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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2023-000421

Southern First Bank……. Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, The Federal Housing Commissioner, The Department of the Treasury – Internal Revenue Service, and The South Carolina Department of Revenue……..... Respondents.

RETURN TO MOTION TO DISMISS

INTRODUCTION

Respondents, Kenneth J. Vilcheck and Renee M. Vilcheck ("Respondents" or "Vilchecks") petition for dismissal of this appeal with overly simplistic argument that fails to provide, much less consider, the relevant facts leading to this appeal and the practical and legal impact of their position. They ask the Court to simply dismiss this case because the judgment against them is over ten years old without consideration of anything more. Appellant, Southern First Bank, however, thinks it is imperative that the Court consider the relevant facts, procedural history, and the overarching practical and legal implications of dismissing this appeal and leaving the Master's Order unchallenged. Dismissing this appeal will reward Respondents' abuse of this Court and the judiciary as a whole and incentivize other debtors to do the same in order to avoid paying debts

they can afford. It has been done in the past, and without being remedied by the Court, will certainly continue in the future.

I. FACTUAL AND PROCEDURAL HISTORY

The underlying action leading to this appeal arose out of a judgment entered against the Vilchecks for $391,284.46 on March 27, 2013, in favor of Appellant Southern First Bank (the "Judgment"). That Judgment immediately attached to the Vilchecks' real property in Beaufort County and would attach to any new real property they subsequently acquired in the County. In November 2020, Renee Vilcheck acquired non-exempt real property in Beaufort County with the address 318 Bamberg Dr., Bluffton, SC 29910 (the "Property").[1]

On March 3, 2021, an Order of Reference was entered and three days later Appellant filed a Petition for Supplemental Proceedings. Following that there was a series of filings, including Appellant's Motion for Order of Reference and Motion to Strike a Jury Demand. The Master in Equity, Marvin H. Dukes, III, granted those motions through orders entered on May 9 and 10, 2022. Respondents filed a motion to reconsider those rulings, which was denied on June 15, 2022. Respondents then filed a notice of appeal of those three orders on July 11, 2022.[2]

Then, on July 13, 2022, the Vilchecks filed Motions to Stay Proceedings and Motion for Relief from the Rule to Show Cause and to Quash asking the Master to declare the Judgment void due to non-service of the Summons and Complaint, leading to a purported lack of personal jurisdiction over the Vilchecks (even though they had filed responsive pleadings and various other filings with the court in the matter). The Master heard arguments on several other motions on July

[1] The Order on appeal provides further details concerning transfers of the Property and other property acquired or owned by the Respondents that was/is subject to collection. It also contains a more extensive procedural history than outlined herein.

[2] *See* Appellate CA. No. 2022-000958.

20, 2022, and issued an order August 25, 2022.

Then, on October 17, 2022, the lower court held a hearing on Vilchecks' Rule 60 Motion. Three days later the Master entered an order denying that Rule 60 Motion. On October 21, 2022, Appellant motioned for an order applying the Property towards satisfaction of the Judgement and another to Join all Necessary Parties. In the interim, the Vilchecks filed a Motion to Reconsider the denial of their Rule 60 Motion which was denied on November 7, 2022. The same day the Master entered an order joining necessary parties, which Respondents challenged by filing a Motion to Reconsider on November 17, 2022. The court denied that motion on November 22, 2022. Then, on November 28, 2022, Respondents filed a Notice of Appeal of the lower court's order denial of their Rule 60 Motion and its Order to Join Parties.[3]

All told, at that point, the Vilchecks had filed appeals challenging four substantive orders (along with the denials of the motions to reconsider them) all in service of attempting to delay the collection proceedings process as much as possible. It is important to note that Respondents never filed any actual briefs addressing the multiple orders they appealed to this Court, even though the first appeal was filed in July 2022. Instead, Respondents filed motions for extensions until this Court would no longer grant them, then turned to filing a motion to consolidate their multiple appeals, and later failed to comply with filing deadlines further prolonging the process all in a coordinated and calculated effort to waste as much time as possible and argue to the Master that the appeals stayed the supplemental proceeding process, when in fact and under the clear law that was not the case.

The Master held a status conference on January 19, 2023 during which the Respondents argued that their appeal of the court's ruling on their Rule 60 Motion stayed the proceedings, acted

[3] *See* Appellate CA No. 2022-001678.

to deprive the lower court of jurisdiction until that appeal was resolved, and asked the Master to wait until the Appellate court rules on their motion rehearing their Motion to Stay the lower court proceedings; again another attempt to waste time and run out the judgment clock. The Master expressed concerns about the court's ability to proceed with ordering the Property be sold to satisfy the Judgment and ultimately declined to hold a hearing on Appellants motion to do so at that time. Shortly afterward, Appellant counsel emailed the Master laying out the applicable law showing that the Vilchecks' appeals did not automatically stay the proceedings and again requested that an order be entered requiring the Property be sold to satisfy the Judgment. (***See* Exhibit A - 1.25.23 Email to Master**).

On February 1, 2023, Respondents filed Motions to Stay the lower court's proceedings with this Court (in both pending appeals). Those motions were immediately denied that same day. The next day, Respondents petitioned for rehearing and requested consideration by a full panel. This Court denied those filings on February 6, 2023. It then sent Partial Remittiturs on March 1, 2023.

