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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Court of Appeals Unpublished Opinion No. 2023-UP-315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 REPLY TO RETURN TO MOTION TO EXPEDITE CONSIDERATION OF PETITIONERS' PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

Petitioners never assert they would suffer any prejudice from this Court granting the motion to expedite. In stark contrast, as Petitioners admit, the relief obtained by Respondent in its appeal to the Court of Appeals may become moot unless this Court grants the motion.

Petitioners' Return to Respondent's Motion to Expedite is a shotgun blast of summarily asserted points that do not rise to the level of any meritorious "argument." This Reply addresses those points in seriatim – none support denying Respondent's motion to expedite.

REPLY ARGUMENT

Petitioners open their Return by asserting this Court does not have authority to expedite its consideration of the Certiorari Petition. (Ret. at 2). Manifestly, this Court has inherent authority to control its docket and therefore has authority to grant the motion to expedite. Granting the motion helps preserve this Court's jurisdiction and protect the appellate relief granted by the Court of Appeals from becoming moot.

Petitioners assert there is no reason for "jumping" this case ahead of other cases pending in this Court. (Ret. at 2, "First, ..."). The reason is simple and not disputed by Petitioners – there is a danger that, absent expedited consideration of the Certiorari Petition, the relief granted to Respondent by the Court of Appeals could become moot.

Petitioners complain of inactivity during the ten-year life of the judgment under S.C. Code Ann. § 15-35-810 (2005). (Ret. at 2-3, "Second, ..."). There is no explanation for the inactivity in the record and, more importantly, Petitioners do not claim and there is no evidence that Respondent acted in any malicious or other wrongful manner. There are many reasons for such inactivity, *e.g.*, waiting for the judgment debtor to have the ability to pay the judgment. If Petitioners disagree with the ten-year life of a judgment, or when that life commences, their recourse is to lobby the General Assembly, not this Court. Petitioners later invoke "equity" to again complain about this inactivity. (Ret. at 4, "Equitable Considerations"). The law gave Respondent 10 years to collect the judgment. Equity cannot change or ignore that.

Petitioners complain that Respondent unduly delayed this appeal in the Court of Appeals by seeking extensions during the briefing process. (Ret. at 3, "Third, ..."). Petitioners do not claim any resulting prejudice to them, and their argument has no merit. Respondent served and filed its Notice of Appeal on November 14, 2022. Absent any extensions under the standard timelines for

perfecting an appeal, the Final Briefs and the Record on Appeal would have been filed with the Court of Appeals in mid-March 2023. See Rules 208(a)(1)-(a)(3), 210(a)-(b), and 211(a), SCACR. The Final Briefs and Record were filed on April 18 and 19, 2023. (See Ct. App. File in S.C. App. Case Mgmt. Sys.). The one-month delay in perfecting this appeal was reasonable, did not cause any prejudice to Petitioners, and is not a basis for denying the motion to expedite.

Petitioners assert that this case is not "a matter of significant public interest nor a legal principal of major importance." (Ret. at 3, "Fourth, ..."). Given this admission, this Court should summarily deny certiorari, because certiorari "will be granted only where there are special and important reasons." Rule 242(b), SCACR. Petitioners also assert that this case represents only "a tiny fraction of all mortgage foreclosures," that it "will affect only a minuscule portion of the cases," and that it will "affect only the parties involved." (Ret. at 3). Given these admissions, there are no "special and important reasons" for granting certiorari to review the Court of Appeal's unpublished opinion. Rule 242(b), SCACR. Petitioners' assertions are incorrect, but they are binding admissions in this appeal. *Thomas v. Dotson*, 659 S.E.2d 253, 254 (S.C. App. 2008) (concession on appeal is binding on appeal), *citing and applying Ex parte McMillan*, 335, 461 S.E.2d 43, 45 (S.C. 1995) (issue conceded at trial is binding on appeal) *and Shorb v. Shorb*, 643 S.E.2d 124, 127 n.3 (S.C. App. 2007) (party bound by concession in brief).[1]

