration of her loan on May 10, 2016. In it, she was warned "[i]f the default, together with additional payments that subsequently become due, is not cured by 06/14/2016, BLS will take steps to terminate your ownership in the property by a foreclosure proceeding or other action to seize the property." (JA 38). She again had notice of the acceleration of her loan on August 9, 2016. In that notice, she was given the same warning with a due date of 09/13/2016. (JA 41). She did not heed the warning and did not file anything either time to stop any eventual foreclosure sale or challenge the propriety of the acceleration notices.

Instead, she waited until right before the sale to address the issue. At the request of Mrs. Lane, a hearing was scheduled and the defendant attended, by counsel, and presented its defense to the request for an injunction. Mrs. Lane was not the party prejudiced by the speed of the Prior Case. She was in complete control of the litigation the entire time.

She cannot use the timing she created as her sword when she wanted to enjoin the foreclosure sale and now as a shield when she does not want the order to serve as *res judicata*.

The parties were at issue in the Prior Case. In the Opening Brief, Mrs. Lane suggests that because BWW did not file responsive pleadings, the parties were not at issue and the case never matured. Mrs. Lane cites the case of *Potts v. Mathieson Alkali Works*, 165 Va. 196 (Va. 1935) to support this position. However, *Potts* does not support this position. In *Potts*, the issue was whether a complainant could receive relief not asked for in the pleading and not supported by facts alleged in the pleading. *Id.* at 207. The analysis in *Potts* pertains to the pleading filed by the plaintiff and the relief sought by the plaintiff. *Id.* It does not state that parties cannot be at issue in a case if the case moves forward prior to responsive pleadings being filed. Mrs. Lane has cited no case that holds for that proposition. "At issue" is defined as "taking opposite sides" and "under dispute." Black's Law Dictionary 136 (8th ed. 2007). Mrs. Lane and BWW and its privies were at issue in the Prior Case as, on the same day it received service, BWW appeared, presented its evidence, argued its position, and moved that the injunctive relief sought be denied. The parties were properly at

issue so that the trial court's final order in the Prior Case serves as claim preclusion (and issue preclusion) to this action.

Contrary to Mrs. Lane's argument, there is no requirement that a party must engage in discovery or file pleadings before a case can be concluded by a final order. BWW was provided notice of a petition for injunction and had the right to defend the claims being made by Mrs. Lane. Since Virginia is a non-judicial foreclosure jurisdiction, BWW did not seek relief from the court and it was not awarded any affirmative relief. As a result, the analysis provided in *Potts* is not applicable. 181 S.E. at 521.

2. Regardless of the type of injunctive relief sought, the denial of the relief sought in the Prior Case serves as issue preclusion in this action

Regardless of the type of injunctive relief sought by Mrs. Lane, the entirety of the case was addressed and disposed of in the final order in the Prior Case as trial court properly considered and ruled on the merits of the claims made by Mrs. Lane in the Prior Case.

The petition for injunction sought relief based on alleged lack of notice in the newspaper, lack of certified mail receipt, and lack of notice pertaining to a letter of default (acceleration notice). (JA 68-69). After a full evidentiary hearing, the trial court made multiple findings in the final order. The trial court speaks through its order and the merits of each claim were

considered and determined by the court. A "final decree, whether right or wrong, from which no appeal is taken, is binding upon the litigants." *Patterson v. Saunders*, 74 S.E.2d 204, 207 (Va. 1953) (citation omitted). The trial court also held that the allegations contained in Mrs. Lane's petition had no likelihood of sustaining a legal claim against BWW or Equity Trustees, LLC to grant an injunction. This constitutes a finding on the merits of the claims.

Mrs. Lane did not ask for reconsideration. Mrs. Lane did not ask to amend her petition. Mrs. Lane asked for nothing more and nothing more remained in the case to be done by the trial court. She could have appealed that decision right then but she did not.

B. The January 10, 2017 order in the Prior Case Was a Valid Final Judgment on the Merits

The trial court entered an order in the Prior Case denying all of the relief sought in the petition for injunction. (JA 183-184). Further, the January 10, 2017 order stated "[t]his matter is ended." *Id.* The January 10, 2017 order was a final order.

In *McLane v. Vereen*, this Court addressed the issue of whether a consent decree was final in the context of a motion for a rule to show cause. 677 S.E.2d 294, 298 (Va. 2009). In *McLane*, the county argued that the consent order was final and not subject to later change because 21

days had run since its entry. *Id.* at 297. The trial court disagreed, but this Court reversed, finding that the consent order was a final order. *Id.* at 299. The order in *McLane* stated, just above the judge's signature, "THIS CAUSE IS ENDED." *Id.* at 296.