In the midst of that, on February 3, 2023, the Master heard Appellant's Motion for an order applying the Property towards satisfaction of the Judgment by selling the property at auction. In challenging that Motion, the Vilchecks again argued that the pending appeals should stay the proceedings and prevent the Master from ordering their Property be sold at auction to satisfy the Judgment debt, even though this Court had already rejected that argument two days earlier. Respondents again asked the Master to not order the sale until their petitions for rehearing were resolved by a full panel of this Court. (***See* Exh. B - 2.3.23 Hearing Transcript p. 20:7-11**). The Master determined that Appellants were in fact entitled to the relief they asked for but did wait until after this Court denied the Vilchecks' petitions for rehearing to rule on the motion for sale of

the Property.

On February 9, 2023, the Master entered the Order challenged by this appeal in which he denied Appellant's Motion to sell the Property because the judicial sale process, he found, would not be complete before the judgment reached its ten-year mark on March 27, 2023. Thus, according to the Master, the judgment's "active energy" would expire on that date, and unless the judicial process could be completed beforehand, ordering it would be futile. The Master reasoned that the applicable statutory provisions required a 30-day judicial sale process that could not be completed by the next judicial sales day of March 6th, but rather would not be final until the following judicial sale date of April 5th, nine days after the Judgment hit the ten-year mark. Thus, the Master held that ordering the sale of the Property would be futile and therefore denied the Motion.

The Respondents' multifaceted and relentless delay tactics, most notably its filing of appeals to this Court and dilatory tactics in those proceedings, got them what they truly wanted—a ruling that nothing could be done to force them to repay their judgment debt due to it being over ten years old. In this appeal, Appellants will argue that the Master's ruling, and the reasoning underlying it, were in err for several reasons, including the failure to consider Respondents' abuse of the appellant court to delay the collection process as much as possible when they had available assets adequate to satisfy the Judgment. On appeal, Appellant will also argue that the Master erred in finding that entry of the order for judicial sale of the Property would have been futile based on its completion occurring after the ten-year mark because, among other things, it was relief to which the Appellant was entitled at the time the Order was entered and entering an order effectuating the process through which that relief is obtained should not rob them of it simply because it ends after the Judgment reaches the ten-year mark. Appellant will ask this Court to find that sound public policy warrants an exception to a bright line ten-year judgment expiration period where the debtor

is shown to have undertaken actions in bad faith to stall the supplemental proceedings process, including most notably, by the filing of frivolous appeals of every order issued by the Master or lower court. These are important issues and arguments for this Court to take up and rule upon, and it is well within its power to reverse the challenged Order and rule that the Master can proceed with ordering judicial sale of the Property, even though such a ruling and subsequent order would take place after March 27, 2023.

II. ARGUMENT & ANALYSIS

Respondents' Motion is based upon the singular argument that the appeal is moot because the Judgment is over ten-years old, and, therefore, even if this Court found the Master erred in not ordering the sale, no sale of the Property can be ordered because the judgment lien no longer exists. Appellants contend that their appeal is not moot, and even if the Court deems it as such, that one or more exceptions to the mootness doctrine apply to allow the appeal to proceed.

A. The Appeal is Not Moot

Generally, the appellate courts "only consider cases presenting a justiciable controversy." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006). "An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). "A moot case exists 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 a reviewing court." *Sloan*, 369 S.C. at 26, 630 S.E.2d at 477. Granting effectual relief is not impossible in this case despite Respondents' argument to the contrary.

Here, at the time the Master entered the Order challenged on appeal, the Appellant was entitled to relief as a result of a judgment lien with active energy and simply motioned the Master

enter an order granting that relief. It was an err for the Master to deny Appellant the relief to which they were entitled simply because the process for effectuating it would end a few days after the judgment reached the ten-year mark. In this appeal the Appellants will contend that this was a legal error and ask that this Court enter an order reversing the Master and providing that he may in fact order the judicial sale of the Property. Otherwise, creditors will be faced with the prospect of debtors continuing to abuse the lower court system, and this Court, to run out the clock on their judgment debt. Even if there were one or two years left on the Judgment at issue when the Master made the ruling challenged in this appeal, it is very plausible that the Respondents debtors could tie up the matter in the appellate courts for those two years in order to reach the ten-year mark. The judiciary should not be so abused, and this case is one in which it was and can and should be rectified by this Court.

Respondents Motion is reliant upon their misconstruing of the holdings in *Garrison* and *Gordon* which they claim stand for the proposition that "[i]f a judgment's ten-year duration expires before the collection proceedings are complete, those proceedings terminate when the ten-year period runs." (Resp. MTD p. 2). In *Garrison*, however, the Court held that "[a] judgment lien is purely statutory, its duration as fixed by the legislature may not be prolonged by the courts and the *bringing of an action* to enforce the lien will not preserve it beyond the time fixed by the statute, if such time expires before the action is tried." *Garrison v. Owens*, 258 S.C. 442, 446-447, 189 S.E.2d 31 (1972)(*emphasis added*). *Gordon* was confined to the Supreme Court addressing "the narrow question of whether a creditor may execute on a judgment more than ten years after its enrollment when the time period has expired during the course of litigation." *Gordon v. Lancaster*, 425 S.C. 386, 387, 823 S.E.2d 173 (2018). Neither case says the collection proceeding ends when the judgment reaches ten years. *Garrison* said "bringing an action" to collect will not extend the

