



The South Carolina Court of Appeals

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March 28, 2024

Sherman-Lanarous Smith
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Mr. James Martin Page, Esquire
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2Nd Floor
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Mr. Don Maxwell Sims, Esquire
339 Heyward Street
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Re: Freedom Mortgage Corporation v. Sherman Smith
Appellate Case No. 2023-001826

Dear Mr. Smith and Counsel:

Enclosed is a copy of this Court's order.

Within thirty (30) days from the date of this letter, the appellant must serve and file the appellant's initial brief and designation of matter pursuant to Rules 208 and 209 of the South Carolina Appellate Court Rules (SCACR). Appellant's failure to serve and file the appellant's initial brief and designation of matter within thirty (30) days from the date of this letter will result in the dismissal of this appeal.

Very truly yours,

Catherine Hannisa, deputy

CLERK

The South Carolina Court of Appeals

Freedom Mortgage Corporation, Respondent,

v.

Sherman Smith, