THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Circuit Court Judge

Appellate Case No. 2022-001597
Case No. 2011-CP-40-02052

Capital Bank, N.A., formerly known as NAFH National Bank,
successor in interest to Carolina National Bank and Trust Company,
and to First National Bank of the South,.....Appellant,

v.

Rosewood Holdings, LLC, D. Christopher Twitty, and
First Citizens Bank and Trust Company, Inc.,..... Defendants,

Of Whom Rosewood Holdings, LLC and D. Christopher Twitty are ..... Respondents.

INITIAL BRIEF OF APPELLANT

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1. The Foreclosure Decree was not a personal money judgment against either Borrower, and there was no personal money judgment against Borrowers until the entry of the Deficiency Judgment, so the money judgment did not expire until ten years after the entry of the Deficiency Judgment.

2. Appellant's reading of § 29-3-660 and § 29-3-650 is not dis-harmonious, and the Master erred in rejecting Appellant's reading.

3. A title examiner's opinion on the meaning of a statute is irrelevant, incompetent, and unproven.

4. The Master erred in relying on equitable considerations to justify his refusal to apply the express terms of the statutes controlling the creation, entry, and longevity of personal money judgments in foreclosure proceedings.

5. The court and the clerk of court, not parties, control the entry of judgments.

6. Appellant did not have control over the entry of any judgment.

7. Respondents could have sought an earlier entry of the deficiency judgment or objected to the entry of the deficiency judgment to protect their interests.

8. The delay in entering the deficiency judgment was not the result of mal-intent or other bad motive by Appellant.

STATEMENT OF THE CASE

This is a commercial mortgage foreclosure action by the Appellant (Lender) against the Respondents (Rosewood and Twitty, collectively referenced as Borrowers) that was referred to the Master in Equity (Master) for final judgment and direct appeal. On July 23, 2012, the Master entered his "Master's Report and Judgment of Foreclosure and Sale" (Foreclosure Decree) and thereafter sold the commercial property. (R. __-__). On July 23, 2015, the Master entered his "Order of Deficiency Judgment" (Deficiency Judgment) against Borrowers for the mortgaged debt that remained after the sale of the property. (R. __-__). On October 14, 2022, the Master entered his "Order on Status of Judgment" (Order), ruling that the personal money judgment against Borrowers expired on July 23, 2022, because the ten-year statutory life of the personal money judgment commenced upon the entry of the Foreclosure Decree in 2012 rather than the subsequent entry of the Deficiency Judgment in 2015. (R. __-__). Lender appealed.

Lender loaned Borrower Rosewood $1.65 Million Dollars in October 2006, taking back a note and a first-lien, purchase money mortgage from Rosewood on its commercial property (the Property), together with a personal guarantee from Borrower Twitty. (Foreclosure Decree at 3, ¶¶ 8-10). In November 2007, Lender loaned Borrower Twitty $203,291.00, taking back a note from Twitty and a second mortgage from Rosewood on the Property. (Id. at 5, ¶¶ 20-23). Borrowers failed to make the required payments. (Id. at 4 and 6, ¶¶ 18 & 28). Lender sued Borrowers in March 2011, seeking foreclosure of the first and second mortgages, as well as a deficiency judgment for any amount remaining after the foreclosure of the mortgages and sale of the Property. (See id. at 9, ¶ 6).

The Master entered his Foreclosure Decree on July 23, 2012. He found that the "total debt" under both notes and mortgages was $2,260,437.28 plus interest and that Lender "should have *judgment of foreclosure of the mortgage* and the mortgaged premises should be ordered sold at public auction." (Foreclosure Decree at 6-7, ¶¶ 30-31) (emphasis added). The Master ordered that Borrowers could avoid the foreclosure sale by paying off the "total debt" on or before the date of sale. (Id. at 8, ¶¶ 2-4). Upon their failure to do so, the Master would sell the property at public auction (id.) and, "**if** the proceeds of sale [were] insufficient to pay the [total debt], the [Lender] shall have a *judgment for such deficiency* against the [Borrowers] pursuant to [§ 29-3-660]." (Id. at 9, ¶ 8) (all emphasis added). Notably, the Form 4 for the Foreclosure Decree did not include a personal money judgment in any amount against any Borrower. (See Form 4 at R. ___; see also n.__ and accompanying text, *infra*). Neither party appealed the Foreclosure Decree, so the findings and rulings therein became the law of the case.

The Master sold the Property for $488,547.00 in August 2012 and, because Lender sought a deficiency judgment against Borrowers, the bidding remained open for thirty (30) days until September 5, 2012. (Order at 1). The Master issued his Report on Sale in January 2013 and thereafter entered his Deficiency Judgment of $1,887,190.18 on July 23, 2015, finding that "[i]t is *now proper* for this amount to be *entered as a monetary judgment*." (Deficiency Judgment at 1) (emphasis added). No one appealed the Deficiency Judgment, so the findings and rulings therein became the law of the case.