life of a judgment and *Gordon* held a creditor has ten years to *execute* on a judgment. In this case the Appellant as the creditor executed on the judgment during its ten-year active energy time period, and the Master could, and should, have ordered judicial sale of the Property in his February 6, 2023, Order regardless of whether the sale process would end shortly after the judgment reached the ten year mark. The relief to which Appellant was undeniably entitled would have been ordered, and the fact that Appellant's receipt of it would have come shortly after the judgment reached ten-years old is, and should be clearly deemed by this Court, irrelevant and an erroneous basis for denying the motion for judicial sale. The same would be the case if a collection matter were tried to completion. In that scenario if a creditor obtained an order entitling it to payment prior to the judgment debt reaching the ten-year mark, they would inevitably be paid at a later date. Under the actual holdings in *Garrison* and *Gordon*, the creditor would be entitled to collect on that judgment. Such is the case here and the Master erred in not ordering that the Appellant get the relief to which they were entitled under the clear law.

This appeal is asking that the Court consider this issue and enter a precedential holding that establishes a creditor may collect on a judgment under these circumstances – when an order is entered during the judgment's ten year "active energy" window directing some action that satisfies the judgment debt (in whole or part) regardless of how long the process effectuating that relief may take, even if it ends after the ten-year mark is reached. This Court could certainly enter an order reversing the lower court and ordering it grant Appellant the judicial sale it sought by ruling that a creditor is entitled to collecting on its judgment so long as that relief is ordered prior to the judgment reaching its ten-year mark, regardless of how long the process for effectuating the relief ordered may take. Appellants believe that is the law in South Carolina under the controlling rulings, but it certainly needs to be clarified so that bad faith dilatory tactics are not employed by

debtors to avoid repaying their debts. Thus, the appeal at hand is not moot and should not be dismissed upon those grounds as Respondents petition the Court to do.

B. One or Both Exceptions to the Mootness Doctrine Apply

Assuming *arguendo*, that the Court agrees with Respondents that this appeal is moot, it may still proceed under one or both exceptions to the mootness doctrine.

The appellate court may consider an appeal that is moot if "the issues at play are capable of repetition yet evade review." *Croft as Trustee of James A. Croft Trust v. Town of Summerville*, 433 S.C. 473, 480, 860 S.E.2d 352, 356 (2021). "For the exception to apply, 'the action must be one which will truly evade review.'" *Id*. *citing Sloan*, 369 S.C. at 27, 630 S.E.2d at 478.

The issues at play in this appeal are capable of repetition yet will evade review if Respondents' position is accepted. Respondents abused the appellate court system to delay the proceedings below and run out the ten-year clock on the Judgment all in an effort to avoid satisfying their debt even when they have adequate assets to do so. They did not file appeals of four orders to actually challenge the substantive rulings in them, but instead to cause as much delay in the collection process as possible. Respondents' actions with regard to their appeals show they were filed for the purpose of delay and nothing more. Respondents filed no substantive briefs with this Court, only motions for extensions, and when the Court would grant no more, submitted other dilatory motions, and then failed to comply with filing deadlines; all actions in service of taking up as much time as possible and none to substantively address the purported issues/ruling they appealed. Respondents argued to the Master that their appeals stayed the lower court proceedings despite clear law to the contrary. That worked to delay the proceedings just enough for them to be in a situation where the Master was convinced he could proceed with ordering the sale following this Court's refusal to stay the proceeding but ultimately refused to order it because the process

would end after the judgment reached its ten-year mark. Other debtors can and have abused the appellate court system in much the same way by filing for appeal of every order entered by a Master or lower court judge in a collection proceeding just to run out the ten-year clock on a judgment. In the event they succeed in pushing the process past that date, as Respondents have done in this case, then their actions evade review if the Court dismisses appeals such as the one before it because the judgment lien is more than ten years old.

Second, for much the same reasons as outlined above, this appeal can and should proceed under the public interest exception to the mootness doctrine. "An appellate court may address an issue despite its mootness 'when the question considers matters of important public interest.'" *Croft*, 433 S.C. at 481, 860 S.E.2d at 356 *citing Sloan*, 369 S.C. at 26-27, 630 S.E.2d at 478. "For this exception to apply, 'the issue must present a question of imperative and manifest urgency requiring the establishment of a rule for future guidance in matters of important public interest.'" *Id*. (internal citations omitted). There is a public interest in preventing the abuse of the judicial, and namely the appellate, court system by a debtor to evade paying their debts. The State and its citizens have a strong public interest in knowing that debtors with means must honor their debts rather than evade repaying them by legal gamesmanship that clogs up an already overburdened appellate system with a litany of appeals none of which have the primary purpose of resolving actual legal issues or errors, but instead are aimed primarily if not exclusively at delaying the collection process as much as possible. This Court should be reserved for and burdened with only good faith challenges to lower court rulings and the resolution of legal issues impacting litigants and the citizens of South Carolina. Appellant counsel, namely the collection attorneys of Angell Molony, LLC that handled this matter below, have seen debtors abuse this Court time and time again in an effort to have their judgment reach the ten-year mark. The public interest would be

