

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

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FEB 26 2024

S.C. SUPREME COURT

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

S.C. COURT OF APPEALS
Unpublished Opinion No. 2023-UP-315

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SC 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 South Carolina,

Appellant,

V.

Rosewood Holdings, LLC, D. Christopher Twitty, and
First Citizens Bank and Trust Company, Inc.

Respondents

Of Whom Rosewood Holdings, LLC and D. Christopher Twitty are the

Petitioners

**PETITIONER'S RETURN TO RESPONDENT'S
MOTION TO EXPEDITE CONSIDERATION OF
PETITIONERS' PETITION FOR A WRIT OF
CERTIORARI TO THE COURT OF APPEALS**

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RETURN TO RESPONDENT'S MOTION

Petitioners submit that there is no Appellate Court Rule which authorizes this Court to expedite the consideration of a Petition for a Writ of Certiorari. Respondent does not cite any authority for its Motion. Without a rule for guidance, however, there is no criteria against which this Court can measure the Respondent's request. Expediting an appeal should be an extraordinary remedy and should be granted only in the most extraordinary of cases (see, for example, Planned Parenthood South Atlantic v. South Carolina, Supreme Court Appellate Case No. 2023-000856)

HISTORY OF THE CASE

The sole reason that Respondent seeks an expedited review is that it fears that its judgment will expire before it can proceed on its collection efforts. The situation that the Respondent finds itself in is of its own creation.

First, Respondent has presented no compelling reason why the timing of consideration of the Petition should be preferred to those of litigants already in line and patiently waiting their turn to be heard.

Second, the record in the trial court shows long periods of time in which the Respondent took no action at all. This is a partial history:

July 23, 2012 Judgment entered finding amount of debt and ordering sale

August 6, 2012 Sale

January 11, 2013 Report on sale

Inaction for three years

July 23, 2015 Deficiency Judgment entered.

Inaction for three years

August 22, 2018 Execution issued

Inaction for a year

November 27, 2019 Service of discovery documents on Respondents

Inaction for almost three years

August 4, 2022 Referral to Master for supplemental proceedings

October 14, 2022 Order dismissing the proceedings

In the almost nine years since the issuance of the judgment the date of which the

Respondent relies, Respondent took no action for more than seven of those years.

Third, after the appeal to the Court of Appeals was filed, Respondent (Respondent is represented by one of the larger law firms in the state) asked for and received no less than five separate extensions of time to perfect its appeal. By contrast, the Petitioners (represented by a solo practitioner) have asked for none. If Respondent were so concerned that its time was going to run out, one would have thought that it would have found a way to avoid having to ask for even a single extension.

Fourth, Petitioners submit that the issue raised in this appeal is neither a matter of significant public interest nor a legal principal of major importance.

Deficiency foreclosures are but a tiny fraction of all mortgage foreclosures. The percentage of actions that are started with the seeking of a deficiency judgment but that actually result in a deficiency is a very small portion of those actions. A decision in this case will affect only a minuscule portion of the cases.

There is also no significant public interest being affected. Deficiency judgments usually affect only the parties involved. It is also significant that the only court order supporting Respondent's position is based on a single Order from the Greenville County Master in Equity which was issued more than ten years ago.

Finally, the Respondent never sought a supersedeas from the Master. The Respondent also never sought a supersedeas from the Court of Appeals. Finally, it does not now seek one from this Court.

Respondent has therefore, through its own inaction, created the sense of urgency for which it now seeks relief.

EQUITABLE PRINCIPLES

Enforcement of a judgment through supplemental proceeding is either an equitable remedy or in the nature of an equitable remedy. Equity aids the vigilant but does not reward those who sit on their rights.

The Respondent has failed to act diligently.

ERRONEOUS DESCRIPTION OF THE OPINION

The Respondent's description of the ruling of the Court of Appeals is erroneous. The holding of the Court is solely based on its finding that the Respondent failed to file a

Motion pursuant to Circuit Court Rule 59(e). Respondent has admitted that it did not argue this ground.

RESPONDENT'S PRIOR FAILED EFFORTS TO EXPEDITE THIS APPEAL

Upon initially filing this appeal, Respondent sought to have this Court certify the Appeal in an effort to bypass the Court of Appeals. This Court denied that motion.

The Respondent then sought an expedited appeal from the Court of Appeals. This Court denied that motion.

CONCLUSION

There is no compelling reason to grant the Respondent's request.

The motion for an expedited consideration should be denied and the Court should proceed to consider the Petition when it is reached in its regular docket order. If July 23, 2025, should happen to arrive before there is a final decision on the appeal, the appeal should be dismissed as moot.



s/Spencer Andrew Syrett

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PROOF OF SERVICE

I certify that I have served one copy of the Petitioner's Return to Respondent's Motion to Expedite Consideration of Petitioners' Petition for a Writ of Certiorari to the Court of Appeals on the Respondent by depositing it in the United States Mail, postage prepaid, on February 26, 2024, addressed to its attorney of record, .

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