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**Jan 18 2024**

**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, Master-in-Equity

Case No. 2023-001054

Wells Fargo Bank, National Association, not in its individual banking capacity,  
but solely as Trustee on behalf of Green Tree Mortgage Trust 2005-  
HE1.....Respondent,

vs.

James E. Turner, a/k/a James Turner, Sr.....Appellant

**PETITION FOR REHEARING and PETITION  
FOR HEARING ENBANC OF  
APPELLANT’S SECOND  
PETITION FOR WRIT OF SUPERSEDEAS**

**NOW COMES APPELLANT**, James E. Turner, Sr., by and through the undersigned attorney, petitioning the Honorable John D. Geathers to reconsider his January 6, 2024, order and if such reconsideration is denied, Appellant then petitions pursuant *Rules 241(d)(2), SCACR*, for an *en banc* review of the Order issued by Judge Geathers on January 16, 2024 [hereinafter referred to as the “Order Lifting Stay”]. The grounds for this Petition are as follows:

1. Judge Geathers cited the following portion *S.C. Code Ann. § 18-9-170* in the Order Lifting Stay: “if the judgment appealed from direct[s] the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless” the appellant executes in writing, with two sureties, guaranteeing the property will not be wasted while the appeal is pending. Based on this statutory requirement, Judge Geathers then concluded that the undertaking filed by Appellant was insufficient.
2. The trial judge in this case granted the Appellant’s motion in open court, allowing the Appellant to proceed solely on the undertaking of one surety in the ordered, thereby, deviating from the “two sureties” requirement of *S.C. Code Ann. § 18-9-170*. The setting of the amount of the appeal bond with one surety was in the trial judge’s sole discretion. *See, United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 108, 413 S.E.2d 866, 870 (Ct. App. 1992) (holding the amount of an appeal bond is a matter committed to the sound discretion of the trial court).
3. Section 18-9-170 says the following:

SECTION 18-9-170. Staying judgment for sale or delivery of land.

If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking. When the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall

provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency, which sum shall be duly entered as a payment on the judgment; and in case the land shall be unimproved land, then in any action or proceedings now pending or hereafter begun in any of the courts of this State the undertaking shall further provide for the payment by appellant, if the judgment be affirmed, of any taxes due at the time of the appeal or already paid by the mortgagee, or becoming due during the pendency of the appeal, and also for the payment by appellant of the interest on the debt falling due during the pendency of such appeal.

4. The undertaking as submitted by the Appellant substantially follows the language as quoted above. Therefore, except for having two sureties, which was not required by the trial court's order from the bench, Appellant's undertaking substantially complies with the statute, and it is thus sufficient.
5. Therefore, Appellant requests Judge Geathers to reconsider his holding in light of the Appellant's assertion that he was only required to have one surety.
6. Alternatively, Appellant requests that the full court consider the merits of Appellant's Second Petition of Writ of Supersedeas that has been decided by a single judge. Such procedural request is proper under *Rule 241(d)(2), SCACR*.

**WHEREFORE**, the Appellant seeks the following relief:

- a. An order from Judge Geathers reconsidering his lifting of the stay.
- b. An immediate order preventing his Property from being sold on January 4, 2024, and for a stay of the proceedings on terms that are just and proper.

- c. For a Writ of Supersedeas to stay the enforcement of Judgment of Foreclosure of Sale that was entered by the Honorable Joseph M. Strickland on June 15, 2023.
  
- d. For such further relief this Court deems just and proper.

January 18, 2024

At Orangeburg, SC

/s/ Glenn Walters, Sr., Esquire  
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Attorney for Appellant

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**PROOF OF SERVICE**

I, Glenn Walters, Sr., certify that I have served the **PETITION FOR REHEARING and PETITION FOR HEARING ENBANC OF APPELLANT’S SECOND PETITION FOR WRIT OF SUPERSEDEAS** on Respondent Wells Fargo Bank, National Association, and Judge Strickland, by depositing a copy of it in the United States Mail, postage prepaid, January 18, 2024, addressed to its attorneys of record as follows: **Lindsay B. Crawford, III, Esquire, PO Box 4216, Columbia SC 29240** and **The Honorable Judge Joseph M. Strickland Richland County Judicial Center, 1701 Main Street, Room 212, Columbia, SC 29201**

At Orangeburg, SC

January 18, 2024

/s/ Glenn Walters, Sr.  
Glenn Walters, Sr.  
Attorney for Appellant