greatly served by this Court addressing that practice and making it clear to debtors that it will not allow them to evade paying their debts through these tactics. Whether that is accomplished through establishing an exception to a bright line ten year cut off for a judgment or other legal basis is up to this Court, but Appellants strongly respectfully contend that it consider the issue and make a ruling that prevents debtors from abusing the Court. Furthermore, there is a public interest in clarifying the applicability of the narrow rulings in *Garrison* and *Gordon* to situations such as the one at hand in this appeal. Do those rulings actually mean what Respondents contend – that all collection proceedings regardless of the debtor's actions and when relief can and should be granted end without exception ten years after the judgment was entered? Appellant contends they do not. Or, does the law allow for the lower court to order relief within the ten year window regardless of whether it will take more time after that date to effectuate the process? Appellant contends the law does allow for this. Appellant will argue in this appeal those decisions do not stand for the blanket proposition advanced by the Respondents which will (as demonstrated by this case) result in inequitable outcomes and encourage debtors to employ inequitable means of running out the clock. This Court has the opportunity to preserve its integrity and ensure that the lower courts of equity actually function to provide equitable relief; a process that requires consideration of the parties' actions.

CONCLUSION

Based upon the Respondents' reasoning a lower court could commit egregious error(s) preventing collection of a judgment debt which cannot be appealed if appeal is filed or would be resolved more than ten years from entry of the judgment. Stated conversely, Respondents petition for dismissal upon the premise that even if the lower court correctly ordered a creditor is entitled to some form of relief (including collection of the debt at hand in that particular case), a debtor

should and could avoid actually paying that debt as long as they have the means to stymie the judicial process through filing of frivolous appeals that would push things beyond the ten year marker. That practice is the very thing that this appeal is aimed at challenging so that the Court can address it and issue an order, not only granting the Appellant the relief to which it is entitled, but also preventing debtors from employing those tactics in the future. It is in the Appellant's, other creditors', and frankly this Court's interest that a binding decision makes clear that debtors cannot escape paying their debts by abusing the appellate system. That is precisely what the Respondents have done in this case, as have other well-funded debtors before them. It is a practice that snubs its nose at the fundamental concept of equity, good reason, and preservation of judicial economy. Debtors with means, such as the Respondents in this case, should be made to pay their debts and not escape liability for them through dilatory litigation tactics whose primary, if not sole, purpose is to reach the ten-year mark. Certainly, judgments do and should have an expiration date, but enforcing an unyielding and immovable end date that fails to consider the totality of the circumstances, including importantly whether the debtor has taken unreasonable actions to delay collection efforts, the Court incentivizes those with means to burden the appellate courts, and judicial system as a whole, to avoid paying their debts that they can afford to pay. That should not be the case. Accordingly, the Appellant strenuously and respectfully asks that the Court deny Respondent's Motion and take up this important issue so that equity can awarded when warranted and the integrity of the appellate, and judicial process as a whole preserved.

[signature page to follow]

Respectfully Submitted,

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April 10, 2023
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
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APPEAL FROM BEAUFORT COUNTY

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EXHIBIT A

Email to Master dated January 25, 2023

Disclaimer: Neither this office, nor its staff gives legal, financial or other advice. Any information obtained from this office or its staff, regardless of form, should not be taken as legal or financial advice. Persons seeking to purchase properties from foreclosures or other sales should obtain independent advice as to value, sufficiency of title, tax consequences, other liens, and all other matters related to said purchase. Persons involved in litigation should obtain counsel and may not rely on any information obtained from this office as legal advice. Do not rely on this office for legal advice- always obtain independent legal advice.

From: Luke Hoopes <luke@angellmolony.com>
Sent: Wednesday, January 25, 2023 10:16 AM
To: McLeod, Heather <hmcleod@bcgov.net>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Grey, Jacqueline <jgrey@bcgov.net>; Dukes, Marvin <mdukes@bcgov.net>; Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; Jim Koutrakos <jimkoutrakos@callisontighe.com>
Subject: Re: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Good morning, Judge Dukes:

Following up on the status conference held last Thursday (January 19, 2023), we are confident that the appeal of the denial of the defendants' Rule 60(b) motion does not stay these proceedings, and neither does the appeal of your Order to Join. Because of this, you have jurisdiction to hear the matters and we may proceed with a hearing on the motion to sell filed back in October.

The first issue the court seemed concerned about was whether the appeal of the denial of Defendants' rule 60(b) motion automatically stays the proceedings under SCACR 241. There is a 2007 SC Supreme Court ruling that directly makes clear that appeals of denials of Rule 60(b) motions do not stay proceedings: "An appeal from a 60(b) denial does not stay the original judgment." Stearns Bank v. Glenwood Falls, 653 S.E.2d 274, 375 S.C. 423 (S.C. 2007). The decision goes on to state that "filing a Rule 60 (b) motion 'does not affect the finality of a judgment or suspend its operation' Rule 60(b). If the debtor wishes to stay enforcement of the judgment pending the trial court's disposition of the debtor's rule 60(b) motion, the burden is on it to make the motion under Rule 62(b), SCRCP". This clears up that issue, so it does not prevent our client from proceeding in the execution and enforcement of its money judgment.

