

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Michael Paul Swearingen, Special Referee

Case No. 2011-CP-20-0002

PROVIDENT COMMUNITY BANK, Respondent,

vs.

ROSS & ROSS PROPERTIES, LLC,
ROBERT D. ROSS, Jr.,
GLORIA ROSS,
DEANNA ROSS,
JOSEPH A. ROSS,
CATAWBA REGIONAL DEVELOPMENT CORP.,
SOUTH CAROLINA DEPARTMENT OF REVENUE,
UNITED STATES SMALL BUSINESS ADMINISTRATION,
and ROCK HILL BANK & TRUST,

of whom

ROSS & ROSS PROPERTIES, LLC and
ROBERT D. ROSS, Jr. are Appellants.

MOTION FOR
EXTENSION OF TIME

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SC Court of Appeals

Pursuant to Rules 240 and 263(b), S.C.A.C.R., the Appellants, by their counsel herein, move this Court for an order granting them an extension of time in which to file their Initial Brief and Designation of Matter to be included in the Record on Appeal, on the grounds stated below:

1. The deadline for filing the Respondent's Initial Brief and Designation of Matter to be included in the Record on Appeal is, after the Appellants' Motion thereon, Friday, April 4th, 2012. No transcript of Record has been requested herein.
2. Counsel for Appellants has not been capable of adequately completing the Appellants' Brief and Designation of Matter during the initial period due to the press of business in his office.
3. In addition, the Respondents herein have sought by motion, and have apparently been granted an order from the Special Referee allowing or confirming the foreclosure sale in

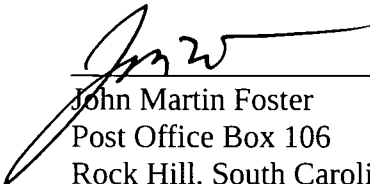
spite of this pending appeal. The order granting this relief has not yet been served on the Appellants.

4. A copy of the e-mail of Respondent's counsel, with his proposed Order is attached hereto and incorporated herein.
5. It is the Appellants' understanding, and position, that the said Order, once issued and served will be a) subject to a Rule 59 Motion and/or b) necessarily appealable and subject to a motion to join that appeal with the one now pending. All of this procedure must take place prior to the determination of issues in this appeal and the submission of the Appellants' Initial Brief herein.
6. By this third request, counsel for Appellants requests an extension for thirty (30) day, that is, through Monday, June 4th, 2012, or until the above-described procedure has completed.

The basis of this Motion is the within-cited Rule, the records of this appeal, and any attached affidavit or stipulation of the undersigned, which items are hereby incorporated in this Motion.

WHEREFORE, the Appellants herein move this Court for an extension of time in which to file their Initial Brief and Designation of Matter to be included in the Record on Appeal for an additional period, as set out above, pursuant to Rule 240 and 263(b), S.C.A.C.R.

February 3, 2012



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
803 324-8100
Attorney for Appellants

Other Counsel of Record:

Michael K. Hatch
Morton & Gettys
Attorneys for Plaintiff
Post Office Box 707
Rock Hill, SC 29731

Subject: Proposed order for motion hearing held April 25, 2012
From: Michael Hatch <Michael.Hatch@mortongettys.com>
Date: 04/27/2012 04:49 PM
To: "Paul Swearingen" <paul@cbcoleman-llc.com>
CC: "John Martin Foster" <jmfoster@comporium.net>, "jack@jameslawfirm.com" <jack@jameslawfirm.com>, "Al G. Schwint" <ASchwint@providentonline.com>, Leah Anderson <Leah.Anderson@mortongettys.com>

Paul, attached is the proposed order for the hearing on Wednesday. Please review and if acceptable I will have Leah forward a form 4 for your signature on Monday. I apologize for the delay and hope you have a nice weekend.

