

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM RICHLAND COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE JOSEPH M. STRICKLAND
RICHLAND COUNTY MASTER IN EQUITY

CASE NO. 2022-00157

RECEIVED

JUN 14 2023

SC Court of Appeals

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 South Carolina,

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

**RETURN TO APPELLANT'S MOTION
FOR AN EXPEDITED APPEAL**

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Attorney for Respondents

RETURN TO APPELLANT'S MOTION

Respondents submit that there is no Appellate Court Rule which authorizes this Court to expedite an appeal. Respondents concede that a Court has and should have control over its docket. Without a rule for guidance, however, there is no criteria against which this Court can measure the Appellant's request. Expediting an appeal should be an extraordinary remedy and should be granted only in the most extraordinary of cases (see, for example, Planned Parenthood South Atlantic v. South Carolina, Supreme Court Appellate Case No. 2023-000856)

RULE 263, SCACR

Appellant cites Rule 263(b) SCACR in support of its application. This Rule clearly has no relevance to this matter as that Rule only applies to the time for filing briefs and the Record on Appeal. Respondents are aware of no rule which provides a mandate to the Court as to when it should consider an Appeal (either with or without oral argument) or when it should issue a decision after the matter has been considered. There is therefore no period for the Court to extend or shorten.

HISTORY OF THE CASE

In addition, the Court should consider the following:

First, Appellant has presented no compelling reason why the timing of consideration of its appeal should be preferred to those of litigants already in line and patiently waiting their turn to be heard.

Second, the record in the trial court shows long periods of time in which the Appellant took no action at all. This is a partial history:

July 23, 2012	Judgment entered finding amount of debt and ordering sale
August 6, 2012	Sale
January 11, 2013	Report on sale
Inaction for three years	
July 23, 2015	Deficiency Judgment entered.
Inaction for three years	
August 22, 2018	Execution issued
Inaction for a year	

November 27, 2019 Service of discovery documents on Respondents

Inaction for almost three years

August 4, 2022 Referral to Master for supplemental proceedings

October 14, 2022 Order dismissing the proceedings

In the almost eight years since the issuance of the judgment the date of which the Appellant relies, Appellant took no action for more than seven of those years.

Appellant has therefore, through inaction, created the urgency for which it now seeks relief.

Third, after the appeal was filed, Appellant (Appellant is represented by one of the larger law firms in the state) asked for and received no less than five separate extensions of time to perfect its appeal. By contrast, the Respondents (represented by a solo practitioner) have asked for none. If Appellant was so concerned that its time was going to run out, one would have thought that it would have found a way to avoid having to ask for even a single extension.

RULE 204, SCACR

Finally, assuming that the Court would refer to Rule 204, SCACR for guidance, the Court should consider the following:

Respondents submit that the issue raised in this appeal is neither a matter of significant public interest nor a legal principal of major importance.

Deficiency foreclosures are but a tiny fraction of all mortgage foreclosures. The percentage of actions that are started with seeking a deficiency but that actually result in a deficiency is a very small portion of those actions. A decision in this case will affect only a minuscule portion of the cases.

There is also no significant public interest being affected. Deficiency judgments usually affect only the parties involved. It is also significant that the only court order supporting Appellant's position is a single Order from the Greenville County Master in Equity which was issued more than ten years ago.

EQUITABLE PRINCIPLES

Enforcement of a judgment through supplemental proceeding is either an equitable remedy or in the nature of an equitable remedy. Equity aids the vigilant but does not


reward those who sit on their rights.

The Appellants have failed to act diligently.

CONCLUSION

There is no compelling reason to grant the Appellant's request.

The motion for an expedited appeal should be denied and the Court should proceed to consider this appeal when it is reached in its regular docket order. If July 23, 2025, should happen to arrive before there is a final decision on the appeal, the appeal should be dismissed as moot.



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June 14, 2023

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APPEAL FROM RICHLAND COUNTY
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SC Court of Appeals

CASE NO. 2022-001597

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 South Carolina,

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

PROOF OF SERVICE

I certify that I have served one copy of the Respondents' Return to Appellant's Motion For
an Expedited Appeal on the Appellant by depositing it in the United States Mail, postage
prepaid, on June 14, 2023, addressed to its attorney of record,

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June 14 , 2023