The other issue is whether or not the appeal of the Order to Join stays the proceedings. We maintain that the matter is not currently stayed as the enforcement of the money judgment is not automatically stayed. If it is stayed under SCACR 241 (old 225), we argue that it should not be pursuant to other reasoning in Stearns Bank v. Glenwood Falls, which says:

> "Moreover, when a debtor appeals the denial of its 60(b) motion, Rule 225, SCACR [now Rule 241, SCACR], which governs stays on appeal, comes into play. The general rule is that an appeal acts as an automatic stay of the relief granted below, subject to certain exceptions. Id. Rule 60(b) denials are not subject to an exception, nor is there any logical reason why they would be. The denial of such a motion grants no relief: that "no relief" is automatically stayed leaves the parties in the exact position they were in before the 60(b) motion and appeal, that is, the original judgment is unaffected. Accordingly, absent the grant of some extraordinary relief to the debtor by the appellate court during the pendency of such an appeal, the creditor is entitled to enforce its judgment."

Stearns Bank v. Glenwood Falls, 653 S.E.2d 274, 375 S.C. 423 (S.C. 2007)

Here, the denials of the Order to Join and subsequent motion to reconsider are similar to those of the Rule 60(b), in that the appeal of the denial of the 60(b) motion and the granting of an order to join parties similarly provide no relief and leave the original judgment unaffected. The biggest difference is that with the denial of a 60(b) motion "absent the grant of some extraordinary relief to the debtor by the appellate court during the pendency of such an appeal, the creditor is entitled to enforce its judgment," while in this circumstance allowing the appeal of joining parties the simple act of automatically staying proceedings grants extraordinary relief to the debtor from the appellate court, and the creditor is not entitled to enforce its judgment. The "extraordinary relief" is the staying of proceedings until the judgment expires, wiping the debt that is owed. By staying these proceedings, the debtors are prevailing, not on the merits, but rather by abuse of appellate proceedings as their weapon.

Furthermore, in Raby Const., LLP v, Orr., the court made it clear that when there are specific orders stayed on appeal, they do not stay the execution of the underlying order of judgment:

> "In other words, because the only appeal pending at the time the trial court awarded additional attorneys' fees was the denial of the Rule 60(b) motion, that is the only order that would be automatically stayed; the general rule does not authorize a stay of the underlying order of judgment or order of foreclosure. Cf. In re Zapata Gulf Marine Corp., 941 F.2d 293, 295 (5th Cir.1991) (where the court, applying analogous federal rules, reversed the district court's stay of execution of the underlying judgment where the only appeal pending was the denial of the Rule 60(b) motion)."

Raby Const., LLP v. Orr, 358 S.C. 10, 594 S.E.2d 478 (S.C. 2004)

Here, the executing on the judgment by applying the debtors' real property to it should not be stayed as the execution of the Judgment is not stayed. This leaves the court the jurisdiction to order the property be sold to be applied to the execution of the Judgment.

This defendant's filing of appeals has quite plainly and clearly been the intent of the debtors for over 23 month since the execution was filed. The Debtors refused to attend depositions after being served with notice. When the foreclosure action was initiated, the debtors answered with a demand for a jury trial, which was rejected. When the matter was referred to the Master, debtors moved for the court to reconsider the decisions and file an appeal once that is denied. Once the appeal was initiated, debtors filed for extensions until the appellate court refused to grant any more. In the supplemental proceedings, the debtors refused to provide documents ordered by the court, and avoided appealing the judgment directly, but instead filed other motions skirting around the issue until you, Judge Dukes, forced a hearing on the matter to get to the core of the issue. After their Rule 60 motion was denied, and the order to join parties was denied, they filed motions to reconsider and then an appeal, which they requested the appellate court consolidate with their other appeal such that they could have another practical extension after the appellate court refused to grant more. The point being, that all this has been a clear and deliberate attempt to use the appellate process as a weapon to kill the judgment, when the debtors clearly owe the debt and are capable of paying.

Again, we state that the appeal does not stay these proceedings. Moreover, the staying of any proceedings relative to the enforcement of the judgment is the duty of the defendant to seek through petition to this court and to rest on the argument of an "automatic stay" is simply unlawful.

Through all this, if the court would prefer, the funds of the sale of the property can be deposited with the court, pursuant to SCRCP 67, to wait to be distributed until the appeals are resolved.

Thank you,

Luke R. Hoopes

Judgment Attorney

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On Thu, Jan 19, 2023 at 2:06 PM McLeod, Heather <hmcleod@bcgov.net> wrote:

> Wonderful, thank you all. We will use the same call-in info that we were going for the 2:00 p.m. conference call but I have provided below for your convenience.
>
> Call your dial-in number: **(202) 926-1130**
>
> Enter the access code: **577627#**

Attention:

We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.

Please contact us immediately if you are:

1. **Waiting on a ruling and it has been more than 30 days.**
2. **Ready to schedule a Trial date.**
3. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

P. (843) 255-5710

F. (843) 255-9505

hmcleod@bcgov.net

Beaufort County Courthouse

Post Office Drawer 1228

Beaufort, SC 29901

Beaufort County Courthouse

102 Ribaut Road, 2nd Floor

(across the hall from the Clerk of Court)

Beaufort, SC 29902

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, January 19, 2023 2:04 PM
To: Grey, Jacqueline <jgrey@bcgov.net>; Dukes, Marvin <mdukes@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

That's fine with me. Luke Hoopes, Jim Koutrakos, and Robert Sneed were on the line with me, and they say it's fine with them, too.

