

RECEIVED

Feb 20 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Joseph M. Strickland, Master-in-Equity

Supreme Court Appellate Case No. 2024-000067
Court of Appeals Unpublished Opinion No. 2023-UP-315
Court of Appeals Appellate Case No. 2022-001597
Court of Common Pleas Case No. 2011-CP-40-02052

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,.....Respondent,

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 Petitioners.

RESPONDENT’S MOTION TO EXPEDITE CONSIDERATION OF PETITIONERS’
PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

Respondent respectfully requests this Court to expedite its consideration of Petitioners’
Petition for a Writ of Certiorari. Petitioners filed their Petition on January 16, 2024. Respondent
filed its Return on February 6. Petitioners filed their Reply on February 16. A fundamental reason
for denying certiorari is Petitioners’ failure to challenge the Court of Appeals’ ruling on the merits
in their Rehearing Petition before the Court of Appeals, and their failure to do so in the Certiorari
Petition before this Court. Each of these failures, standing alone, warrants a summary denial of
certiorari. For this reason, and for the other reasons set forth below, Respondent respectfully
requests that this Court expedite its consideration of the Certiorari Petition and deny it.

FACTUAL AND PROCEDURAL BACKGROUND

A. Introduction

This is an action to collect a deficiency judgment issued after a foreclosure sale in a commercial mortgage foreclosure action. The fundamental question is when was the judgment entered such that its ten-year “life” commenced under S.C. Code Ann. § 15-35-810 (2005). The Master held that the ten-year period commenced upon the entry of his “Master’s Report and Judgment of Foreclosure and Sale” (Foreclosure Decree) on July 23, 2012. The Court of Appeals reversed, holding that the ten-year period commenced upon the Master’s entry of his “Order of Deficiency Judgment” (Deficiency Judgment) on July 23, 2015, after the Master’s sale of the mortgaged property, which produced the deficiency that resulted in the Deficiency Judgment. Under the Court of Appeals’ ruling, Respondent has until July 23, 2025, to enforce the Deficiency Judgment against Petitioners. To protect this right against becoming moot, and to provide sufficient time after remand for the completion of the collection proceedings, Respondent respectfully requests that this Court expedite consideration of the Certiorari Petition and deny it.

B. Background Facts

Respondent (Lender) made two loans to Petitioners (Borrowers). Lender loaned Borrower Rosewood Holdings \$1.65 Million Dollars in October 2006, taking back a note and a first-lien, purchase money mortgage from Borrower Rosewood on its commercial property (the Property), together with a personal guarantee from Borrower Twitty. (R. 18, ¶¶ 8-10). In November 2007, Lender loaned Borrower Twitty \$203,291.00, taking back a note from Borrower Twitty and a second mortgage from Borrower Rosewood on the Property. (Id. at 20, ¶¶ 20-23). Borrowers failed to make the required payments. (Id. at 19 and 21, ¶¶ 18 & 28). Lender sued Borrowers in March 2011, seeking foreclosure of both mortgages and judgment for any deficiency. (See id. at 24, ¶6).

The Master entered his Foreclosure Decree on July 23, 2012, finding that the “total debt” was \$2,260,437.28 plus interest and ordering that the Property be sold at public auction with the Lender to have a judgment against Borrowers for any deficiency remaining after the sale. (R. 21-22, ¶¶ 30-31; 23-24, ¶¶ 2-4, 8). The Master sold the Property in August 2012, leaving a deficiency of more than \$1.8 Million Dollars. (R. 1). The Master issued his Report on Sale in January 2013 and thereafter entered his Deficiency Judgment of \$1,887,190.18 on July 23, 2015, finding that “[i]t is now proper for this amount to be entered as a monetary judgment.” (R. 8). Neither party appealed the Foreclosure Decree or the Deficiency Judgment, so the findings and rulings therein became the law of the case.

During the course of supplemental proceedings in August 2022 to collect the Deficiency Judgment, Borrowers asserted that the money judgment against them expired on July 23, 2022, ten years after the entry of the Foreclosure Decree. Lender asserted that the money judgment did not expire until July 23, 2025, ten years after the entry of Deficiency Judgment. The Master agreed with Borrowers and held that the money judgment expired on July 23, 2022. Lender appealed. The Court of Appeals agreed with Lender and reversed the Master, holding that the ten-year “life” of the judgment commenced upon the filing of the Deficiency Judgment in July 2015, *i.e.*, that the judgment would not expire until July 23, 2025.

