

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

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

APR 19 2023

SC Court of Appeals

CASE NO. 2022-001597

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

FINAL BRIEF OF RESPONDENTS

Spencer Andrew Syrett SC BAR 5459
P.O. Box 7403
Columbia, SC 29202
803-765-2110
Attorney for Respondents

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TABLE OF AUTHORITIES

CASES

None cited

STATUTES

§15-35-180 2

§15-35-810 3

§29-3-630 2

§29-3-650 2

§29-3-660 2

COURT RULES

Rule 58, SCRCP 3

STATEMENT OF ISSUE ON APPEAL

1. The Foreclosure Decree was not a personal money judgment against either borrower and there was not personal money judgment against Borrowers until the entry of the Deficiency Judgment, so the money judgment did not expire until ten years after the entry of the Deficiency Judgment.
2. The Master erred in relying on equitable considerations to justify his refusal to apply the express terms of the statutes controlling the creation, entry and longevity of personal money judgments in foreclosure proceedings.

STATEMENT OF THE CASE

The Respondents accept Appellant's statement of the case.

STANDARD OF REVIEW

The Respondents agree with Appellant on the standard of review.

ARGUMENT

1. The Foreclosure Decree was not a personal money judgment against either borrower and there was not personal money judgment against Borrowers until the entry of the Deficiency Judgment, so the money judgment did not expire until ten years after the entry of the Deficiency Judgment.

The Court issued its Judgment and Order of Foreclosure and Sale (the "Foreclosure Decree", which was introduced into the record at the hearing) on July 23, 2012. This judgment determined the amount of the "Total Debt" owed by the Defendants Rosewood Holdings, LLC and D. Christopher Twitty and directed the judicial sale of the mortgaged property, but although the text of the foreclosure decree did not direct the entry of a money judgment against any Defendant, it clearly established the obligation of the Borrowers. The section of the Form 4 under the heading "Information for the Public Index", on which the parties against whom a judgment would be entered, and specifying the dollar amount of the money judgment, was left blank.

Assuming the Appellant's position correct, then it should have made clear in the Judgment of Foreclosure that no personal money judgment was being sought at the time. The Order simply did not make that clear.

The foreclosure order found the amount of the debt, ordered the Defendants to pay it and ordered the property sold if they failed to do so. The foreclosure order has all the indicia of a money judgment except for the "magic words" on whose omission, the Appellant relies. §15-35-180, §29-3-630.

The trial court, finding that the two statutes were enacted simultaneously tried to make them harmonious and achieve a just and equitable result. Had the Appellant delayed the entry of the judgment a few months rather than years, it is likely that its position would have been accepted by the Court.

The Respondents believe that the term "may" in both statutes (§29-3-650 and §29-3-660) did not intend to create two alternative means of dealing with a foreclosure. The term used by the legislature simply empowered the Court to so act (and to prevent any argument that the Court was without that power) rather giving the Court an alternative to act or not act as to entering a judgment.

If the statutes are interpreted as urged by the Appellants, no judgment would be enrolled unless and until the Mortgagee elected to act. As argued below, that is an absurd result.

2. The Master erred in relying on equitable considerations to justify his refusal to apply the express terms of the statutes controlling the creation, entry and longevity of personal money judgments in foreclosure proceedings.

Assuming that Appellant is correct in its analysis of the two statutes, the Court was correct in applying equitable principles to the statutes.

Foreclosure is an equitable cause of action. Equity requires that he seeks equity must do equity.

Appellant is correct in stating that there was no reason given for the three year delay. The burden of explaining the delay was on the Appellant and it offered none. The only reason in the record is found in the letter of Mr. Miller to the Court. He stated that the

Appellant was waiting for the report of the Receiver. (Rec. p. 78) That report was never filed. This reason is simply not sufficient to justify the delay.

Certainly the amount of the deficiency was known when the bid period closed 30 days after original sales date. If the Receiver had recovered anything, that amount could have been credited against the judgment by a separate filing. The fact that no receiver's report was ever filed is an indication that the receiver recovered nothing.

Appellant argues that under Rule 58, SCRPC, the entry of a judgment is solely within the control of the Court and the Clerk. This argument ignores the reality of how cases are processed in our court system. The Plaintiff in a foreclosure is the primary driver of the progress of the case. The Court relies on the Plaintiff to submit all of the documents which move the case forward. When the Plaintiff submits a document, the Court and Clerk act. They rarely act in the absence of a submission from the Plaintiff.

Rule 58 requires a judgment to be entered "forthwith" and "promptly." Waiting three years to enter the judgment is neither.

Although the Appellant states that:

"Borrowers had the absolute right to seek an earlier entry of the deficiency judgment or object to the entry of the deficiency judgment if they believed that the judgment should have been entered earlier to protect their interests."

Appellant has not, however, cited any authority for this proposition nor is there any. In view of the fact that the subsequent order was issued without a hearing or notice to the borrowers prior to its entry, Borrowers were hardly in a position to seek the entry of a judgment earlier than it was entered.

If the Plaintiff's interpretation of the statutes is correct, what would prevent a party foreclosing a mortgage and seeking a deficiency judgment to wait five, ten, twenty years or more before entering the deficiency judgment?

§15-35-810 clearly provides a ten year period for a judgment. This a clear statement of public policy. No creditor should be permitted to extend this period by any means.

The interpretation of a statute should not ever lead to an absurd result.

ADDITIONAL SUSTAINING GROUND

Paragraph 4 of the instructions for Form 4C (Rec. pp. 76-77) provides as follows:

If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

Paragraph 10 provides

When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure action specifically requires the entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

Paragraph 12 states:

Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended.

The Appellant should have entered N/A somewhere on Form 4(c). The form, however, was left completely blank. This would necessarily create an ambiguity and doubt as to the intention of the Plaintiff.

If the Plaintiff were not seeking immediate entry of a money judgment, it ought to have made its intentions clear both in the judgment of foreclosure and on Form 4(c). It failed to do so.

CONCLUSION

Just how long should a party suffering a foreclosure in which a deficiency judgment is sought have to live with this burden? If the term of ten years is to have any meaning, it should run not later than the date that the deficiency amount becomes known and not from the date the foreclosing party decides to file its deficiency judgment.

The Order of the Judge Strickland should be affirmed.



s/Spencer Andrew Syrett

Spencer Andrew Syrett SC BAR 5459
Attorney for the Respondents
712 Richland Street Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
FAX 803-765-9950

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with the requirements
of Rule 211(b), South Carolina Appellate Court Rules.


s/Spencer Andrew Syrett
Spencer Andrew Syrett SC BAR 05459
P.O. Box 7403
Columbia, SC 29202
803-765-2110
syrettlaw@sc.rr.com
Attorney for Respondents

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