In *McLane*, this Court found that a "final judgment is one that disposes of the entire matter before the court, giving all the relief contemplated and leaving nothing to be done by the court except the ministerial execution of the court's order or decree." *Id.* at 298. Here, as in *McLane*, the order stated "[t]his matter is ended" and the order disposed of the entire matter before the court. The order gave all of the relief contemplated and left nothing to be done by the court. The order was final. *See also Stultz v. Albaugh*, 1998 WL 808357 (Va. Ct. App. 1998) (the order was final because it disposed of the "whole subject" before the court and the order "plainly stated in closing, 'And this cause is ENDED.'").

This case is distinguishable from *Scales v. Lewis*. 541 S.E.2d 899 (Va. 2001). In *Scales*, this Court found that the record from the prior case was "insufficient to establish res judicata or collateral estoppel." *Id.* at 901. This Court considered the fact that the only portion of the record provided in the subsequent suit was the warrant in debt, the bill of particulars, and the grounds of defense. *Id.* at 900. In the case disposition box, it was

simply marked "DISMISSED." *Id.* There was no transcript from the prior hearing provided and there were no details provided by the general district court on the proceeding and there was no signed statement of facts provided. *Id.* at 901. As a result, the Court was unable to determine what happened in the prior case below. *Scales* does not support the position asserted by Mrs. Lane in this matter.

Mrs. Lane recognizes that the final order in the Prior Case states that her "Petition is denied." However, she then argues that the final order does not enter judgment in favor of BWW Law Group. A denial of all of the relief sought by the plaintiff is a judgment against Mrs. Lane even if not specifically stated. Further, the final order in the Prior Case addressed everything Mrs. Lane asked the trial court to address.

This case is distinguishable from *Bibber v. McCreary*, 73 S.E.2d 382 (Va. 1952) as the final order in the Prior Case is not like the one in *Bibber* which sustained a demurrer, but did not dismiss the case. When the judge inquired of counsel for Mrs. Lane why the Prior Case went dormant and why Mrs. Lane filed a new case, counsel for Mrs. Lane responded, in part, by stating "[t]he clerk would not have accepted a filing in that case because according to the clerk's records, the matter had been ended." (JA 281-282).

Last, the final order in this case was not an advisory opinion nor did it contain superfluous findings. The trial court made five separate findings. (JA 183-184). The order also states that in consideration of the above findings, plural, "the Plaintiff's Petition is DENIED." As a result, the trial court based its ruling on all of the findings made including that the pre-acceleration notice was sent by Bayview in compliance with the deed of trust. That finding is binding and was necessary to the holding of the trial court. Had the trial court found otherwise, then in accordance with *Mathews v. PHH*, it would have granted the injunction. 724 S.E.2d 196 (Va. 2012). The trial court denied the injunction because, in part, it found that Bayview had properly sent the pre-acceleration notice. This was not advisory or unnecessary.

C. The Cause of Action in the Amended Complaint is the Same as the Cause of Action in the Complaint in the Prior Case

Rule 1:6 states:

> (a) *Definition of Cause of Action.* A party whose claim for relief arising from identified conduct, a transaction, or an occurrence, is decided on the merits by a final judgment, shall be forever barred from prosecuting any second or subsequent civil action against the same opposing party or parties on any claim or cause of action that arises from that same conduct, transaction or occurrence, whether or not the legal theory or rights asserted in the second or subsequent action were raised in the

> prior lawsuit, and regardless of the legal elements or the evidence upon which any claims in the prior proceeding depended, or the particular remedies sought. A claim for relief pursuant to this rule includes those set forth in a complaint, counterclaim, cross-claim or third-party pleading.

Pursuant to Rule 1:6, *res judicata* applies to causes of action and applies regardless of the "particular remedies sought." Mrs. Lane is now asking the Court to conflate a cause of action with a right of action and find that *res judicata* does not apply because she claims a petition to enjoin a foreclosure is different from a complaint to rescind a foreclosure. It is not for purposes of *res judicata*.

A cause of action "is simply the 'set of operative facts' that causes a claimant to assert his claim." *Cherrie v. Va. Health Servs.*, 787 S.E.2d 855, 857 (Va. 2016). It is "a 'group of operative facts giving rise to one or more bases for suing.'" *Id.* (quoting Black's Law Dictionary 266 (10th ed. 2014)).