Thanks

Michael K. Hatch, Associate *
MORTON & GETTYS
616 E. Liberty Street
PO Box 176
York, SC 29745

Main Tel: 803.684.9604
Fax: 803.684.4932
Web: www.mortongettys.com

* SC, NC, GA & FL Licensed (Inactive in GA & FL)
A Limited Liability Company

MORTON & GETTYS

ATTORNEYS AT LAW

The information contained in this e-mail is intended solely for the addressee. Information contained in this message may be privileged, and should not be relied on by parties other than the addressee. If you receive this message in error, disregard its content, delete it, and then please notify the sender via e-mail or the phone number referenced above. **INTERCEPTING ELECTRONIC MESSAGES MAY BE AGAINST SOUTH CAROLINA AND FEDERAL LAW.** **CIRCULAR 230 DISCLOSURE:** TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, UNLESS SPECIFICALLY INDICATED OTHERWISE, ANY TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF AVOIDING TAX RELATED PENALTIES OR PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX RELATED MATTER ADDRESSED HEREIN.

—Attachments: —

Proposed order.docx

20.2 KB

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Equity Court

Michael Paul Swearingen, Special Referee

Case Number 2011-CP-20-0002

Provident Community Bank,

Respondent,

v.

Ross & Ross Properties, LLC,
Robert D. Ross, Jr.,
Gloria Ross,
Deanna Ross,
Joseph A. Ross,
Catawba Regional Development Corporation,
South Carolina Department of Revenue,
United States Small Business Administration,
and, Rock Hill Bank & Trust,

of whom

Ross & Ross Properties, LLC,
and, Robert D. Ross, Jr. are

Appellants.

ORDER TO UPHOLD JUDICIAL SALE CONDUCTED PURSUANT TO COURT
ORDER AND NOT STAYED BY FILING OF BOND

This matter came before me on April 25, 2012, on motion of Respondent, Provident Community Bank to Uphold Judicial Sale. Michael K. Hatch appeared for the Plaintiff. Both parties presented supporting arguments for their respective positions.

Based upon the arguments presented at the hearing I find and conclude as follows:

The grounds for this motion are as follows:

1. Pursuant Rule 241(b), the sale of the Property subject to this action was not stayed by the filing of a written undertaking or bond securing the payment of the continued use and occupation of the Property as required S.C. Code Ann. § 18-9-170 (1976) ("If the judgment appealed from direct the sale or delivery of possession of real property, **the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties**, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof) (Emphasis added).
2. The appeal of the Appellant has effectively stayed the sale, not allowing the third party bidder to comply with the terms of sale as set forth in the order entered in this case (the "Order") and notice of sale filed in the action.
3. The Appellant failed to file a motion to set aside the Order as required by South Carolina Rule of Civil Procedure, Rule 60(b).
4. Appellant's failure to file the bond as required has put the Property at substantial risk of devaluation as the Property is unoccupied and has previously been vandalized as noted during the hearing of this matter and to counsel for Appellant.
5. If the appellant in this action desired to stay the sale of the mortgaged premises, it was his duty to give a bond in conformity with Section 18-9-170 of the South Carolina Code of Laws. Since the Appellant in this case did not give such a bond, his appeal from the order of sale in foreclosure did not stay the sale. Carsten v. Wilson, 241 S.C. 516, 522, 129 S.E.2d 431, 435 (S.C.1963)(Court has held that where there is a decree ordering property to be sold to satisfy a mortgage, a notice of appeal from such decree does not stay the sale unless an undertaking is given by the appellant as required by Section 7-417 of the Code).

Therefore, based on the findings and conclusions herein, it is ordered as follows:

1. The judicial sale conducted on February 6, 2012 was conducted in accordance with South Carolina Law and because the Defendant/Appellant failed to file a bond to stay the judicial sale, the sale may proceed to close and finalize as specified in the Notice of Sale filed herein.

2. Notwithstanding the provisions of the Notice of Sale, the successful bidder at the judicial sale, Henry S. Campbell, III, shall have thirty (30) days from the date this order is filed of record to comply with the bid as specified in the Notice of Sale.
3. It is also ordered that during the time allowed for compliance with the bid Henry S. Campbell, III shall, upon the consent of Plaintiff/Respondent, be allowed to enter upon the property subject to the judicial sale to conduct appraisal and environmental inspections. Henry S. Campbell, III shall request of Plaintiff/Respondent permission to enter the subject property, which Plaintiff/Respondent shall not unreasonably withhold, and Henry S. Campbell, III shall be responsible for any damage caused to the subject property caused by any inspections conducted thereon.