Thanks.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

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From: Grey, Jacqueline <jgrey@bcgov.net>
Sent: Thursday, January 19, 2023 2:02 PM
To: Drew Radeker <Drew@harrisonfirm.com>; Dukes, Marvin <mdukes@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

To all,

Just to let you all know the judge is running a little behind. Would you all be ok with doing this conference call at 3pm?

Attention:

We no longer have a Court Reporter so you are responsible for bringing your own. If there is live testimony at the hearing, you are REQUIRED to bring your own Court Reporter to this hearing. Failure to do so will result in the cancellation and rescheduling of the hearing.

Jacqueline Grey
Admin Tech III

Foreclosure Clerk
Hon. Marvin H. Dukes, III
Beaufort County Master In Equity
And Special Circuit Court Judge
P. (843) 255-5713
F. (843) 255-9505
jgrey@bcgov.net

Beaufort County Courthouse
102 Ribaut Rd., 2nd Floor, Room 212
Beaufort, SC 29902
Post Office Drawer 1228
Beaufort, SC 29901

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, January 19, 2023 1:52 PM
To: Dukes, Marvin <mdukes@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Judge Dukes:

I write to note some case law about the effect of an appeal. The Court of Appeals, discussing the effect of an appeal (there, in a family court case), noted the following:

> When a party appeals an order, two questions may arise as

> to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. If a stay exists, either automatically under Rule 241(a) or by supersedeas under Rule 241(c), the appealed order may not be carried out or enforced during the pendency of the appeal. This is the purpose of a stay under Rule 241—to determine whether the appealed *order* may be carried out or enforced—not to determine whether the *action* may proceed in the lower court while the appeal is pending.
>
> The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. The rule provides: "Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal...." Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal. The rule states: "Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal." Rule 205, SCACR; see also Rule 241(a), SCACR ("The lower court ... retains jurisdiction over matters not affected by the appeal...."). Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court's power to proceed with the action and address matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a "matter[ ] affected by the appeal" under Rules 205 and 241(a).

Tillman v. Oakes, 398 S.C. 245, 254-55, 728 S.E.2d 45, 50-51 (Ct. App. 2012) (emphasis in original).

The Supreme Court has observed that "[t]he lower court may not act or issue orders that affect an issue on appeal." Arnal v. Fraser, 371 S.C. 512, 641 S.E.2d 419, 422 (2007).

Thank you. I look forward to speaking with you in a few minutes.

Drew Radeker

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Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
Facsimile: (803) 779-6700
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From: Drew Radeker
Sent: Wednesday, January 18, 2023 11:47 AM
To: McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Thank you, Heather. I have it on the calendar.

Drew Radeker

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Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
Facsimile: (803) 779-6700
www.harrisonfirm.com

From: McLeod, Heather <hmcleod@bcgov.net>
Sent: Wednesday, January 18, 2023 11:24 AM
To: Jim Koutrakos <jimkoutrakos@callisontighe.com>; Drew Radeker <Drew@harrisonfirm.com>; Luke Hoopes <luke@angellmolony.com>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing
Importance: High

Good Morning:

I am scheduling the status conference call for January 19th, 2023 at 2:00 p.m. Please mark your calendars, as this is the only notice you will receive from the Court. We will use the below call-in info for the conference call.

Call your dial-in number: **(202) 926-1130**

Enter the access code: **577627#**

Attention:

We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter.

Failure to do so will result in the cancellation and rescheduling of the hearing.

Please contact us immediately if you are:

4. **Waiting on a ruling and it has been more than 30 days.**
5. **Ready to schedule a Trial date.**
6. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

P. (843) 255-5710

F. (843) 255-9505

hmcleod@bcgov.net

Beaufort County Courthouse

Post Office Drawer 1228

Beaufort, SC 29901

Beaufort County Courthouse

102 Ribaut Road, 2nd Floor

(across the hall from the Clerk of Court)

Beaufort, SC 29902

Disclaimer: Neither this office, nor its staff gives legal, financial or other advice. Any information obtained from this office or its staff, regardless of form, should not be taken as legal or financial advice. Persons seeking to purchase properties from foreclosures or other sales should obtain independent advice as to value, sufficiency of title, tax consequences, other liens, and all other matters related to said purchase. Persons involved in litigation should obtain counsel and may not rely on any information obtained from this office as legal advice. Do not rely on this office for legal advice- always obtain independent legal advice.

From: Jim Koutrakos <jimkoutrakos@callisontighe.com>
Sent: Tuesday, January 17, 2023 2:44 PM
To: Drew Radeker <Drew@harrisonfirm.com>; Luke Hoopes <luke@angellmolony.com>; McLeod, Heather <hmcleod@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Heather,

I am available all those times.