In the Prior Case, Mrs. Lane's cause of action was that Bayview could not foreclose because she had not received notice in the newspaper, a certified mail receipt, or notice pertaining to a letter of default (acceleration notice)(JA 68-69). The operative facts were that Bayview had allegedly not satisfied conditions precedent to foreclosure and had no right to foreclose. In this case, Mrs. Lane claims that she is entitled to rescission of the completed foreclosure sale and damages because she did not

receive a proper acceleration notice and the appointment of substitute trustee, executed prior to her filing the Prior Case, was improper. The operative facts are that Bayview allegedly did not satisfy conditions precedent to foreclosure and had no right to foreclose. The cause of action is the same.

A right of action is a "remedial right" used to "enforce a cause of action." *Id.* It is the "'right to bring a specific case to court.'" *Id.* (quoting Black's Law Dictionary 1520 (10th ed. 2014)). It is what is filed to seek the remedy. The remedy sought in the Prior Case and the remedy sought in this case is different. The right of action is different. In the Prior Case, Mrs. Lane sought to enjoin foreclosure. In this action, Mrs. Lane seeks to rescind the foreclosure and for monetary damages. However, Rule 1:6 does not pertain to rights of action and specifically states that *res judicata* applies regardless of the remedy sought. Both operative facts, for which Mrs. Lane now seeks rescission and damages, lack of proper acceleration notice and improper appointment of substitute trustee, existed before Mrs. Lane filed the Prior Case. As a result, the cause of action in the Prior Case and the cause of action in this case are the same and subject to Rule 1:6.

In *Cherrie*, the Court pointed out the import of making a distinction between a cause of action and a right of action in *res judicata* cases. *Id.*

(the distinction "factors into many modern legal doctrines, including res judicata . . . .") The Court conducted this analysis in *Lee v. Spoden,* 776 S.E.2d 798 (Va. 2015). There, in describing the distinction between a cause of action and a right of action, the Court found that "'multiple rights of action may arise under a given cause of action. *Kiser v. A.W. Chesterton Co.,* 285 Va. 12, 21, 736 S.E.2d 910, 916 (2013). However, 'a wrongful act generally gives rise to only a single indivisible cause of action.'" *Id.* at 805.

If Mrs. Lane's argument was correct, in every foreclosure case every plaintiff would have two chances to challenge a foreclosure. First, the plaintiff could file suit to enjoin the foreclosure. If the plaintiff were unsuccessful, then the foreclosure could occur and the plaintiff could file a new suit to rescind the foreclosure. This is exactly what Mrs. Lane is attempting to do and what *res Judicata* is designed to prevent.

Both of Mrs. Lane's lawsuits "arose out of a single underlying dispute" she did not want Bayview to be able to foreclose on the property. *See Funny Guy, LLC*, 795 S.E.2d at 895. In this action, she seeks rescission and damages due to alleged lack of proper pre-acceleration notice and alleged improper appointment of substitute trustee. In the Prior Case it was due to alleged lack of proper pre-acceleration notice, newspaper

advertisement, and notice of foreclosure. The cause of action is exactly the same regardless of who she made the claims against.

"If claims can truly be joined under Code §§ 8.01-272 and 8.01-281, then it necessarily follows that the very same claims would be prima facie within the scope of Rule 1:6." *Id*. at 896. Mrs. Lane could have joined the claim on the appointment of substitute trustee to the matter she filed in the Prior Case. The appointment was made on December 2, 2016, almost a month before she filed the Prior Case. She made the same claim on the pre-acceleration notice in the Prior Case that she is making here. She claimed it was not proper in the Prior Case and claims the same notice is not proper in this matter. The trial court specifically found that it was sent in accordance with the provisions of the deed of trust. "All of the varied circumstances" pertaining to whether Bayview could foreclose on the property "orbited around one core dispute." *Id.*

The cause of action in the Prior Case is the same as the cause of action in this suit and is subject to Rule 1:6.

