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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, Circuit Court Judge

Court of Appeals Unpublished Opinion No. 2023-UP-315
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.

APPELLANT'S RETURN TO RESPONDENTS' PETITION FOR REHEARING

The Respondents filed their Petition for Rehearing on October 5, 2023. The Appellant files this Return as directed by this Court's November 2, 2023, letter.

ARGUMENT

I. This Court correctly reversed the Master on the controlling merits issue in this case, and this ruling is the law of this case.

The controlling merits issue in this appeal is whether the judgment was enrolled in 2012 with the filing of the Foreclosure Decree or in 2015 with the filing of the Deficiency Judgment. Based on its analysis of the language in the 2015 Judgment and § 18-35-810, this Court correctly held that the judgment was entered in 2015:

> Based on the language in the July 2015 order—"It is *now* proper for this amount to be entered as a monetary judgment" (emphasis added)—and the language of section 15-35-810(2005) of the South Carolina Code, we hold the judgment was entered in 2015." . . . S.C. Code Ann. § 15-35-810 ("Final judgments and decrees entered in any court of record in this State . . . shall constitute a lien upon the real estate of the judgment debtor situate in any county in this State in which the judgment or transcript thereof is entered upon the book of abstracts of judgments and duly indexed, *the lien to begin from the time of such entry on the book of abstracts and indices* and to continue for a period of ten years from the date of such final judgment or decree."

(Op. at 2) (Italics by Court, underlining added). The Respondents never challenge this dispositive ruling on the controlling merits issue. (See Rhg. Pet., *passim*). Thus, it is the law of this case and cannot be a ground for certiorari review by the South Carolina Supreme Court. *Mazloom v. Mazloom*, 709 S.E.2d 661, 661 (S.C. 2011) (citations omitted); Rule 242(d)(2), SCACR.[1]

Any attempt by the Respondents to challenge this Court's ruling on this controlling merits issue in a Reply would be futile, because an issue cannot be raised for the first time in a reply. *See McClurg v. Deaton*, 716 S.E.2d 887, 888 n.2 (S.C. 2011) (issue cannot be raised for the first time in a reply brief or in a petition for rehearing) (citations omitted). This moots the Respondents' rehearing arguments, which have no merit in any event, because any error alleged by the Respondents in their Petition is harmless in light of this Court's reversal on the controlling merits question.

[1] At the end of their Ground 3 for rehearing, the Respondents make the following statement: "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." (Rhg. Pet., Grnd. 3 at 2). The Respondents' purpose is unclear, given that the statement is made at the end of the Respondents' erroneous arguments about Rule 59(e) in Ground 3. In any event, this conclusory assertion in a single sentence does not challenge this Court's ruling holding that the judgment was entered in 2015, not 2012, with any particularity, discussion, supporting argument, or supporting authority. See Rule 221(a), SCACR (rehearing petition "*shall* state *with particularity* the points supposed to have been overlooked or misapprehended by the court." (emphasis added)); *see also Englert, Inc. v. Netherlands Ins. Co.*, 433 S.E.2d 871, 873 (S.C. App. 1993) ("one-sentence argument is too conclusory to present any issue on appeal."); *accord First Sav. Bank v. McLean*, 444 S.E.2d 513, 514 (S.C. 1994) (mere assertion of error with no supporting argument or authority is an abandonment of the issue), and *In re Estate of Combis v. Combis*, 888 S.E.2d 1, 8 (S.C. App. 2023) (issue deemed abandoned and not considered on appeal if raised in short, conclusory statements without supporting authority) (citations omitted). Moreover, this Court correctly analyzed the language in the 2015 Judgment and § 15-35-810 to reach its holding, and the Respondents never challenge that analysis or holding.

II. The Respondents' grounds for rehearing have no merit.

The Respondents enumerate four (4) grounds for rehearing, but their fundamental argument is that this Court reversed the trial court on a ground not raised by the Appellant. (Rhg. Pet. at 1, opening par.)[2] This argument fails for two basic reasons. First, as noted above, this Court reversed the trial court on the controlling merits issue of when the judgment was enrolled, 2012 or 2015. It is indisputable that this issue was properly before and therefore properly reached by this Court. This Court correctly held that the judgment was enrolled in 2015 and therefore correctly reversed the Master's ruling that the judgment was enrolled in 2012. The Respondents never challenge this Court's analysis of the language in the 2015 Judgment and § 15-35-810 to reach its holding on this controlling merits issue, thereby making it the law of this case and mooting all of the Respondents' rehearing arguments. Second, this Court did not reverse on a ground not raised to it, and the Respondents' rehearing arguments have no merit.

In Grounds 1, 3, and 4, the Respondents assert that this Court reversed the trial court on a ground not raised to it, thereby exceeding the power granted by Rule 220(b) and 220(c), SCACR. (Rhg. Pet. at 1, 2). That is not what this Court did. Rather, this Court reversed the trial court on the basis that the judgment was enrolled in 2015 not 2012, a ruling that is correct and is the law of this case that moots the Respondents' rehearing arguments. (See Arg. I, *supra*).

