The South Carolina Court of Appeals

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.

Appellate Case No. 2022-001597

12/14/2023
1/13/2024 (SAT) →
JAN 15, 2024

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____________ C.J.

_____________ J.

_____________ J.

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FILED
Dec 14 2023

Columbia, South Carolina

cc:
Robert L. Widener, Esquire
Weyman C. Carter, Esquire
Ben N. Miller, III, Esquire
Ian Douglas McVey, Esquire
Spencer Andrew Syrett, Esquire

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Unpublished Opinion No. 2023-UP-315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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PETITION

The Respondents petition the Court to reconsider it 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 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 al 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), SCRCP.

   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.

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October 5 , 2023

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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.

Appellate Case No. 2022-001597

Appeal From Richland County
Joseph M. Strickland, Circuit Court Judge

Unpublished Opinion No. 2023-UP-315
Submitted September 13, 2023 – Filed September 20, 2023

REVERSED

Ben N. Miller, III, of McDonald, McKenzie, Rubin, Miller & Lybrand, LLP, of Columbia; Weyman C. Carter, of Burr & Forman LLP, of Greenville; and Robert

L. Widener, of Burr & Forman LLP, of Columbia, all for Appellant.

Ian Douglas McVey, of Turner Padget Graham & Laney, PA; and Spencer Andrew Syrett, both of Columbia, for Respondent Rosewood Holdings, LLC.

Spencer Andrew Syrett, of Columbia, for Respondent D. Christopher Twitty.

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PER CURIAM: Capital Bank, N.A. (Capital Bank) appeals the master-in-equity's order finding the effective date of the judgment against Rosewood Holdings, LLC and D. Christopher Twitty (Respondents) was July 23, 2012, and thus the lien of judgment expired July 23, 2022. On appeal, Capital Bank argues the master erred by ruling the judgment had expired. We reverse pursuant to Rule 220(b), SCACR.

On July 23, 2012, the master filed its order of foreclosure and sale, which determined the total debt due to Capital Bank and ordered the mortgaged premises described in the complaint be sold at public auction. The order also acknowledged that a personal and deficiency judgment had been demanded; thus, the sale would remain open for thirty days and "if the proceeds of sale are insufficient to pay the amounts hereinbefore authorized to be paid out of said proceeds, [Capital Bank] shall have a judgment for such deficiency against [Respondents] . . . and such judgment will be entered without further notice or hearing." However, the portion of the Form 4 that would instruct the Clerk of Court to enroll a judgment was left blank. The property was sold on August 6, 2012, bidding closed on September 5, 2012, and the master's report on sale was filed on January 10, 2013. On July 23, 2015, the master filed an order for deficiency judgment. The order stated, "It is now proper for this amount to be entered as a monetary judgment" and ordered "the Clerk of Court amend the Form 4 previously filed in this action to reflect this monetary judgment."

Capital Bank later initiated post-judgment collection activities. Subsequently, Capital Bank filed a motion for an order in aid of supplemental proceedings, seeking a determination from the master that the judgment previously entered against Respondents was and remained a judgment with "active energy." On October 14, 2022, the master found the effective date of the judgment was July 23, 2012, and thus the lien of judgment expired on July 23, 2022.

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. If the parties took issue with the delay in enrollment of the judgment, their remedy at the time would have been to file a Rule 59(e), SCRCP, bringing their concerns to the court's attention. *See Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 571, 776 S.E.2d 397, 403 (Ct. App. 2015) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." (quoting *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009))); 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." (emphasis added)).

REVERSED.[1]

WILLIAMS, C.J., and HEWITT and VERDIN, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.