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Feb 02 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2022-001678

Southern First Bank, N.A. d/b/a Greenville First Bank,.....Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,.....Appellants.

MOTION FOR REVIEW BY FULL COURT OF DENIAL OF
MOTION TO PREVENT LOWER COURT FROM PROCEEDING WITH
MATTERS AFFECTED BY APPEAL

Appellants hereby submit this motion, pursuant to Rule 205 and 241(d)(2), SCACR, which seeks review by the full court of the denial by an individual judge hereof, Chief Judge H. Bruce Williams, of Appellants' motion for this court to direct the lower court not to proceed with matters affected by this appeal.

There are good grounds for this court to review that decision and issue an order directing the lower court not to proceed with matters affected by this appeal, as the following shows:

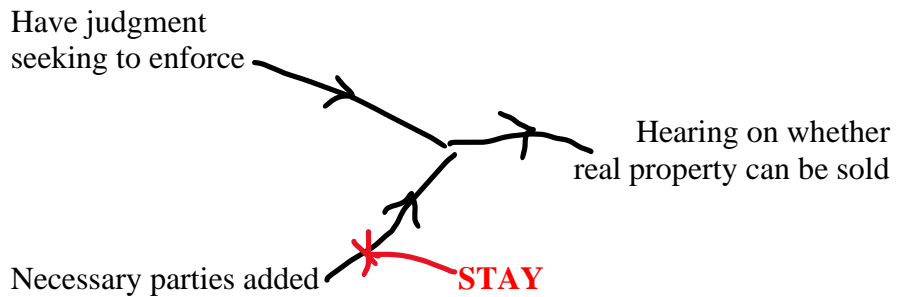
1. Appellants' motion for this court to direct the lower court not to proceed with matters affected by this appeal was filed, served, and

ruled on yesterday, February 1, 2023. That motion is incorporated herein by reference as if here set forth verbatim.

2. Rule 241(d)(2), SCACR, provides that, once an individual judge of this court has ruled on a stay or supersedeas motion, “an aggrieved party may petition the full appellate court for review of that decision.” That review is what this motion seeks.
3. Chief Judge Williams’ order denied Appellant’s motion on the basis that an appeal of the denial of a Rule 60(b) motion does not stay execution of the underlying judgment and because an order adding a party is not ordinarily immediately appealable.
4. While those principles of law are correct, His Honor respectfully misapprehended the procedural posture of this case and why the companion appeal of the order adding parties means the hearing now set by the master for tomorrow morning is stayed and cannot go forward.
5. The order denying Appellants’ motion under Rule 60(b), SCRCR, is an immediately appealable order, Ateyeh v. United Omaha Life Ins. Co., 293 S.C. 436, 437, 361 S.E.2d 340 (Ct. App. 1987), and no one has voiced any disagreement with that. The order joining parties – the order that is stayed as a result of this appeal – is properly before this court because “[an] order that is not directly appealable may be considered if there is an appealable issue before the court.” Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 517, 623 S.E.2d 387,

390 (2005); accord Briggs v. Richardson, 273 S.C. 376, 379 & n.1, 256 S.E.2d 544, 546 & n.1 (1979); Cox v. Woodmen of World Ins. Co., 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001).

6. To get to the procedural point where a hearing is being held on whether real property will be sold, the parties necessary for such sale to occur must be made parties to the proceeding. See BancOhio Nat. Bank v. Neville, 310 S.C. 323, 329, 426 S.E.2d 773, 777 (1993); Green Tree Servicing, LLC v. Adams, 654 S.E.2d 100 (S.C. App. 2007); Susan B. Berkowitz, et al., South Carolina Foreclosure Law Manual 36 (3d ed. 2013).
7. The order that joined those parties is an order that is on appeal here. Accordingly, Rules 205 and 241(a), SCACR, apply to that order.
8. Mapped out, the stay analysis looks like this:



9. Please forgive my poor drawing skills.
10. Proceedings seeking to sell the real property are currently stayed and are within the jurisdiction of this court, because whether the required parties have been joined is a decision that has been appealed to this

court. Rules 205 & 241(a), SCACR. It is for *that* reason that the hearing now scheduled for tomorrow morning cannot go forward.

11. The Respondent has not sought a supersedeas under S.C. Code Ann. § 18-9-130(A)(2) or in any other way. The stay is in effect.
12. Whether the appellate stay applies in a particular situation is not always straightforward. A close examination of the proceedings at issue here shows that they are stayed and that the lower court lacks jurisdiction to proceed with them unless and until an order lifting the stay is granted.

WHEREFORE Appellants pray for an order that directs the lower court not to proceed with matters affected by this appeal, including holding a hearing on the Respondent's motion seeking to have real property of the Appellants sold.

Respectfully submitted,

/s/ Andrew S. Radeker
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February 2, 2023

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PROOF OF SERVICE

I certify that I have served the foregoing motion for review by full court of denial of motion to prevent lower court from proceeding with matters affected by appeal on the date given below by emailing it to counsel for the Respondent(s) and all other counsel of record in the underlying action at the address(es) noted below.

Aaron J. Angel, Esq., at aaron@angellmolony.com
Luke R. Hoopes, Esq., at luke@angellmolony.com

February 2, 2023

Respectfully submitted,

/s/ Andrew S. Radeker

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