Demetri "Jim" K. Koutrakos

CALLISON TIGHE & ROBINSON, LLC

1812 Lincoln Street, 2nd Floor

Post Office Box 1390 (29202-1390)

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Facsimile: (803) 404-6902

JimKoutrakos@CallisonTighe.com

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Tuesday, January 17, 2023 2:21 PM
To: Luke Hoopes <luke@angellmolony.com>; McLeod, Heather <hmcleod@bcgov.net>
Cc: Jim Koutrakos <jimkoutrakos@callisontighe.com>; Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Heather, I can do any of those times except for the 19th at 3:00.

Thank you.

Drew Radeker

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Columbia, South Carolina 29201
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Columbia, South Carolina 29250
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Facsimile: (803) 779-6700
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From: Luke Hoopes <luke@angellmolony.com>

Sent: Tuesday, January 17, 2023 12:52 PM
To: McLeod, Heather <hmcleod@bcgov.net>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: Re: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Heather:

All of those dates and times work for me.

Thank you,

Luke R. Hoopes

Judgment Attorney

Angell Molony, LLC

18 E. North Street, Suite 302

Greenville, SC 29601

P: 864.248.4708

F: 864.752.1422

www.AngellMolony.com

content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

DEBT COLLECTOR: This firm collects debts for creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

On Tue, Jan 17, 2023 at 12:48 PM McLeod, Heather <hmcleod@bcgov.net> wrote:

> Good Afternoon All:
>
> As it turns out Jan. 18th no longer works for us. Are parties still available for any of the below dated/times?
>
> Jan. 19th at 9:00 a.m., 2:00 p.m., 2:30 p.m. or 3:00 p.m.
>
> Jan. 20th at 9:00 a.m., 11:00 a.m. or 2:30 p.m.
>
> **Attention:**
>
> **We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.**

--
LegalAssetSearch.com

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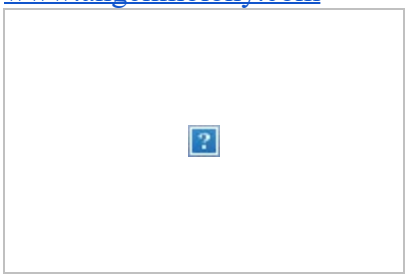

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2023-000421

Southern First Bank……..……..……..……..…….…… Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, The Federal Housing Commissioner, The Department of the Treasury – Internal Revenue Service, and The South Carolina Department of Revenue……..... Respondents.

RETURN TO MOTION TO DISMISS

EXHIBIT B

February 3, 2023 Hearing Transcript Excerpt

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT Case No.: 2012-CP-07-04253

SOUTHERN FIRST BANK,N.A.
d/b/a GREENVILLE FIRST
BANK, N.A.,

Plaintiff,

v.

KENNETH J. VILCHECK and
RENEE M. VILCHECK,
Defendants.

HEARING BEFORE THE HONORABLE
MARVIN H. DUKES, III

DATE: February 3, 2023
TIME: 9:34 a.m.
BY: Counsel for the Plaintiff
LOCATION: Virtually via Webex
REPORTED BY: MICHELLE BAKER LEE,
Certified Court Reporter

MR. KOUTRAKOS: I'll stick around, but I'm not waiving jurisdiction by sticking around.

THE COURT: No, no.

All right. What next?

MR. ANGELL: Next is our motion for the judicial sale, Your Honor. We filed that motion, like I said, back in October with corresponding exhibits. Our client's judgment was entered in 2000 -- on March 27th, 2013. The Vilchecks have been served with notice of that motion through us serving their attorney. We've laid out the reasoning here and ultimately we think it's lawful, Your Honor. We haven't -- I haven't heard any defense yet, but under subsection -- Title 15-39-410, property which may be ordered to be applied to execution. And, Your Honor, you know the law better than any of us here. And so we're eager to do -- to get this done. We've been fighting and scrapping to have our day in court. And between the status conference and this morning I think we've had two more appeals filed and other -- and other things have happened as well.

So, Your Honor, we ask that you grant our motion to dismiss because on its face it's clear

you have full authority to do that -- or motion to sell the property, sorry, and based on state statute.

THE COURT: Now, let me ask. I think Mr. Radeker sent the Homestead Exemption -- I think you or somebody sent those to me a minute ago. And this is an owner-occupied residence, I assume, since it's got a reverse on it.

MR. ANGELL: Yes.

THE COURT: And it's owned by -- is it two debtors? We've got both debtors?

MR. ANGELL: That's correct.

THE COURT: So is there any issue other than -- any dispute other than the fact that the Homestead Exemption would be, what is it, 167 or something? Y'all had it on here. My printer printed on both sides.

MR. RADEKER: I'm looking at --

THE COURT: No, I'm sorry, one --

MR. RADEKER: Yeah, I'm looking at something that says it's 134,175, so that would (indiscernible audio) Vilchecks. So, I mean, I have some other arguments about it, but I did want to make sure that, like, if the sale is ordered that it protects their --

THE COURT: No, no, no, you're right. I mean, this is not selling it --

MR. RADEKER: (Indiscernible audio.)

THE COURT: -- on the mortgage, this is selling it on the judgment debt so they would be entitled to that.

By the way, I'm impressed with your drawing in your most recent filing to the appeals court. That was -- that was a bold move with the --

MR. RADEKER: I was just like --

THE COURT: -- arrows.