The Court of Appeals issued its unpublished opinion on September 20, 2023. Borrowers filed a Petition for Rehearing on October 5, 2023. The Court of Appeals requested a Return to the Petition on November 2, 2023, and Lender filed its Return on November 13, 2023. Borrowers did not file a Reply in support of the Petition. The Court of Appeals denied rehearing on December 14, 2023. Borrowers filed their Certiorari Petition in this Court on January 16, 2024. Lender filed its Return on February 6, 2024. Borrowers’ filed their Reply on February 16, 2024.

ARGUMENT

Upon the entry of a money judgment, a ten-year period commences during which the creditor may enforce the judgment. S.C. Code Ann. § 15-35-810 (2005); see also S.C. Code Ann. §§ 15-39-20 and 15-39-30 (2005). Courts strictly enforce the exact terms of these “judgment” statutes. For example, the judgment expires and becomes unenforceable at the end of the 10-year period, even if the creditor commenced collection proceedings within the 10-year period but did not obtain a judgment within that 10-year period, and despite there being compelling facts making this result inequitable. *Gordon v. Lancaster*, 823 S.E.2d 173, 175 & 176 (S.C. 2018), *rev’g* 795 S.E.2d 857 (S.C. App. 2016) and *overruling Linda Mc Co. v. Shore*, 703 S.E.2d 499 (S.C. 2010).

Under the Court of Appeals’ ruling, Lender must *complete* its collection action within the next 18 months, on or before July 23, 2025, but Lender cannot recommence its action until after the current certiorari proceedings in this Court and the issuance of the remittitur to the lower court. Given the customary timelines for certiorari proceedings, particularly if certiorari is granted, there is a substantial danger that Lender will not be able to complete the collection action after a remand from a successful result in this Court. Accordingly, Lender respectfully requests that this Court expedite its consideration of Borrowers’ Certiorari Petition.

Expediting the proceedings here will not be burdensome. The Court of Appeals’ opinion is only three pages long – Borrowers’ Certiorari Petition is only four substantive pages – Lender’s Return is ten substantive pages – Borrowers’ Reply is only one substantive page. As explained in Lender’s Certiorari Return, a fundamental reason for denying certiorari is that Borrowers’ failed to challenge the Court of Appeals’ ruling on the merits in their Rehearing Petition before the Court of Appeals, and they also fail to challenge it in the Certiorari Petition before this Court. Each of these failures, standing alone, warrants a summary denial of certiorari.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Court expedite its consideration of the Certiorari Petition and deny it.

Respectfully Submitted,

/s/ Robert L. Widener

Robert L. Widener, SC Bar #6089
BURR & FORMAN, LLP
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Weyman C. Carter, SC Bar #15255
BURR & FORMAN, LLP
Post Office Box 447
Greenville, South Carolina 29601
(864) 271-4940

Ben N. Miller, III, SC Bar # 3977
MCKENZIE LYBRAND, LLP
Post Office Box 58
Columbia, South Carolina 29202
(803) 384-3230

February 19, 2024
Columbia, SC

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Joseph M. Strickland, Circuit Court Judge

Supreme Court Appellate Case No. 2024-000067
Court of Appeals Unpublished Opinion No. 2023-UP-315
Court of Appeals Appellate Case No. 2022-001597
Court of Common Pleas Case No. 2011-CP-40-02052

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,.....Respondent,

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 Petitioners.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of Burr & Forman LLP certify that I have served the *RESPONDENT'S MOTION TO EXPEDITE CONSIDERATION OF PETITIONERS' PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS* on counsel for the Petitioners via email and U.S. Mail at the addresses listed below, on February 19, 2024:

Spencer Andrew Syrett
Post Office Box 7403
Columbia, SC 29202
syrettlaw@sc.rr.com

Ian D. McVey
Turner Padgett Graham & Laney, P.A.
1901 Main Street, 17th Floor
Columbia, SC 29201
imevey@turnerpadgett.com

Columbia, SC


Ann Shuler