Petitioners argue that the relief granted by the Court of Appeals to Respondent is "solely based on its finding that the [Petitioners] failed to file a Motion pursuant to Circuit Court Rule (sic) 59(e)." (Ret.at 3-4). This is the entire premise of their Certiorari Petition, and it is false. The Court

[1] Petitioners also complain that Respondent has not sought supersedeas in this case. (Ret. at 3, "Finally, ..."). Petitioners misperceive the purpose of supersedeas, which is to stay an order not stayed automatically by the appeal. See, *e.g.*, Rule 241(c)(1),SCACR ("In a case subject to an exception [of the general rule that an appeal imposes an automatic stay], any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal."). That is not the situation here.

of Appeals clearly ruled on the merits and specifically held that the 10-year statutory life of the deficiency judgment commenced upon the entry of the deficiency judgment:

> [T]he master found the effective date of the judgment was July 23, 2012, and thus the lien of judgment expired on July 23, 2022.
>
> Based on the language in the July 2015 order – "It is *now* proper for this amount to be entered as a monetary judgment" (emphasis added) – and the language of section 15-35-810 (2005) of the South Carolina Code, we hold the judgment was entered in 2015.

(Ct. App. Op. at 2) (*Italics* by Ct. App.; underlining added). Petitioners did not challenge this ruling in their Rehearing Petition before the Court of Appeals, nor do they do so in their Certiorari Petition before this Court. Thus, it is the law of this case and, for this reason alone, this Court should deny the Certiorari Petition. See, *e.g.*, *Mazloom v. Mazloom*, 709 S.E.2d 661, 661 (S.C. 2011) (rehearing petition); Rule 242(d)(2), SCACR (same); *Moseley v. All Things Possible*, 719 S.E.2d 656, 658 n.4 (S.C. 2011) (certiorari petition); *South Carolina Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group*, 578 S.E.2d 8, 9 n.1 (S.C. 2003) (same).[2]

Petitioners make their real argument in their last sentence: "If July 23, 2025, should happen to arrive before there is a final decision on the appeal, the appeal should be dismissed as moot." (Ret. at 4). Petitioners thus admit that this appeal could become moot absent an expedited consideration of the Certiorari Petition, and they invite this Court to allow it to happen. This Court should decline the invitation and grant the motion to expedite, particularly given Petitioners'

[2] This ruling does not mention and does not rely on anything regarding a 59(e) motion – the subsequent reference to 59(e) involves a different question as explained in Respondent's Certiorari Return. (Cert. Ret., Arg. II at 7-10). After their "59(e)" argument, Petitioners recite some of the procedural history whereby Respondent earlier sought to expedite this appeal. Petitioners point is unclear – they make no arguments in connection with their recitation. (Ret. at 4). And their recitation is partly wrong. It is true that Respondent sought and this Court denied certification, but that motion was filed after the case was ready for consideration rather than upon the filing of the appeal. It is also true that after this Court denied certification, Respondent filed a motion to expedite in the Court of Appeals. Petitioners assert that "[t]his Court denied that motion." (Id.). Of course, this Court did not deny a motion filed in the Court of Appeals. Moreover, the Court of Appeals granted the motion: "This appeal cannot be decided during our next term of court because our terms of court are planned in advance, *but the appeal will be considered as expeditiously as possible*." (Ct. App. Order, file Jul. 11, 2023) (Emphasis added).

admission that they do not challenge the Court of Appeals' ruling on the merits of the controlling issue in this case, which makes that ruling the law of this case, so there is no need to further delay the denial of certiorari.

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in Respondent's Motion to Expedite and Certiorari Return, Respondent respectfully submits that this Court should expedite its consideration of the Certiorari Petition and deny it.

Respectfully Submitted,

/s/ Robert L. Widener

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