During the course of supplemental proceedings in August 2022, Borrowers asserted that the money judgment against them expired on July 23, 2022, ten years after the entry of the Foreclosure Decree. Lender asserted that the money judgment did not expire until

July 23, 2025, ten years after the entry of Deficiency Judgment. The Master agreed with Borrowers and held that the money judgment expired on July 23, 2022. Lender appealed.

STANDARD OF REVIEW

This appeal presents questions on the meaning of statutory law and the application of that statutory law to undisputed facts. The meaning of a statute and the application of law to undisputed facts are questions of law that are reviewed *de novo* with no deference to the trial court. *Callawassie Island Members Club, Inc. v. Martin*, 877 S.E.2d 341, 345 (S.C. 2022) (meaning of statute); *J.K. Constr., Inc. v. Western Carolina Reg'l Sewer Auth.*, 519 S.E.2d 561, 563 (S.C. 1999) (application of law to undisputed facts).

ARGUMENT

I. The Foreclosure Decree was not a personal money judgment against either Borrower, and there was no personal money judgment against Borrowers until the entry of the Deficiency Judgment, so the money judgment did not expire until ten years after the entry of the Deficiency Judgment.

Statutes control the creation, entry, and longevity of a personal money judgment arising from the judicial sale of property in mortgage foreclosure actions. Before any mortgage foreclosure sale of any property, there must first be a judgment by a court of competent jurisdiction establishing the amount of debt secured by the property being sold. S.C. Code Ann. § 29-3-630 (2007).[1] If the foreclosure plaintiff seeks a deficiency

[1] Section 29-3-630 provides in full as follows:

> No sale under or by virtue of any mortgage or other instrument in writing intended as security for a debt, conferring a power upon the mortgagee or creditor to sell the mortgaged or pledged property while such power remains of force or has not been revoked by the death of the person executing such mortgage or instrument, shall be valid to pass the title of the land mortgaged unless the debt for which the security is given shall be first established by the judgment of some court of competent jurisdiction or unless the amount of the debt be consented to in writing by the debtor subsequently to the maturity of the debt, such consent in writing to be recorded in the office of the register of deeds or clerk of the court where the mortgage or other instrument in writing given to secure such debt is or ought to be recorded. But if the mortgagor be dead it shall not be necessary in any foreclosure proceeding first to establish the debt by the judgment of some court of competent jurisdiction in order to obtain a decree of foreclosure and sale.

judgment, the court issuing the foreclosure and sale judgment may proceed in one of two ways. First, under S.C. Code Ann. § 29-3-650 (2007), the court may include a personal money judgment for the total debt in the foreclosure decree entered against the debtors and later reduce that judgment amount by crediting it with the net sales proceeds from the foreclosure sale.[2] Second, under the alternative process in S.C. Code Ann. § 29-3-660 (2007), the court may determine the total debt without entering a personal money judgment for it, order the sale of the property, and thereafter enter a personal money judgment against the debtors for any deficiency remaining after the sale of the property.[3]

Per S.C. Code Ann. § 15-35-510 (2005), any personal money judgment in mortgage foreclosure proceedings must be entered in the "abstract of judgments," which is the "book for the entry of judgments" maintained by the clerk as part of the court's records. As noted earlier, the Form 4 for the Foreclosure Decree did not enter a money judgment. It included a section entitled "Information for the Public Index," which include subsections for the parties to the judgment and "Judgment Amount to Be Enrolled." (Form 4 at p. 1). This

[2] Section 29-3-650 provides in full as follows:

> The court may also render judgment against the parties liable for the payment of the debt secured by the mortgage and direct at the same time the sale of the mortgaged premises. Such judgment so rendered may be entered and docketed in the clerk's office in the same manner as other judgments. Upon the sale of the mortgaged premises the officer making the sale under the order of the court shall credit upon the judgment so rendered for the debt the amount paid to the plaintiff from the proceeds of the sale.

