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Feb 06 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Scott Sprouse

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Case No. 2020-CP-04-01202  
Appellate Case No.: 2022-001527

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MOATS CONSTRUCTION, INC. ....Appellant,

v.

CECIL R. DYAR .....Respondent.

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**RESPONDENT’S REPLY TO APPELLANT’S RETURN  
TO RESPONDENT’S MOTION TO DISMISS**

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In reply to the Appellant’s Return to Respondent’s Motion to Dismiss, the Appellant has confirmed that the Respondent is entitled to the relief he has requested in his Motion to Dismiss Appellant’s Appeal for the following reasons:

- I. **Section 18-9-170 of the South Carolina Code of Laws dealing with Appeals to this Supreme Court and Court of Appeals requires that, to “stay” an appeal for judgment for sale or delivery of land, a bond must be posted.”**

Under the Law of South Carolina, §18-9-170, Moats had the option to either post a bond to stay the execution of the Judgment and appeal the decision of the Lower Court in the South Carolina Supreme Court or satisfy the Judgment. Without posting a bond, the Appeal is not stayed. In this case, no bond was posted.

**II. In lieu of posting a bond, the Appellant voluntarily paid the amount of the Judgment, in full, and the litigation ended. *Reedy River Power Co., v. City of Laurens, et al*, 109 S.C. 240, 96 S.E. 116 (1918).**

As a part of the Appellant's Return, the Affidavit of Russell Moats was attached as Appellant's Exhibit 4, wherein Moats testified as follows:

"5. Upon entry of the circuit court's Order Granting Defendant's Motion for Damages and Judgment of Foreclosure and Sale, I undertook the process of investigating the process for obtaining a bond. During my research, I learned about the potential costs of a bond secured by real estate and costs for a bond secured by cash. I was informed by one bond provider that a bond in the amount of the court's judgment would have to be secured by cash." (emphasis added).

It is interesting to note that nowhere in the Affidavit does it state that Moats did not have the financial ability to pay for a bond either secured by real estate or cash. In *Kelon v. Hess*, 457 N.E. 2d 911, the Court stated "since appellant was in a financial position to pay the judgment, she undoubtedly would have been able to give an adequate appeal bond." Further, he makes no statement/allegation wherein he alleges that his ultimate decision was based upon his concern that, if the Judgment was reversed or modified, he would be unable to obtain complete restitution. The reason is obvious. He had no such concerns. Moats, by his own admissions, actions and testimony, had the financial ability to pay the Judgment in full, which he did, or post a bond, which he didn't do, and makes no assertions as to any restitution issues/concerns in his Affidavit (Appellant's Exhibit 4). Therefore, Moats voluntarily failed to post a bond and voluntarily chose to pay the Judgment without any expressions of concern as to his ability to obtain restitution if he was successful on appeal. Stated another way, Moats had the opportunity to post a bond and stay this action, thus preserving his right to appeal and, depending on the result of that appeal, claim a right to restitution. However, Moats voluntarily chose another course of action and is bound by that choice. *Kelon v. Hess*, 457 N.E. 2d 911.

Further, while argued in his brief by his attorney, there was absolutely no evidence presented in his Affidavit that Moats was ever concerned about the issue of restitution and is now the owner of the real property since he paid the Judgment in full. In addition, it is very interesting

that the only authorities from South Carolina that Appellant cites in his Brief dealing with the issue of restitution are cases dealing with workers compensation claims as opposed to claims in an action for a judgment of foreclosure directing the sale of real property. Further, there is absolutely no evidence presented in his Affidavit that restitution could not be enforced if the Appellant was successful on appeal.

Finally, Appellant's Affidavit gives no details as to the extent of his investigation into the bond issues, comparative costs of a bond secured by real estate as opposed to cash, nor the number of bond providers (other than one) with whom he discussed the need for a cash bond; and, not once did he mention that his decision was based upon any hardship(s) - financial/restitution, etc. - of any kind.

### **III. No Agreement to End Litigation**

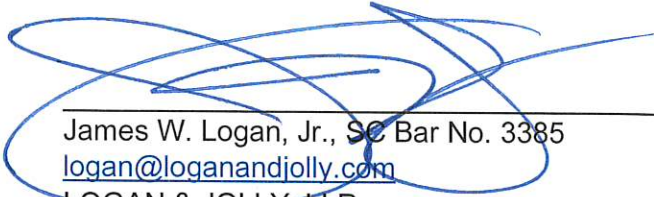
The Appellant cites in his Return that there was never an agreement between the parties to end this litigation. However, the relevant question on this point is whether there was ever an Agreement to pay the Judgment in full and allow the Appellant to proceed with his appeal? The answer to that question is an emphatic "NO." (See Appellant's Exhibit 5). Appellant had a right to satisfy the Judgment – that was his choice. He does not have the right to imply that this satisfaction was a part of any "agreement" to allow him to proceed with his appeal after doing so. No such agreement exists!

### **IV. There are no issues separate and apart from the Judgment of Foreclosure.**

The Lower Court heard all issues in this case, as the Court Orders reflect. When the Judgment was paid, this litigation, and all issues contained therein, ended and there is nothing further to consider on appeal.

### **Conclusion**

Based upon the above, the final Judgment has been satisfied. Accordingly, the Respondent respectfully requests that his Motion to Dismiss Appellant's Appeal be granted.



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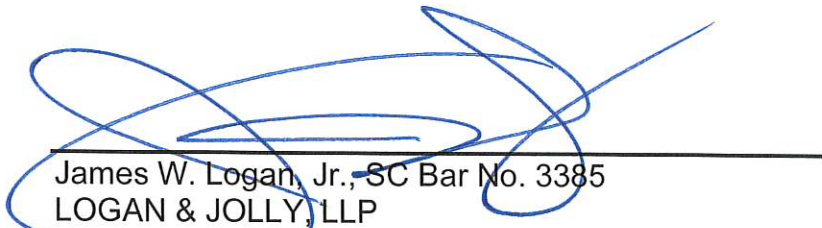
v.

**CECIL R. DYAR** .....Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Respondent's Reply to Appellant's Return to Respondent's Motion to Dismiss Appeal was served via electronic mail and by first class mail, postage prepaid this 6<sup>th</sup> day of February, 2023, upon the following:

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Date: February 6, 2023 