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Jul 10 2023

SC Court of Appeals

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.

REPLY TO RETURN TO MOTION TO EXPEDITE

Appellant filed a motion requesting this Court to expedite its consideration (including any oral argument) and decision in this appeal, because the passage of time could moot any benefit of any appellate relief on the merits. Respondents filed a Return, objecting for several reasons but without claiming any prejudice from this Court granting an expedited consideration of this appeal. Appellant respectfully submits this Reply to Respondent’s Return.

REPLY ARGUMENT

Respondents contend that no rule grants this Court the authority to expedite an appeal but begrudgingly concede that this Court controls its docket. Manifestly, this Court has discretion to expedite an appeal, and Appellant has made a sufficient showing for the Court to do so here.

Respondents argue that Rule 263, SCACR is irrelevant, because it relates only to the time for briefs and records. There is no such language in the rule. Moreover, there are numerous other timelines to which the rule applies, including the timelines imposed by Rule 216, SCACR, for the Court's Preliminary List and Roster. See also, *e.g.*, Rule 221, SCACR (rehearing petitions); Rule 240, SCACR (motions).

Respondents argue there have been long periods of inactivity by Appellant in enforcing the judgment. The law gives all judgment creditors the right to ten (10) years to collect on their judgments. Exercising that right is not and cannot be a ground for denying it. The merits of this appeal present the essential question of when did that 10-year period commence in this case.

Respondents complain that Appellant received five (5) extensions for its initial briefs. These extensions totaled 67 days, but Appellant served and filed the Record on Appeal and its Final Briefs 35 days earlier than required by the rules.¹ Of the remaining 32 days, 17 days were due to illness of counsel. In short, there has been no undue delay in this appeal.

Respondents also argue that Appellant has not satisfied Rule 204, SCACR. This rule is irrelevant – it concerns transferring cases from this Court to the Supreme Court.

Finally, and most tellingly, Respondent does not claim that it would suffer any prejudice if this Court expedites this appeal.

¹ Appellant filed its Initial Reply Brief on April 3, 2023. It served the Record on Appeal on the next day, April 4, rather than the 30 days permitted by Rule 210(a), SCACR. Appellant filed the Record on Appeal and its Final Briefs on April 18, rather than the 20 days permitted by Rules 210(b) and 211(a), SCACR.

CONCLUSION

This appeal is ready for consideration. If this Court does not expedite its consideration of this appeal, there is a substantial likelihood that time will moot any benefit of any appellate relief on the merits. Respondents do not claim that they will suffer any prejudice from an expedited consideration of this appeal. For these reasons, and for the reasons set forth above and in the Motion to Expedite, Appellant respectfully requests that this Court grant the Motion to Expedite.

Respectfully Submitted,

/s/ Robert L. Widener

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Capital Bank, N.A., formerly known as NAFH National Bank,
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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.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of Burr & Forman LLP certify that I have served the Appellant's
REPLY TO RETURN TO MOTION TO EXPEDITE on counsel for the Respondents via email at the
email addresses listed below, on July 10, 2023:

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SC Court of Appeals

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July 10, 2023

VIA EMAIL (ctappfilings@sccourts.org)

Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**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 Expedite. 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