The Respondents apparently read this Court's opinion as reversing the trial court based on an estoppel theory that, because the Respondents did not file a 59(e) motion in response to the 2015 Deficiency Judgment, they were estopped from later arguing that the 10-year life of the judgment began with the 2012 Foreclosure Decree. (Rhg. Pet. at 1). That is not what this Court

[2] The page numbering system used in the Petition for Rehearing does not assign a page number to the caption page and, therefore, numbers the second sheet of paper in the Petition as "Page 1 of 2." This Return follows this system is citing to the Petition.

said. Rather, this Court noted that, if the Respondents had some concern about the delay in entering the Deficiency Judgment, they could have raised those concerns in a 59(e) motion. (Op. at 2). This Court did not rule that the Respondents were estopped from arguing that the 10-year life of the judgment commenced with the filing of the 2012 Decree.

In Ground 3, the Respondents further argue that they could not have filed a 59(e) motion in response to the 2015 Judgment, because doing so would violate the rule that "[o]ne cannot raise matters in a motion under Rule 59 which had not been previously presented to the Court." (Rhg. Pet. at 2). This is an incomplete statement of the rule, which actually states in full: "A party cannot raise an issue for the first time in a Rule 59(e), SCRCP motion *which could have been raised at trial*." *Mailsource, LLC v. M.A. Bailey Assocs.*, 588 S.E.2d 639, 641 (S.C. App. 2003) (emphasis added) (citations omitted). Here, as the Respondents note, the 2015 Deficiency Judgment was entered without a hearing.[3] Thus, any issue about any delay in entering the Deficiency Judgment "could [not] have been raised" prior to the entry of that judgment. *Id.* Accordingly, the Respondents properly could have filed a 59(e) motion to raise any concerns about any delay in entering Deficiency Judgment, but they did not. Therefore, the Respondents' Ground "3" has no merit.[4]

In Ground 2, the Respondents challenge this Court's citation of *Flexon v. PCH-Jasper, Inc.*, 776 S.E.2d 397 (S.C. App. 2015), a case that applied the law of the case doctrine in a

[3] Entering a deficiency judgment without a hearing is standard foreclosure practice. Moreover, the 2012 Foreclosure Decree specifically noted that if a deficiency remained after the foreclosure sale, a Deficiency Judgment would be "entered without further notice or hearing." (R. 24. ¶ 8).

[4] In a single sentence, without any discussion or citation of authority, the Respondents summarily assert the following: "Moreover, the question of when the judgment had expired was not ripe for consideration until July 23, 2022." (Rhg. Pet. at 2). This conclusory statement is insufficient to present any issue for review. See authorities cited in n.1, *supra*. In any event, even if the issue was not "ripe" until July 2022, it was adjudicated in this action after that date in the August 2022 hearing that resulted in the appealed October 2022 order. This Court correctly reversed the Master on the merits of the controlling "date of enrollment" issue and, as noted earlier, the Respondents do not challenge this ruling, thereby making it the law of this case that moots all rehearing arguments made in the Respondents' Petition for Rehearing. (See Arg. I, *supra*).

"subsequent appeal" scenario. The Respondents correctly note that this case does not involve a subsequent appeal. As argued by the Appellants, however, the Respondents' failure to appeal or otherwise challenge the 2015 Deficiency Judgment made the rulings therein the law of this case, including the ruling repeatedly emphasized by this Court: "It is now proper for this amount to be entered as a monetary judgment." (See App. Br. 4 and Reply Br. 6; see also Op. at 2, 3). As the Appellants read this Court's opinion, the citation to *Flexon* was a correct ruling that the 2015 Judgment was the law of this case, not because it was not the subject of a 59(e) motion, but because the Respondents did not appeal or otherwise challenge the rulings in the 2015 Judgment.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the Appellant's Brief of Appellant and Reply Brief, which are incorporated herein, this Court should deny the Petition for Rehearing.

Respectfully Submitted,

/s/ Robert L. Widener

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CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of Burr & Forman LLP certify that I have served the *APPELLANT'S RETURN TO MOTION TO RESPONDENTS' PETITION FOR REHEARING* on counsel for the Respondents via email at the email addresses listed below, on November 10, 2023:

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VIA EMAIL (ctappfilings@sccourts.org)

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Re: Capital Bank, N.A. v. Rosewood Holdings, LLC and D. Christopher Twitty
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Dear Madam Clerk:

Attached for filing, please find the Appellant's Return to Respondents' Petition for Rehearing, as requested by this Court on November 2, 2023. Counsel for the Respondents are being served by copy of this email, and by U.S. Mail.

Thank you for your assistance in this matter.

Sincerely,

Burr & Forman LLP

Robert L. Widener

Robert Widener
Partner

RLW/as
Attachments

cc: Spencer Andrew Syrett
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