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May 11 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Joseph M. Strickland, Circuit Court Judge

Court of Appeals Appellate Case No. 2022-001597
Court of Common Pleas 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.

REPLY TO RETURN TO
MOTION TO CERTIFY APPEAL and TO EXPEDITE CONSIDERATION

The Respondents argue this appeal does not warrant certification and expediting, because mortgage foreclosure actions seeking a deficiency are a “tiny fraction” of all mortgage foreclosure actions, and the decision in this case will affect only a “miniscule” number of cases. (Return. at 1). Assuming the Respondents’ mathematical assertions about the universe of mortgage foreclosures are true, and there is no evidence supporting these assertions, the Respondents miss the point.

As stated in the motion to certify and expedite, “[t]he fundamental issue on appeal is the significant and important legal question of when does the ten-year life of a judgment commence.” (Motion at 2). This issue affects all money judgments in all civil cases. The Respondents never dispute this and never otherwise respond to it. (Return, *passim*).

As also stated in the motion, this appeal also “includes the equally important question of whether S.C. Code Ann. §§ 29-3-650 and -660 (2007) provide different procedures for entering judgment in foreclosure actions (as argued by [the Appellant]) or simply provide the same procedure twice (as argued by the [Respondents] and held by the Master).” (Motion at 2). The Respondents never mention this issue. (Return, *passim*).

The Respondents correctly note that the Appellant requested extensions during the time for the initial briefs, including two extensions for illness of counsel. (See Jan. 11 and 23, 2023 extension motions). After the filing of the initial reply brief on April 3, 2023, the Appellant had 30 days to compile and serve the Record on Appeal and then an additional 20 days to file the Record on Appeal and final briefs, a total of 50 days. See Rules 210(a) and 211(a), SCACR. The Appellant served and filed the Record on Appeal and its final briefs on April 18, 2023, using only 15 of the 50 days allowed under the SCACR. Also, the appeal was filed on November 14, 2022, and ready for consideration only five months later on April 19, 2023 (filing date of Respondents’ Final Brief). Appellant has not unduly delayed the perfection of this appeal.

The real reason for the Respondents’ opposition to the Appellant’s motion is their hope that the appeal will remain pending long enough to moot the issues in this appeal: “If July 23, 2025, should happen to arrive before there is a final decision on the appeal, *the appeal should be dismissed as moot.*” (Return at 3) (emphasis added). This specter of mootness is the reason for and fully supports the motion to certify and expedite this appeal.

If the Appellant’s appeal is successful, it will have until July 23, 2025, to collect its judgment against the Respondents for their failure to repay money loaned to them. This success will be meaningless unless the case is remanded to the Master for further proceedings with sufficient time to complete the collection action before July 23, 2025. For this reason, and for the

other reasons set forth in this Reply and in the Motion, the Appellant respectfully submits that this Court should grant the motion to certify and expedite this appeal.

Respectfully Submitted,

/s/ Robert L. Widener

Robert L. Widener, SC Bar #6089
Burr & Forman, LLP
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Weyman C. Carter, SC Bar #15255
Burr & Forman, LLP
Post Office Box 447
Greenville, South Carolina 29601
(864) 271-4940

Ben N. Miller, III
McDonald, McKenzie, Rubin, Miller
and Lybrand, LLP
Post Office Box 58
Columbia, South Carolina 29202
(803) 252-0500

ATTORNEYS FOR APPELLANT

May 10, 2023
Columbia, SC

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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.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of Burr & Forman LLP certify that I have served the Reply to Return Motion to Certify Appeal and to Expedite Consideration on counsel for the Respondents via email at the email addresses listed below, on May 10, 2023:

Spencer Andrew Syrett
Post Office Box 7403
Columbia, SC 29202
syrettlaw@sc.rr.com

Ian D. McVey
Turner Padget Graham & Laney, P.A.
1901 Main Street, 17th Floor
Columbia, SC 29201
imcvey@turnerpadget.com

Columbia, SC


Ann Shuler

Robert L. Widener
rwidener@burr.com

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SC Court of Appeals

1221 Main Street
Suite 1800
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

Office (803) 799-9800
Fax (803) 753-3278

BURR.COM

May 10, 2023

VIA EMAIL (supctfilings@sccourts.org)

Patricia A. Howard
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

**Re: Capital Bank, N.A. v. Rosewood Holdings, LLC and D. Christopher Twitty
Court of Appeals Appellate Case No. 2022-001597**

Dear Madam Clerk:

Attached for filing, please find the Appellant's Reply to Return to Motion to Certify Appeal and to Expedite Consideration and the Certificate of Service for same.

Counsel for the Respondents have been served via email and U.S. Mail. By copy of this letter, we are also filing the Reply with the Court of Appeals.

Thank you for your assistance in this matter.

Sincerely,

Burr & Forman LLP



Robert Widener

RLW/as
Attachments

Patricia A. Howard
May 10, 2023
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cc: Honorable Jenny Abbott Kitchings
Spencer Andrew Syrett
Ian D. McVey