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Jul 17 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, Master-In-Equity

Appellate Case No.: 2018-CP-40-04044

Wells Fargo Bank, N.A., not in its individual banking capacity, but solely as Trustee on behalf of
Green Tree Mortgage Trust 2005-HE1Respondent

v.

James E. Turner, a/k/a James Turner, Sr.Appellant.

**RESPONDENT'S AMENDED RETURN TO
PETITION FOR SUPERSEDEAS**

I. THE PETITION FOR A SUPERCEDEAS IS PREMATURE

The summons and complaint of the within foreclosure was filed on July 31, 2018. A hearing on the merits was heard on May 11, 2023 before the Honorable Joseph M. Strickland, Richland County Master in Equity. At the end of the testimony the Master in Equity ordered Foreclosure and Sale and set the sale for August 7, 2023.

The attached Notice of Sale was conveyed to the newspaper via email on June 7, 2023. Said Notice was to be published as required by statute in July 2023, for the purpose of including the subject property in the judicial sale roster of August 7, 2023 at 12 o'clock noon to be held at the Richland County Judicial Center.

An error was made when the Richland County Master in Equity's office mistakenly indicated that the subject property would be included in the judicial sale roster of Monday, July 3, 2023. Plaintiff's counsel remained unaware of this inaccuracy until Friday, June 30, 2023, when it was notified by Defendant's counsel. Plaintiff's counsel immediately reported to Defendant's counsel at 12:13 PM on Friday, June 30 that the foreclosure sale was not intended to take place until August 7, 2023. Plaintiff's counsel sent an additional email confirming that there was no foreclosure sale until August 7 at 12:29 PM on Friday, June 30, 2023. Finally, on

Monday, July 3, 2023, Plaintiff's counsel sent an additional email to Defendant's counsel confirming that there would be no July 3, 2023 judicial sale of the subject property.

Appellant's ex parte Petition for Writ of Supersedeas alleges exigent circumstances and emergency time constraints. That is in error and is based on the mistaken belief that the foreclosure sale would be on Monday, July 3, 2023. In fact, the foreclosure sale is not until August 7, 2023. Appellant's grounds for the petition are that there has been no advertising of the sale and no time and location of the sale. That is because the sale is not until August 7 and no advertising has occurred.

II . RESPONDENT HAS FILED FOR A HEARING BEFORE THE TRIAL COURT TO SET A SUPERCEDAS BOND AND FOR JUSTIFICATION OF APPELLANT'S SURETIES

South Carolina Code of Laws Anno. Section 18 – 9 – 130 specifies that a notice of appeal from a judgment directing the sale of the Defendant's property does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grant a stay of execution. The presiding judge may grant a stay of execution and require a bond or other surety to guarantee the payment of the judgment pending the appeal.

In the present case, on July 3, 2023, Appellant filed an Ex Parte Exigent Circumstances Petition for Writ of Supersedeas with the South Carolina Court of Appeals. On July 10, 2023, Appellant filed the attached Undertaking of James E. Turner with the Trial Court. No amount of bond has been set by the trial court and Appellant failed to identify the sureties. In response, on July 14, 2023, Respondent filed the attached Motion for Hearing to Set Bond and for Justification of Sureties with the Trial Court. Pursuant to the provisions of South Carolina Code of Laws Anno. Section 18 – 9 – 130 and South Carolina Code of Laws Anno. Section 18 – 9 – 210, the within matter is before the trial judge for the determination of a bond and the justification of the sureties.

Respondent prays that the Court inquire into this matter and dismiss the appeal as premature.

Respectfully submitted,

s/Theodore von Keller

Theodore von Keller

S.C. Bar No. 5718

Crawford & von Keller, LLC

Post Office Box 4216

Columbia, South Carolina 29250

(803) 764-7444

ted@crawfordvk.com

Attorney for Respondent

July 17, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Wells Fargo Bank, National)
Association, not in its individual or)
banking capacity, but solely as)
Trustee on behalf of Green Tree)
Mortgage Trust 2005-HE,)

Case No.: 2018-CP-40-04044

Plaintiff,)

vs.)

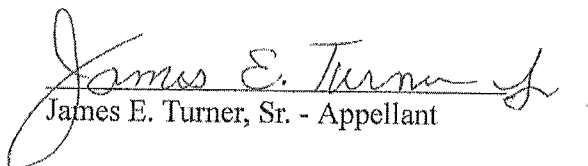
UNDERTAKING OF JAMES E. TURNER, SR.
[Pursuant to S.C. Code § 18-9-130]

James E. Turner, a/k/a James)
Turner, Sr. et. al.)

Defendants.)

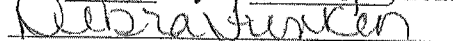
NOW COMES JAMES E. TURNER, SR., having been sworn and duly stating the following under oath:

1. I am a named defendant in the above-captioned case. I am over the age of eighteen, and I am informed and believe that I am competent to give this undertaking.
2. This undertaking is given pursuant to *Pursuant to S.C. Code § 18-9-130*.
3. I, James E. Turner, Sr., as a condition of staying the enforcement of the judgment in the above-stated case, enter into an undertaking, with good sureties, in double the appraised value of the property or the amount of the judgment, to pay the judgment with legal interest and all costs and damages the plaintiff may sustain by reason of the appeal or to produce the property levied on and submit to the sale if the judgment is confirmed.
4. Entered and accepted by the under-signed appellant, James E. Turner, Sr. and the two named sureties.