[3] Section 29-3-660 provides in full as follows:

> In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage and if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor the plaintiff may make such person a party to the action and the court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises against such other person and may enforce such judgment as in other cases.

section and all subsections were blank, so there was no "Judgment Amount" to be enrolled in the "abstract of judgments" until the entry of the Deficiency Judgment.[4]

Upon the entry of a personal money judgment, a ten-year period commences during which the creditor may seek to enforce the judgment. S.C. Code Ann. § 15-35-810 (2005); see also S.C. Code Ann. §§ 15-39-20 and 15-39-30 (2005).[5] Courts strictly enforce the exact terms of these "judgment" statutes. For example, the judgment expires and becomes unenforceable at the end of the 10-year period, even if the creditor commenced collection proceedings within the 10-year period but did not obtain a judgment within that 10-year period, and despite there being compelling facts making this result inequitable. *Gordon v. Lancaster*, 823 S.E.2d 173, 175 & 176 (S.C. 2018) (addressing § 15-39-30), *rev'g* 795 S.E.2d 857 (S.C. App. 2016) and *overruling Linda Mc Co. v. Shore*, 703 S.E.2d 499 (S.C.

[4] See also S.C. Code Ann. § 15-35-520 (2005) (clerk to index judgments in the abstract of judgments).

[5] Section 15-35-810 provides in full as follows:

> Final judgments and decrees entered in any court of record in this State subsequent to November 25, 1873, or in any circuit or district court of the United States within this State or of any other Federal court the final judgments and decrees of which, by act of Congress, shall be declared to create a lien, *shall constitute a lien upon the real estate of the judgment debtor* situate in any county in this State in which the judgment or transcript thereof is entered upon the book of abstracts of judgments and duly indexed, the lien to begin from the time of such entry on the book of abstracts and indices and *to continue for a period of ten years from the date of such final judgment or decree*.

Section 15-39-20 provides in full as follows:

> Writs of execution for the enforcement of judgments shall conform to this Title. The party in whose favor judgment has been given and, in case of his death, his personal representatives duly appointed may at any time within ten years after the entry of judgment proceed to enforce such judgment as prescribed by this Title.

Section 15-39-30 provides in full as follows:

> Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions.

2010). In short, "a judgment expires after ten years *from its enrollment*." *Gordon*, 823 S.E.2d at 176 (emphasis added).

Here, the Master clearly issued the Foreclosure Decree pursuant to § 29-3-660 rather than § 29-3-650. The Foreclosure Decree so states: "**if** the proceeds of sale are insufficient to pay the [total debt], the [Lender] shall have a *judgment for such deficiency* against the [Borrowers] *pursuant to* S.C. CODE Ann. § 29-3-660 (1976)." (Foreclosure Decree at 9, ¶ 8) (all emphasis added). Moreover, as the Master stated in the appealed order, the Foreclosure Decree was not a personal money judgment:

> [The Foreclosure Decree] determined the amount of the "Total Debt" owed by the [Borrowers] and directed the judicial sale of the mortgaged property, but the text of the foreclosure decree *did not direct the entry of a money judgment against any Defendant*. The section of the Form 4 under the heading "Information for the Public Index", on which the parties against whom a judgment would be entered, and specifying the dollar amount of the money judgment, *was left blank.*

(Order at 1) (emphasis added). Thus, the Master did not issue the Foreclosure Decree under § 29-3-650, as further shown by the fact that he did not credit the sales proceeds to the Foreclosure Decree as required by § 29-3-650. Accordingly, there was no personal money judgment against any Borrower until the entry of the deficiency judgment in July 2015.

The Master rejected Lender's argument that sections -650 and -660 provide alternative procedures for deficiency judgments, reasoning that "the statutes were enacted by the legislature at the same time and should be read to make them harmonious." (Order at 6; see generally id. at 4-6). There is nothing dis-harmonious about reading two different statutes as being different – the General Assembly would not enact two separate statutes, side by side, in the same Act, at the same time, with the intent of doing the same thing in both statutes, thereby rendering one of the statutes meaningless or superfluous. *E.g., State*

v. Brown, 873 S.E.2d 445, 456 (S.C. App. 2022) (legislature presumed to have intended to "accomplish something" in a statute, and a statute must not be read so that is "rendered surplusage, or superfluous"). To the contrary, the courts specifically refuse to read one statute in a manner that would make a different statute meaningless or superfluous. *E.g.*, *State v Long*, 610 S.E.2d 809, 811-812 (S.C. 2005) (rejecting reading of one statute that would render another statute "virtually meaningless"), *aff'g* Op. No. 2003-UP-111 (S.C. Ct. App. filed Feb. 12, 2003). The only reasonable reading of the plain language in sections -650 and -660 is that the General Assembly intended to provide alternative procedures for entering a deficiency money judgment in foreclosure proceedings as set forth above.

The Master also stated that a title examiner would have considered that Borrowers had a money judgment against them upon the entry of the Foreclosure Decree. (Order at 3). There is no evidence from any witness on what a title examiner would have concluded about the 2012 Foreclosure Decree, and the statements to that effect by Borrower's counsel are not evidence of anything. *Landry v. Landry*, 843 S.E.2d 491, 496 (S.C. 2020). Moreover, the question here is a question of law, which is a matter solely for the court and not a proper subject of witness opinion testimony. *Perry v. Bullock*, 761 S.E.2d 251, 252 (S.C. 2014). In any event, a title examiner is concerned with what risks the public record reveals that are relevant to the question of whether an insurance company should issue title insurance, which has nothing to do with the questions presented here.