D. Bayview Established Privity Between BWW and Bayview

"One of the fundamental prerequisites to the application of the doctrine of *res judicata* is that there must be an identity of parties between the present suit and the prior litigation asserted as a bar. *A party to the*

present suit, to be barred by the doctrine, must have been a party to the prior litigation, or represented by another so identified in interest with him that he represents the same legal right." *Raley v. Haider*, 747 S.E.2d 812, 815 (Va. 2013) (emphasis added) (citing *Leeman v. Troutman Builds, Inc.*, 530 S.E.2d 909, 911 (2000)). Since Bayview asserted the defense of *res judicata* against Mrs. Lane, it had a burden to prove that Mrs. Lane was a party to the Prior Case and to the current action or was in privity with a party to the Prior Case. The pleadings from both cases established that she was the same party in both actions. That is all Bayview had to establish with respect to parties and privity for purposes of Rule 1:6 and its claim of *res judicata*.

Notwithstanding this, Bayview established Privity between BWW, the defendant in the Prior Case, and Bayview. "There is no fixed definition of privity that automatically can be applied to all cases involving *res judicata* issues." *Nero v. Ferris*, 284 S.E.2d 828, 831 (Va. 1981). "The touchstone of privity for purposes of *res judicata* is that a party's interest is so identical with another that representation by one party is representation of the other's legal right." *State Water Control Bd. v. Smithfield Foods, Inc.*, 542 S.E.2d 766, 769 (Va. 2001) (citations omitted). "Courts have held that the attorney-client relationship itself establishes privity." *Weinberger v. Tucker*,

510 F.3d 486, 492-93 (4th Cir. 2007) (stating that under Fourth Circuit and Virginia decisions, the test for privity is the same, but finding not all attorney client relationships establish privity) (citation omitted). In addition, "Virginia Courts typically find privity when the parties share a contractual relationship, owe some kind of legal duty to each other, or have another legal relationship such as co-ownership." *Columbia Gas Transmission, LLC v. David N. Martin Revocable Trust*, 833 F. Supp. 2d 552, 558 (E.D. Va. 2011).

The pleadings from the Prior Case establish the privity between BWW and Bayview. BWW sought to prevent an injunction of the January 4, 2017 foreclosure sale to be conducted by Equity Trustees on behalf of Bayview (as alleged in the amended complaint in this matter and Mrs. Lane agreed in her Opening Brief specifically that BWW was the attorney for Equity Trustees) (JA 1-22, Opening Brief fn 2 p. 5). That is the same identity of interest such that BWW represented Bayview's same legal right.

BWW introduced the acceleration notice in question as evidence in the proceeding, which was a document provided by Bayview. In fact, in the January 10, 2017 order, the trial court made a specific finding that "Bayview Loan Servicing, LLC sent the Plaintiff a pre-acceleration notice in compliance with paragraph 17 of the Deed of Trust." BWW and Bayview

were in privity because they had the same interest in the Prior Case, a fact recognized by the trial court in the January 10, 2017 order.

Further, Mrs. Lane correctly noted in her Opening Brief that "BWW Law Group, LLC acts as attorney for Equity Trustees." (Opening Brief at fn. 2, p. 5). Equity Trustees was the substitute trustee on the deed of trust. (JA 201). Equity Trustees, Bayview, and BWW Law Group all had privity with each other due to attorney-client relationships and due to the legal duties between them. See *Weinberger*, 510 F.3d at 492-93. All three entities had the same identity of interest and each could represent the same legal right: opposition to an order enjoining the January 4, 2017 foreclosure sale. *See Raley,* 747 S.E.2d at 815.

It is incorrect to argue, as Mrs. Lane did in her Opening Brief, that Bayview cannot plead *res judicata* because it was not bound by the trial court's final order in CL16-991. (Opening Brief p. 16-17). Had the trial court entered an injunction barring foreclosure in CL16-991, Bayview would have been the party directly affected by the order.

E. Bayview Established Issue Preclusion Pertaining to the Acceleration Notice

Issue preclusion is a form of *res judicata*. Issue preclusion "'bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the

issue recurs in the context of a different claim." *Lee*, 776 S.E.2d at 803 (citing *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748 (2001)).

1. The Trial Court's finding on the acceleration notice in the Prior Case was actually litigated and resolved in that case.

In *Snead v. Bendigo*, the Court analyzed whether a doctor's negligence was at issue in a general district court matter pertaining to collections from a patient. 397 S.E.2d 849 (Va. 1990). In *Snead*, a doctor filed a warrant in debt to collect amounts due from a patient. *Id.* at 850. The doctor filed an affidavit pursuant to Virginia Code § 8.01-28 and received default judgment without further evidence. *Id.* at 851. The prior case was a collections case. *Id.* at 850. Later, the patient filed a malpractice action against the doctor. *Id.* The doctor moved to dismiss the malpractice case based on a plea of collateral estoppel. *Id.* The Court found that the general district court case did not serve as *res judicata* to the case for medical malpractice because the negligence of the doctor was never "at issue" in the collection case and could not have been "actually litigated." *Id.* at 851.

