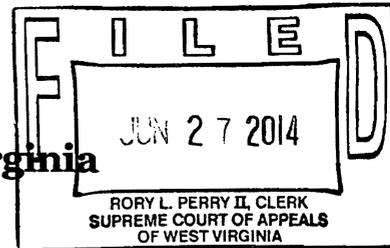


**In the Supreme Court of Appeals of West Virginia**

Docket No. 14-0143



**NANCY AND STJEPAN SOSTARIC,**  
Petitioner

V.)

**SALLY MARSHALL,**  
Respondent

Appeal from a final order  
of the Circuit Court of Morgan County (12-C-143)

**Summary Response**

Sally Marshall

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SUMMARY RESPONSE

Comes now the Respondent, Sally Marshall, pro se, and pursuant to Rule 10 (e) of the Revised Rules of Appellate Procedure and a Scheduling Order from this Honorable Court, files the within summary response.

I. STATEMENT OF THE CASE

The petitioners [hereafter referred to as the Sostarics] signed a Promissory Note for a loan of \$200,000.00 with respondent [hereafter referred to as Marshall]. (AR page 1). The loan was secured by a Deed of Trust pledging property at 99 Garden Drive, Berkeley Springs, WV. (AR4-21). The Sostarics eventually defaulted on the loan. A notice of acceleration by reason of non-payment and right to cure was served on the Sostarics. (AR page 22,23). A Trustee Sale was held on October 17, 2012 and Marshall purchased the property at 99 Garden Drive at public auction. At the time of the foreclosure sale the Sostarics owed the sum of \$200,000 on the original loan and additional interest payments of \$25,911. (AR page 23). It is undisputed that all statutory requirements of the State

foreclosure laws were followed. It is also undisputed that the Sostarics did not seek to have the foreclosure sale set aside.

On December 13, 2012, Marshall filed a complaint seeking to recover \$175,407.45 and any additional costs or interest that the court deemed appropriate. A Hearing was held by trial court on November 8, 2013 and the court entered an Order of Proceedings on November 12, 2013. Defendants Answer was submitted by the Sostarics to the court on December 2, 2013 and Marshall submitted Response to Defendants Answer on January 3, 2014.

The Court entered an Order Granting Summary Judgment to Plaintiff Marshall on January 14, 2014. Following the Order, a Notice of Appeal, scheduling order, petitioners brief, and this summary response ensued.

## II. ARGUMENT

It is difficult to address and give concise arguments in response to Appellant's Brief since it fails to address any specific Assignment of Error as required in the Rules of Appellate Procedure. An Administrative Order of the court dated 10 December 2012 states:

- . Briefs that set forth rambling assignments of error that are essentially
- . statements of facts with a conclusion that the lower tribunal was "clearly wrong"
- . rather than "a list of the assignments of error that are presented for review,
- . expressed in the terms and circumstances of the case but without unnecessary
- . detail" as required by Rule 10(c)(3);

Briefs with arguments that do not contain a citation to legal authority to support the argument presented and do not "contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal" as required by rule 10(c)(7);

The Court is of the opinion that as of January 1, 2013, all of the requirements of

the Rules must be strictly observed by litigants. The Rules are not mere procedural niceties; they set forth a structured method to permit litigants and this Court to carefully review each case. "Judges are not like pigs, hunting for truffles buried in briefs." *State Dept. of Health v. Robert Morris N.*, 195 W. Va. 759, 765, 466 S.E.2d 827, 833 (1995). In addition, litigants before this Court must recognize that "an appellate remedy should not be pursued unless counsel believes in good faith that error has been committed and there is a reasonable basis for the extension, modification, or reversal of existing law." Syl. Pt. 3, in part, *State v. McGill*, 2012 WL 5834573 (W. Va Sup. Ct. No. 11-0261, November 15, 2012).

Accordingly, litigants before this Court are hereby provided notice that all filings after January 1, 2013 must carefully comply with the Rules. Pursuant to Rule 10(j), failure to file a compliant brief "may result in the Supreme Court refusing to consider the case, denying argument to the derelict party, dismissing the case from the docket, or imposing such other sanctions as the Court may deem appropriate."