Statutes control personal money judgments, and the courts strictly enforce the requirements of those statutes, even if the result seems inequitable. *Gordon*, 823 S.E.2d at 175-176. Here, by statute, no personal money judgment was entered until the entry of the Deficiency Judgment on July 23, 2015. Again by statute, that date triggered the ten-year

life of the personal money judgment. Therefore, by statute, the judgment remains active until July 23, 2025, and the Master erred in finding otherwise in contradiction of the express requirements of the controlling statutes.

II. The Master erred in relying on equitable considerations to justify his refusal to apply the express terms of the statutes controlling the creation, entry, and longevity of personal money judgments in foreclosure proceedings.

There is no explanation in the Record for the three-year delay between the entry of the Foreclosure Decree and the entry of the Deficiency Judgment. Borrowers did not claim or submit evidence that Lender acted with any mal-intent. Borrowers did not claim or submit evidence that Borrowers did not seek the deficiency judgment earlier with the intent to gain an advantage in collecting the undisputed debt owed by Borrowers. The Master never found any mal-intent or other bad motive by Lender. Nevertheless, the Master "blamed" Lender for the delay and based thereon found it would be inequitable to enforce the Deficiency Judgment as written:

> The *entry of the judgment* determining the deficiency was a matter which *was solely within the control of the [Lender]*. The [Lender] failed to act to file the deficiency judgment for three years. It *would be inequitable* to grant the Plaintiff an extra three years to enforce its judgment *when the delay in its entry was solely the choice of the [Lender]*."

(Order at 6) (emphasis added). In short, the Master found that the Lender could have and should have entered the Deficiency Judgment much sooner. (See also Order at 1-2 (Lender "entitled to file" Deficiency Judgment earlier); *id.* at 3 (deficiency amount known earlier); id. at 3 (unfair to allow delay in filing Deficiency Judgment)).

No party controls the entry of any judgment – only the court and the clerk of court have that control. Indeed, Rule 58(a), SCRCP, the only authority cited by the Master, specifically imposes a duty on the court, not the parties, to enter judgments promptly:

> [U]pon a decision by the court . . . *the court shall promptly prepare* the form of the judgment, *or direct counsel to promptly prepare* the form of judgment, to which may be attached the decision, order or opinion of the court, and after review and approval by the court, *the clerk shall promptly enter it*."

(Emphasis added) (cited and quoted by Master at Order p. 3). Here, the Master did not promptly prepare the deficiency judgment or direct counsel to do so and, therefore, there was no personal money judgment for the clerk to "promptly enter."[6]

The core basis for the Master's ruling was his erroneous view that Lender had sole control over the entry of the Deficiency Judgment. To the contrary, Rule 58(a), SCRCP, grants that power and control solely to the court and the clerk of court. Moreover, Borrowers had the absolute right to seek an earlier entry of the deficiency judgment or object to the entry of the deficiency judgment if they believed the judgment should have been entered earlier to protect their interests. They did not, and they have not claimed or shown that Lender acted with any mal-intent in not earlier seeking entry of the deficiency judgment. See *Kennedy v. Roundtree*, 41 S.E. 477, 480 (S.C. 1902) (foreclosure action holding: "All persons are bound to respect Courts in causes to which they are legally made parties. If a litigant would protect his legal rights, he must appear in the cause, so that he can keep himself informed either by himself or through his counsel of what transpires in the cause."). Accordingly, under the circumstances of this case, there was no basis for the Master to invoke equitable considerations to avoid the plain and express terms of the statutes controlling the creation, entry, and longevity of personal money judgments in mortgage foreclosure proceedings, nor any basis for refusing to enforce the Deficiency

[6] Rule 58(a), SCRCP also provides as follows: "Every judgment shall be set forth on a separate document. A judgment is *effective only when so set forth and entered in the record*." (Emphasis added). Here, there was no judgment or document "entered in the record" that imposed a personal money judgment against Borrowers until the entry of the July 2015 Deficiency Judgment.

Judgment as written and entered. See *Gordon*, 823 S.E.2d at 175-176 (courts strictly enforce money judgment statutes even if there are compelling facts making it seemingly inequitable to do so).

CONCLUSION

For all of the foregoing reasons, Appellant (Lender) respectfully submits that this Court should reverse the appealed order and remand the case for further proceedings.

Respectfully Submitted,

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