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Dec 29 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeals Case No. 2023-000044

The Hon. Teasa K. Weaver
York County Master in Equity
Trial Court Case No. 2019-CP-46-01766

Aracely Sanchez, Respondent,
v.
Vanessa M. Sumpter, Appellant,

IN RE:
Pennington Place Home Owners Association of York, Inc., Plaintiff
v.
Vanessa M. Sumpter, Appellant

APPELLANT REPLY TO MOTION TO DISMISS
BY RESPONDENT

Appellant here replies to the Respondent's Second Motion to Dismiss and asserts the following by memorandum in requesting the Court of Appeals Deny the Second Motion to Dismiss the Appeal in its Entirety.

Respectfully Submitted,

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December 29, 2023
Barnwell, South Carolina

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MEMORANDUM OPPOSING SECOND MOTION
TO DISMISS BY RESPONDENT

Respondent counsel firstfiled a Motion to Dismiss on _____, denied by this court. Respondent now files a Second Motion to Dismiss the Entire Appeal on December 12, 2023. By this motion Respondent Counsel cites “*The only transcript which is relevant to this appeal is the transcript of of the hearing held on October 13, 2022.*” While Appellant counsel respectfully disagrees, Appellant counsel has previously advised the court that no recoverable¹ transcript of the October 13 2022 oral argument exists due to no fault of the Appellant or Respondent. Provided, however, what does exist within the proposed Designation of Matter is the Respondent’s July 27, 2022 filed Petition for Writ of Assistance to the Master in Equity. Also existing is the Master in Equity Court’s Order and Rule to Show Cause (7/26/2022) and Final Order dated August 17, 2022.

¹ Appellant counsel would concede that he did not request a court reporter for the October 13, 2023 hearing and acknowledge Subject Matter jurisdiction was not raised at the October 13, 2021 hearing argument.

All the above issue during Moratorium Order of the Hon. Donald W. Beatty and the Supreme Court arising during the infamous Pandemic.

To be clear, the October 13, 2022 hearing arguments were on the Writ of Assistance prayed for by Sanchez and court filings, which culminated in a Final Order by the Master to Eject Vanessa M. Sumpter from her residence. Respondent seeks disposition of this case on technicality and non-prejudicial procedural grounds vs. the case being decided on the merits.

1. Appellant Designation of Matter:

While Appellant counsel respectfully disagrees with the position of Respondent counsel that prior transcripts of record are irrelevant, this matter could easily be dealt with by communication between the attorneys and/or by motions before this court if and where necessary. Without arguing the case merits here, the transcripts evidence Surplus issued to a second mortgage lender Family Trust Federal Credit Union, a lien holder not named in the initial pleadings. Appellant deems the Transcripts from October 3, 2019 (Foreclosure) and February 18, 2020 (Surplus hearing) as relevant, but is willing to discuss amendment with opposing counsel of the Designation of Matter and Appellant Initial Brief. Appellant acknowledges Sumpter took no appeal of the two referenced Orders.

The above referenced Orders, nonetheless, evidence the court proceeding in the face of notice of liens under which Sumpter alleges she continued to hold beneficial and possessory use of the subject property irrespective of Title under Court Order for the property issued to Sanchez. Sanchez takes title to the property subject to the liens of Wachovia Bank First Mortgage, and second mortgage lien of Family Trust Federal Credit Union.

Respondent has not Designated Matter for inclusion within the Record on Appeal, nor responded by Initial Brief pursuant to this court's last Order. The Second Motion to Dismiss the

Appeal in its entirety is No different from the first Motion to Dismiss. It improperly seeks this court issue a dispositive decision not on the merits, but rather on procedural and technicality grounds.

2. Availability of Final Order.

As cited above, irrespective of no transcript existing for the October 13, 2021 hearing what does exist in fact as very relevant is (a) Respondent's Petition for Writ of Assistance filed during moratorium; and (b) a Final Order of the Master in Equity Court issuing Writ of Assistance and Ejecting Sumpter from the subject property 3025 Rocket Road. If Respondent counsel seeks to cast blame for Sumpter's attorney not requesting a court reporter, equal blame is attributable to Sanchez' counsel in preparation and filing what Appellant claims was a legal nullity in violation of the Supreme Court's Certification Order. This court should deny the motion and require Respondent's reply position pertaining to whether the Petition was or was not a legal nullity at the date it filed and whether, therefore, the Master in Equity had proper Subject Matter Jurisdiction.

Again, counsel for Appellant has no objection to any extension sought by Respondent counsel to properly respond whereby the case can be disposed of on the merits vs. disposed of upon procedural or technicality.

CONCLUSION

Appellant therefore prays that the Court of Appeals deny the Second Motion to Dismiss Appeal in its Entirety and grant any further relief or extension to Respondent Counsel for Response deemed appropriate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE
MEMORANDUM OPPOSING SECOND MOTION
TO DISMISS

Counsel for Appellant hereby Certifies that a cop of the foregoing Appellant Response to Motion to Dismiss Appeal in its Entirety was provided by electronic filing, e-mail, and U.S. Mail postage prepaid this 29th day of December, 2023 as follows:

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Respectfully Submitted,

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