

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

69297

The Honorable William H. Seals, Jr.

Appellate Case No. 2012-213439

TD Bank, N.A., successor by merger to Carolina First
Bank

Respondent-Appellant,

v.

Grande Crescent Corporation, Larry D. Silver, and
Edward O. Minniear, Jr.,

Appellants-Respondents.

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SC COURT OF APPEALS

JOINT MOTION FOR CONTINUED STAY OF APPEAL

I. Introduction

Respondent-Appellant TD Bank, National Association, successor by merger to Carolina First Bank and Appellants-Respondents Grande Crescent Corporation, Larry D. Silver, and Edward O. Minniear, Jr., hereby jointly move for a continued stay of this appeal, including the deadline for filing initial briefs and designations of matter, for an additional period of 30 days up to and including September 6, 2013.

II. Prior Stay and Recent Negotiating History

TD Bank commenced this action to foreclose on certain real property pledged as collateral for a loan to Grande Crescent, and to collect personal guarantees signed by Mr. Silver and Mr. Minniear. The Grande Crescent parties counterclaimed, alleging TD Bank had breached

certain duties to facilitate sale of the collateral. This is an interlocutory appeal of certain issues addressed in an order by the Circuit Court.

Because of the nature of the dispute, a sale of the collateral property to a third party at an acceptable price would enable the parties to settle. Indeed, on May 1, 2013, the parties filed a joint motion requesting 90-day stay of this appeal to allow the parties to pursue a possible sale of the collateral real property underlying portions of the dispute. The parties informed the Court that they had reached a settlement agreement in principle that would resolve the case, if and only if a sale similar to the one proposed were concluded.

By order dated May 3, 2013, the Court granted the motion to stay and directed the parties to provide updates to the Court at 30-day intervals, which the parties have done.

On May 29, 2013, Appellant/Respondent Grande Crescent and the third-party purchaser entered into a written agreement for sale of the collateral property. That agreement provided for a 45-day due diligence period, it and gave the purchaser the right to terminate the agreement at any time during the due diligence period. On or about July 9, 2013, that purchaser exercised its right to terminate.

While this termination was unfortunate, other potential purchasers almost immediately expressed an interest in the property. At the time of this writing, Grande Crescent has received a Letter of Intent from another potential purchaser, making an offer to purchase the property. The new offer for the property is for less than the previous offer, and the parties are still negotiating to determine whether they can reach a settlement at this lower amount. However, counsel are comfortable in representing to the Court that there is a reasonable prospect that the parties could reach a settlement that would arise out of this sale.

In candor to the Court, we would again emphasize that standard commercial real estate terms would give any new buyer a certain period of time to perform due diligence and to terminate any contract, as has just occurred. However, given the recent interest in this property and the general uptick in economic activity, both parties believe it would be the best course to further stay this appeal to allow the parties to explore sale of the property and a possible settlement.

Counsel for both parties are mindful of the Court's time, and we would not suggest further stays without a good faith belief that this is the best course forward. While there is some uncertainty about whether the parties can achieve a resolution, one seems within reach, and we believe that pursuing that is a better use of the time and energy of the parties and this Court, when compared to restarting the appeals process.

III. Requested Relief

Accordingly, the parties respectfully submit this joint motion to extend the stay of appeal until September 6, 2013. We believe this is a reasonable time to allow the parties to pursue the pending offer to purchase the property and to try to reach a settlement agreement arising out of any such agreement.

If such an agreement were reached, the parties would at that point seek additional time from the Court (probably on the order of 90 days) for due diligence by the selected purchaser and closing. However, we would expect to seek that additional time only if there is a clear path forward to sale of the property and settlement at that point. Needless to say, we would of course provide periodic updates to the Court if and as directed.

If we can provide any further information to the Court in connection with this motion, we would be happy to do so.

July 30, 2013

Respectfully submitted,

Keith Babcock (by permission of JS)

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AFFIDAVIT OF SERVICE

This is to certify that Lynda T. Romanstine, an employee of the firm of Wyche, P.A., Attorneys
for Respondent-Appellant, did cause this day copies of the within Joint Motion for Continued
Stay of Appeal to be served upon opposing counsel, by mailing copies of same, postage prepaid
to the following addresses:

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Lynda T. Romanstine
Lynda T. Romanstine

SWORN to before me this
30th day of July, 2013.

Joanne Marble
Notary Public for South Carolina
My Commission Expires: Jan 16, 2018

W Y C H E

Attorneys at Law

July 30, 2013

Via U. S. Mail

Jenny Abbott Kitchings
1015 Sumter Street
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Re: *TD Bank, N.A., successor-by-merger to Carolina First Bank v. Grande Crescent Corporation; Larry D. Silver; Edward O. Minniear, Jr.*
Appellate Case No: 2012-213439

Dear Ms. Kitchings:

Please find enclosed for filing the Joint Motion for Continued Stay of Appeal with regard to the above-referenced matter. We would appreciate it if you would return a file-stamped copy to us in the envelope provided.

Thank you.

Sincerely,

Lynda Romanstine

Lynda T. Romanstine
Litigation Paralegal

Enclosures

cc: Keith M. Babcock
Michael W. Tighe
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