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Mar 30 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. 2023-000421

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

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners’ Association, Inc., and the Greenery, Inc. a South Carolina corporation,.....Respondents.

MOTION TO DISMISS APPEAL

Respondents Kenneth and Renee Vilcheck hereby move pursuant to Rule 260, SCACR, and all other applicable law, for the dismissal of this appeal.

The grounds for this motion are as follows:

1. This appeal is moot. “A case is moot where a judgment rendered by the Court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the Court.’ S.C. Ret. Syst. Inv. Comm’n v. Loftis, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013). ‘[M]oot appeals result when intervening events prevent a decision on appeal from having an immediate impact on the parties.’ 15 S.C. Jur.

Appeal and Error § 19 (Supp. 2014).” Wachesaw Plantation E. Cmty. Servs. Ass’n, Inc. v. Alexander, 414 S.C. 355, 359, 778 S.E.2d 898 (2015).

2. Here, an intervening event has prevented a decision in this appeal from having an impact on the parties. The result will be the same whether the Appellant wins or loses.
3. This is an appeal of orders that all decline to order the sale of a piece of real property in execution of a judgment lien. As shown by the order that rendered the judgment, submitted with this motion, the judgment lien has now expired, and execution of the judgment is barred. More than ten years have elapsed since the date of the judgment.
4. The Supreme Court has issued on-point precedent that judgments in South Carolina cannot be enforced more than ten years after they are rendered, even if at that time there are pending proceedings to enforce the judgment. Gordon v. Lancaster, 425 S.C. 386, 823 S.E.2d 173 (2018). “The lien of a judgment is absolutely extinguished and ended after the expiration of ten years from the date of entry.” Garrison v. Owens, 258 S.C. 442, 446-47, 189 S.E.2d 31 (1972). If a judgment’s ten-year duration expires before the collection proceedings are complete, those proceedings terminate when the ten-year period runs. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47.

5. That has now happened. The date of the underlying judgment is March 27, 2013, and it is now more than ten years since then.
6. Further, the proceedings below sought enforcement of a judgment lien that no longer exists, as “[t]he lien of a judgment is absolutely extinguished and ended after the expiration of ten years from the date of entry.” Garrison, 258 S.C. at 446-47.
7. Accordingly, even if Appellant prevails in this appeal and obtains a decision that Judge Dukes erred in not ordering a sale, no sale can *now* be ordered. Execution on this judgment cannot be had, and the judgment’s lien on real estate no longer exists. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47.
8. The expiration of the judgment’s lien and collection period have mooted this appeal. Whether Appellant wins or loses this appeal, no sale can be made in enforcement of the judgment. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47. “[I]ntervening events prevent a decision on appeal from having an immediate impact on the parties.” Wachesaw Plantation, 414 S.C. at 359 (quoting 15 S.C. Jur. Appeal and Error § 19).
9. The undersigned has served this document on opposing counsel by email to registered AIS email address on the date given below.

WHEREFORE Respondents Kenneth and Renee Vilcheck pray for an order that dismisses this appeal.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
Attorney for Respondents
Kenneth J. Vilcheck and
Renee M. Vilcheck

March 29, 2023