Here, Mrs. Lane placed the matter of whether Bayview sent her a proper acceleration notice at issue in her petition for injunction. In the

petition for injunction at paragraph 4, Mrs. Lane alleged that "[n]o prior letters of being in default were sent to your Petitioner." (JA 68). A full evidentiary hearing was conducted by the trial court on all of the issues presented by Mrs. Lane in the Prior Case. After consideration of all of the evidence and arguments, the trial court found that Bayview had sent Mrs. Lane "a pre-acceleration notice in compliance with paragraph 17 of the deed of trust."

Mrs. Lane's effort to distinguish *Patterson v. Saunders* is ineffective. 74 S.E.2d 204 (Va. 1953). In *Patterson*, the trial court denied a petition for temporary injunction. Later, that order served as *res judicata* to additional claims made by the same plaintiff against the same and different parties. In Patterson, this Court found that a "final decree, whether right or wrong, from which no appeal is taken, is binding upon the litigants." *Id.* at 207 (citation omitted). As the parties are at issue in this matter, the Court should likewise find that the denial of the injunctive relief serves as a bar to Mrs. Lane's case like in *Patterson*.

This Court further held that "[a] fact necessarily involved in an issue, on which there has been a judgment, is thereby conclusively settled in any suit thereafter between the same parties and their privies." *Id.* at 208 (citations omitted). Here, Bayview was a party to the Prior Case

"inferentially and by representation." *Id.* Its interest in the outcome of the Prior Case was identical to the interest of BWW. As a result, Bayview had a right to rely on the judgment of the trial court in the Prior Case and to conduct the scheduled foreclosure sale. The trial court essentially gave Bayview permission to do so when it denied the injunction after a full evidentiary hearing on the merits.

2. The Trial Court's finding on the acceleration notice in the Prior Case was essential to its ruling denying the relief sought in the Petition for Injunction.

In the January 4, 2017 order, the trial court made a particular finding pertaining to whether Bayview sent a proper acceleration notice prior to the foreclosure sale. The trial court found that Bayview sent Mrs. Lane a pre-acceleration notice "in compliance with paragraph 17 of the deed of trust." (JA 183-184). This finding was essential to its ruling denying the relief sought by Mrs. Lane in the Petition for Injunction. If the trial court did not make this finding, then it would have been required to grant Mrs. Lane's Petition. As a result, the trial court's finding pertaining to the acceleration notice was essential to its ruling. The fact that the trial court based its ruling on more than one finding does not make any one of them non-essential.

IV. CONCLUSION

For all of the reasons discussed herein, Bayview respectfully requests that the Court affirm the trial court on the final order entered in this matter and dismiss the appeal.

Respectfully submitted,

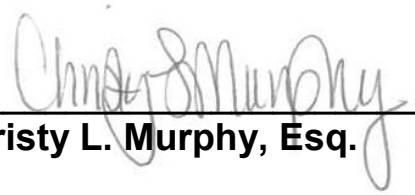
BAYVIEW LOAN SERVICING, LLC

By: _____
Of Counsel

Christy L. Murphy, Esq. (VSB #73253)
Bischoff Martingayle, P.C.
208 East Plume Street, Suite 247
Norfolk, Virginia 23510
(757) 965-2793 (direct)
(757) 440-3924 (fax)
Email: clmurphy@bischoffmartingayle.com

CERTIFICATION OF COUNSEL

I hereby certify that on this 15th day of February, 2019, pursuant to Rule 5:26, three paper copies of the Brief of Appellee have hand-filed with the Clerk of the Supreme Court of Virginia and an electronic copy of the Brief was filed, via VACES. On this same day, an electronic copy of the Brief of Appellee was served, via email, to, Drew D. Sarrett, Robert R. Michael, BWW Law Group, LLC, 8100 Three Chopt Road, Suite 240, Richmond, Virginia 23229, drew@sarrettlawfirm.com, robert.michael@bww-law.com, and Richard E. Craig and Amy L. Bradley, BrigliaHundely, P.C., 1921 Gallows Road, Suite 750, Tysons Corner, rcraig@brigliahundley.com Virginia 22182, , this 15th day of February, 2019.



Christy L. Murphy, Esq.