AND IT IS SO ORDERED.

Michael Paul Swearingen, Esq.
Special Referee for Fairfield County

This the ___ day of _____, 2012
York, South Carolina

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Equity Court

Michael Paul Swearingen, Special Referee

Case Number 2011-CP-20-0002

Provident Community Bank, Respondent,

v.

Ross & Ross Properties, LLC,
Robert D. Ross, Jr.,
Gloria Ross,
Deanna Ross,
Joseph A. Ross,
Catawba Regional Development Corporation,
South Carolina Department of Revenue,
United States Small Business Administration,
and, Rock Hill Bank & Trust,

of whom

Ross & Ross Properties, LLC,
and, Robert D. Ross, Jr. are

Appellants.

PROOF OF SERVICE

I certify that I have served the Order To Uphold Judicial Sale Conducted Pursuant To Court Order And Not Stayed By Filing Of Bond on the following counsel of record:

John Martin Foster, Esq.
Attorney for Appellants
P.O. Box 106
Rock Hill, SC 29731

Harold Shapiro
Registered Agent for Catawba Regi
Development Corporation
100 Dave Lyle Boulevard
Rock Hill, SC 29732

U.S. Small Business Administration
2120 Riverfront Dr. , Ste 100
Little Rock, AR 72202

William N. Nettles, Esq. 1441 Main
Columbia, SC 29201

Respectfully submitted,

This the ___ day of _____, 2012
York, South Carolina

Michael K. Hatch, SC Bar No. 6973!
Morton & Gettys, LLC
Attorney for Plaintiff
P.O. Box 176
York, SC 29745
T: 803.684.9604
F: 803.684.4932
michael.hatch@mortongettys.com

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas
Michael Paul Swearingen, Special Referee

Case No. 2011-CP-20-0002

PROVIDENT COMMUNITY BANK, Respondent,
vs.

ROSS & ROSS PROPERTIES, LLC,
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SC Court of Appeals

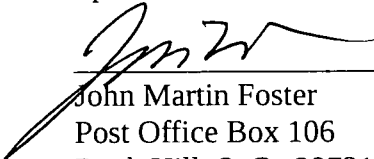
PROOF OF SERVICE

I certify that I have served the Motion for Extension of Time dated May 6, 2012, on the following counsel or persons of record:

Michael K. Hatch
Morton & Gettys
Attorneys for Plaintiff
Post Office Box 707
Rock Hill, SC 29731

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out above, pursuant to Rule 262, S.C.A.C.R.

May 6, 2012



John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
803 324-8100
Attorney for Appellants

JOHN MARTIN FOSTER

Attorney at law

| | | |
|--------------------------------|--------------|------------------------|
| The Guardian Building | PO Box 106 | 803 324 8100 |
| 223 East Main Street Suite 520 | Rock Hill SC | 803 324 8109 Fax |
| Rock Hill South Carolina 29730 | 29731-6106 | jmfoster@comporium.net |

May 6, 2012

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Provident Community Bank, Respondent,
v. Ross & Ross Properties, LLC and Robert D. Ross, Appellants.

Case No. 2011-CP-20-0002

Dear Ms. Gee:

In accordance with Rules 240 and 263(a), S.C.A.C.R., enclosed herewith please find the original and seven (7) copies of the Appellants' Motion for Extension of Time, together with Certificate of Service for the same in the above referenced case. I also enclose our check for the Motion fee of \$25.00.

By copy of this letter, I am serving the attorney for the Respondents with copies of the said Motion, as evidenced by the Certificate of Service.

Please return the extra conformed copy to my office in the enclosed self-addressed, stamped envelope. As always, thank you, and your staff, for your assistance in these matters.

Sincerely yours,



John Martin Foster

jmf/
enclosures

cc: Client File

Michael K. Hatch
Morton & Gettys
Attorneys for Plaintiff
Post Office Box 707
Rock Hill, SC 29731

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