

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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 Which Rosewood Holdings, LLC and D. Christopher Twitty are Respondents.

MOTION TO EXPEDITE

This appeal is ready for consideration – the Record on Appeal and all Final Briefs have been filed with this Court. Pursuant to Rule 263(b), SCACR, Appellant respectfully requests that this Court expedite its consideration (including any oral argument) and decision in this appeal.¹

This is a judgment collection action based on a prior commercial mortgage foreclosure action by the Appellant (Lender) against the Respondents (Rosewood and Twitty, collectively referenced as Borrowers) that was referred to the Master in Equity (Master) for final judgment and

¹ Rule 263(b), SCACR, provides in pertinent part as follows: “The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.”

Appellant previously moved in the Supreme Court to certify this appeal. (See Motion & Reply on file with this Court). The Supreme Court denied this motion without analysis last week. (See Sup. Ct. Order on file with this Court).

direct appeal. On July 23, 2012, the Master entered his “Master’s Report and Judgment of Foreclosure and Sale” (Foreclosure Decree) and thereafter sold the commercial property. On July 23, 2015, the Master entered his “Order of Deficiency Judgment” (Deficiency Judgment) against Borrowers for the mortgaged debt that remained after the sale of the property. On October 14, 2022, in response to collection efforts by the Lender, the Master entered his “Order on Status of Judgment” (Order). The Master ruled that the personal money judgment against Borrowers expired on July 23, 2022, because the ten-year statutory life of the personal money judgment commenced upon the entry of the Foreclosure Decree in 2012 rather than the subsequent entry of the Deficiency Judgment in 2015. Lender appealed, arguing that the ten-year life of the judgment commenced upon the entry of the deficiency judgment on July 23, 2015.

A judgment collection action fails if it is not complete within the 10-year life of a judgment, and the courts strictly enforce this rule, even if there are compelling facts making it inequitable to do so. *Gordon v. Lancaster*, 823 S.E.2d 173, 175 & 176 (S.C. 2018) (addressing § 15-39-30), *rev’g* 795 S.E.2d 857 (S.C. App. 2016) and *overruling Linda Mc Co. v. Shore*, 703 S.E.2d 499 (S.C. 2010). Here, if Lender prevails in this appeal, the judgment expires in approximately two years on July 23, 2025. Thus, it is imperative that this appeal be completed with sufficient time remaining thereafter to complete the underlying collection action on or before July 23, 2025.

Given the time ordinarily needed to obtain a decision by this Court, coupled with the inevitable rehearing and certiorari proceedings thereafter, Lender will have little if any time after remand from a successful appeal to comply with the strict rule of completing collection actions within ten years. For this reason, Lender respectfully requests that this Court expedite its consideration (including any oral argument) and decision in this appeal to help ensure that Lender has sufficient time to conclude its collection action after remand from a successful appeal.

Respectfully Submitted,

/s/Robert L. Widener

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June 12, 2023
Columbia, SC

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Joseph M. Strickland, Circuit Court Judge

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First Citizens Bank and Trust Company, Inc.,..... Defendants,

Of Which 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 Appellant’s
Motion To Expedite on counsel for the Respondents via email at the email addresses listed below, on
June 12, 2023:

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RECEIVED

Jun 12 2023

SC Court of Appeals

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June 12, 2023

VIA EMAIL (ctappfilings@sccourts.org)

Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
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**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 Motion to Expedite. The filing fee of \$50 will be hand delivered to the Court today. Counsel for the Respondents have been served via U.S. Mail, and are included in this email filing.

Thank you for your assistance in this matter.

Sincerely,

Burr & Forman LLP



Robert Widener

RLW/as
Attachment

cc: Spencer Andrew Syrett
Ian D. McVey
Ben N. Miller III