James E. Turner, Sr. - Appellant

Sworn and subscribed before me, this

The 10 day of July, 2023


Notary Republic of South Carolina

My Commission Expires: 7/16/23

STATE OF SOUTH CAROLINA

RICHLAND COUNTY

Wells Fargo Bank, National Association,
not in its individual or banking capacity, but
solely as Trustee on behalf of Green Tree
Mortgage Trust 2005-HE1,

Plaintiff,

vs.

James E. Turner a/k/a James Turner, Sr., *Et*
al.,

Defendants,

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-40-04044
(S.C. Ct. App. 2023-001054)

**MOTION FOR A HEARING FOR
JUSTIFICATION OF SURETIES AS TO
DEFENDANT JAMES E. TURNER, SR.**

WHEREAS an Order of Judgment of Foreclosure in favor of the Plaintiff was filed in the instant action on June 15, 2023.

WHEREAS The South Carolina Court of Appeals filed an Order temporarily granting Defendant/Appellant James E. Turner a/k/a James Turner Sr.'s petition for supersedeas on June 30, 2023 (*See* 2023-001054 S.C. Ct. App.).

WHEREAS Defendant/Appellant James E. Turner a/k/a James Turner Sr. filed an Undertaking of James E. Turner, Sr. on July 10, 2023, purporting to enter into an undertaking with god sureties; and

THEREFORE Plaintiff/Respondent Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely as Trustee on behalf of Green Tree Mortgage Trust 2005-HE1 hereby requests a hearing before the Richland County Master-in-Equity pursuant to South Carolina Code of Laws §18-9-210 to decree the requirement and amount of a bond or other surety to guarantee payment of the Judgment pending appeal as required by South Carolina Code of Law §18-9-170 and to adjudge the validity of Defendant/Appellant's sureties as affirmed under oath by James E. Turner a/k/a James Turner, Sr.

RESPECTFULLY SUBMITTED

CRAWFORD & VON KELLER, LLC



Theodore von Keller, S.C. Bar No. 5718
B. Lindsay Crawford, III S.C. Bar No. 6510
B. Lindsay Crawford, IV S.C. Bar No. 101707
Charley S. FitzSimons S.C. Bar No. 104326
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Post Office Box 4216
Columbia, South Carolina 29204
Telephone 803-790-2626
ATTORNEYS FOR THE PLAINTIFF

Columbia, SC
July 14, 2023

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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, Master-In-Equity

Appellate Case No.: 2018-CP-40-04044

Wells Fargo Bank, N.A., not in its individual banking capacity, but solely as Trustee on behalf of
Green Tree Mortgage Trust 2005-HE1Respondent
v.

James E. Turner, a/k/a James Turner, Sr.Appellant.

PROOF OF SERVICE

I certify that I served the foregoing Respondent's Amended Return to Petition for
Supersedeas in this case on the date given below by mailing it to opposing counsel at the address
noted below.

Glenn Walters, Sr.
1910 Russell Street
P.O. Box 1346
Orangeburg, SC 29116

glennwalterspa@gmail.com

Respectfully submitted,

s/Theodore von Keller

Theodore von Keller

S.C. Bar No. 5718

Crawford & von Keller, LLC

Post Office Box 4216

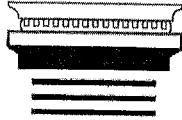
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Attorney for Respondent

July 17, 2023



CRAWFORD & VON KELLER, LLC

SOUTH CAROLINA
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B. Lindsay Crawford, IV**

NORTH CAROLINA
Benjamin A. Barco
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Brittany T. Morrison**

Charley S. FitzSimons
Jason M. Hunter
Lawrence W. Johnson, Jr.* - Special Counsel

* Certified Specialist in Bankruptcy
and Debtor-Creditor Law in SC

**Admitted in South Carolina and North Carolina

July 17, 2023

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SC Court of Appeals

Via ctappfilings@sccourts.org

SC Court of Appeals
PO Box 11629
Columbia, SC 29211

**RE: Wells Fargo Bank, N.A., not in its individual banking capacity, but solely as
Trustee on behalf of Green Tree Mortgage Trust 2005-HE1 vs. James E. Turner
a/k/a James Turner, Sr.
Appellate Case No.: 2018-CP-40-04044**

Dear Sir/Madam:

Enclosed please find Respondent's Amended Return to Petition for Supersedeas and Proof of Service regarding the above referenced matter.

Sincerely,

CRAWFORD & VON KELLER, LLC

Theodore von Keller, Esquire
Post Office Box 4216
Columbia, South Carolina 29240
Telephone: (803) 790-2626
Attorney for Respondent

TVK/tdd
Enclosure

Cc: Glenn Walters, Sr. – email and regular mail
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Orangeburg, SC 29116

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1017 Ashes Drive, Suite 106, Wilmington, NC 28405 • 910-363-1637 • Facsimile 910-363-1652