MR. RADEKER: -- this is the best that I can do was draw it so -- I'm no Michelangelo.

THE COURT: Gotcha. Let me get back to the Plaintiff for a second.

How would you envision the sale be done? A three-times advertising --

MR. ANGELL: Yes.

THE COURT: -- referencing --

MR. ANGELL: Yes, sir, Your Honor. Just the three preceding weeks to the first Monday in March. But certainly you have authority to sell it in any way you see fit under 15-39-410, and so that's how we would see it proceeding. We've got our notices ready, we're in touch with the

newspaper and just think that we could get that done and resolved before our case is expired.

MR. RADEKER: And, Your Honor, I'd like to note some stuff for the record in --

THE COURT: Oh, absolutely.

MR. RADEKER: -- in opposition with those.

THE COURT: Yeah, I was just --

MR. RADEKER: Sure.

THE COURT: -- trying to figure out exactly what the Plaintiff wanted, which I think I know. So that would be a master sale, not a sheriff's sale that y'all would be looking for.

MR. ANGELL: Yes, sir.

THE COURT: And -- okay.

MR. RADEKER: And then we're looking at that for the March sales day; is that right?

THE COURT: Which would be -- I think it's the 6th, but I'm not --

MR. ANGELL: Yeah, that's right, it'd be the 6th. So 17th, 24th of February and the 3rd of March would be those three preceding Fridays, Your Honor.

THE COURT: Gotcha. All right. Mr. Radeker, happy to hear from you, sir.

MR. RADEKER: Thank you, Your Honor.

If Your Honor grants them the sale, it would be a sale pursuant to Code Section 15-39-720, you know, the -- it's not like a mortgage where the deficiency can be waived or anything like that. Just, again, incorporating the same argument that Long Bridge made earlier, just so I don't repeat that. Also, we believe this is stayed on appeal. We'd ask for the Court to at least wait until the appellate court rules on our motion for review by the full court of the stay motion. We've noted the exemptions that apply. In addition to what was talked about earlier, you know, they didn't go through a supplemental proceedings procedure after examining the debtors to do this so I'm not sure that's proper to go forward.

As to calculation of interest, I think this is a Turner Coleman situation where this is a suit on a note, and so the note rate would control the calculation, because I'm not sure exactly, like -- because I don't know exactly what they're claiming, is what the Plaintiff is saying like the total amount of the interest is on their judgment. So, I mean, I guess I'd just like an opportunity to review that, which will probably be in some proposed order or something

that's sent up to you.

So far there has not been any compliance with Code Section 18-9-130(A)(2), which we think that there would need to. We don't think any sale should be had at all for several reasons that we've already talked about, but if one is to happen that they'd need to comply with that section to do that which governs the circumstances under which real property can be sold in execution of a judgment while an appeal is pending.

THE COURT: And what specifically have they failed to do?

MR. RADEKER: All right. Hold on a second. I had this open earlier. Now I've got to open it up.

THE COURT: See, this question will give me enough time to open it myself so I'll know what you're talking about.

MR. RADEKER: All right.

MR. ANGELL: Is that 18-9-130; is that what you said, Drew?

MR. RADEKER: Right, 18-9-130(A)(2). And it says, "A plaintiff may not enforce a sale of property after a notice of appeal is filed

without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed."

THE COURT: Okay. And I'm happy to hear from the Plaintiff on that.

MR. ANGELL: Thank you, Your Honor.

I believe that's -- I mean, we're in a position to post that bond. I believe that that's not -- that's not necessary to receive your order for sale today. We've got plenty of time to work -- to post that bond prior to the actual sale going in. I read that as -- under subsection -- a plaintiff may not enforce a sale of the property after notice of -- enforce a sale of the property after notice of appeal is filed without giving an undertaking or bond to the defendant. Well, we -- today, if you were to grant our motion to sell the property, we still haven't enforced it yet. We still have -- we have to follow the statutory requirements for the advertisement, we still have to post a bond. There's still many steps to be taken at this

RECEIVED
Apr 10 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2023-000421

Southern First Bank……. Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, The Federal Housing Commissioner, The Department of the Treasury – Internal Revenue Service, and The South Carolina Department of Revenue……..... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on April 10, 2023, he served the foregoing Appellant's Return to Motion to Dismiss by emailing a copy to the persons below listed for opposing counsel on AIS pursuant to SCACR 262 as amended by the Supreme Court's August 25, 2021 Order, addressed as follows:

Aaron J. Angell
Luke R. Hoopes
aaron@angellmolony.com
luke@angellmolony.com
18 E. North St., Ste. 302
Greenville, SC 29601

Andrew S. Radeker
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Robert M. Sneed, Asst. United States Attorney
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Kiera C. Dillon
Kiera.dillon@dor.sc.gov
300A Outlet Pointe Blvd.
Columbia, SC 29210

SMITH HUDSON LAW, LLC

s/ Joseph O. Smith
Joseph O. Smith (S.C. Bar No. 77475)
Joshua J. Hudson (S.C. Bar No. 100311)
200 N. Main Street, Suite 301-C
Greenville, SC 29601
Phone: (864) 908-2912
jsmith@smithhudsonlawcom
jhudson@smithhudsonlaw.com
Attorneys for Appellants

April 10, 2023
Greenville, South Carolina