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

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OCT 05 2023

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

SC Court of Appeals

Unpublished Opinion No. 2023-UP-315

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

PETITION FOR RECONSIDERATION

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Attorney for the Respondents

PETITION

The Respondents petition the Court to reconsider its Opinion issued on September 20, 2023. The Respondents submit that the Court exceeded its powers under the Appellate Court by reversing the Trial Court Order based on a ground not argued by the Appellants in their brief. The following are the points which Appellants assert were overlooked or misapprehended by the Court:

1. The Court ignored its limited power under the Rules to deal with an appeal.

Rule 220 (c) states:

Affirmance on Any Ground Appearing in Record. The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.

There is no Rule which authorizes the Court to reverse a judgment on grounds that were not argued by the Appellant.

As former Chief Judge Alex Sanders so aptly stated, "[A]ppellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." State v. Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct.App.1991).

The Appellants did not in either their Brief nor in their Reply Brief ever argue that the failure to file a motion under Rule 59(e) in 2015 estopped the Respondents from raising the issue in 2022, which was ten years after the sale.

2. Reliance on Flexon v. PCH-Jasper, Inc., 413 S.C. 561, 776 S.E.2d 397 (S.C. App. 2015)

The Court's reliance on Flexon v. PCH-Jasper, Inc. is misplaced.

The holding in that case is specifically limited to a challenge in a second appeal to a ruling made in the prior appeal. It does not establish a general rule of res judicata in all appeals.

This appeal is not at all similar to the issue in Flexon nor can the holding in Flexon be stretched to apply to the facts in this appeal.

3. Reliance on Rule 59(e), SCRPC.

Even if the Court could reach outside the briefs to decide the case on Rule 59(e), that decision is in error.

Although the Court finds that the Appellants should have filed a motion under Rule 59(e), it is unclear how that might have been accomplished. First there was no hearing prior to the issuance of the Order. The Appellants had no opportunity to present an opposition prior to the Order being issued. One cannot raise matters in a motion under Rule 59 which had not been previously presented to the Court. Moreover, the question of when the judgment had expired was not ripe for consideration until July 23, 2022.

In short, the filing of the 2015 Order should not have been dispositive of the issue of when the start of the ten year period should start to run.

4. Disposition pursuant to Rule 220(b) SCACR

Disposing of the appeal pursuant to Rule 220(b) was improper.

Rule 220 (B) requires the Court to set forth the reasons for its disposition of the case. Neither Rule 220(b) nor any other Rule gives the Court carte blanche to scour the Record looking for reasons to reverse the Trial Court.

CONCLUSION

The Court should reconsider and vacate its Opinion. The Court should then proceed to consider the appeal based solely on the issues presented to the Court by the parties.

s/Spencer Andrew Syrett

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October 5 , 2023

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PROOF OF SERVICE

I certify that I have served one copy of the Respondents' Petition for Reconsideration on the Appellant by depositing them in the United States Mail, postage prepaid, on October 5, 2023, addressed to his attorney of record, Robert L. Widener

Burr and Forman, LLP
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October 5, 2023