Despite this failure noted above, we will hunt for the truffles buried in this brief. It appears that Appellants are arguing "NANCY AND I ARE PRO SE LITIGANTS AND SHOULD HAVE BEEN TREATED AS SUCH". There is no evidence presented that the Sostarics were not treated as pro se litigants and it should be noted that all parties appeared pro se. In *Hammer* the court held:

"This Court has long held that non-lawyer, pro se litigants generally should not be held accountable for all of the procedural nuances of the law." *Hammer*, 215 W. Va. at 603, 600 S.E.2d at 315 (Davis, J., concurring).

When a litigant chooses to represent himself, it is the duty of the trial court to insure fairness, allowing reasonable accommodations for the pro se litigant so long as no harm is done an adverse party. . . . Most importantly, the trial court must strive to insure that no person's cause or defense is defeated solely by reason of their unfamiliarity with procedural or evidentiary rules. *State ex rel. Dillon v. Egnor*, 188 W. Va. 221, 227, 423 S.E.2d 624, 630 (1992) (internal quotations and citations omitted).

Sostarics requested a hearing on September 3, 2013 in their Opposition to the Motion for Default Judgment and a Hearing was held by the court on November 8, 2013. Appellant's Brief at page 2 acknowledges that the judge gave instructions and attempted to aid both parties of the need "to file a response supported by admissible proof of a defense to the claim". The Sostarics filed an Answer and the court considered it but concluded it "does not

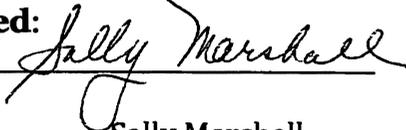
include any affidavit or admissible proof of a defense.” *Quoting; Order Granting Summary Judgment at page 2.* The court also cited Rule 56(f) ID. At 60 and W. VA. R CIV.P.56 that “an adverse party may not rest upon mere allegations or denials of the adverse party’s pleadings...” Wishing for a different set of facts or outcomes does not mean the Sostarics were not treated as pro se litigants.

The Sostarics Answer “raised issues about the foreclosure sale and the fact that Sally had purchased the house and was now suing for the money on the note.” [Appellant’s Brief at page 2]. It is undisputed that the Sostarics did not seek to have the foreclosure sale set aside but instead sought an off-set against the loan deficiency in the amount of what they perceived or hoped to be the fair market value of the property. This Court has determined that “ A grantor may not assert, as a defense in a deficiency judgment proceeding, that the fair market value of real property was not obtained at a trustee foreclosure sale.” *Quoting, Syl. Pt. 4. Fayette County National Bank v. Gary C. Lilly, et al. Case No. 23360 [January, 1997].*

Appellant’s Brief additional states: ‘THERE ARE ISSUES OF FACT’ and therefore seeks the judgment be set aside and send it back for a trial. Here again the only “issue of fact” that is presented is that “Sally bought the house at foreclosure, on which she had a deed of trust. She then sued for the differential but did not present proper evidence as to what is the value of the damages she incurred. The court made a mistake when it relied upon Sally’s statements.” In the Order Granting Summary Judgment the court clearly addressed this issue of value of damages incurred and stated: “the Plaintiff has met her burden and ... set forth evidence of the outstanding debt and attorney’s fees” while the court denied other expenses requested by the Plaintiff as not supported by the evidence of law.

### III. CONCLUSION

The Circuit Court's order granting default judgment should be upheld, and this matter should not be remanded for further proceedings.

Signed:   
Sally Marshall

### CERTIFICATE OF SERVICE

I hereby certify that on this 25<sup>th</sup> day of June 2014, true and accurate copies of the foregoing Summary **Response** were deposited in the U.S. Mail contained in postage-paid envelope addressed to Petitioner of this appeal as follows:

Stjepan Sostaric/Nancy Sostaric  
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Nancy Sostaric  
164 Fairfax Street  
Berkeley Springs, WV 25411

Signed:   
Sally Marshall  
P.O. Box 419  
Berkeley Springs, WV 25411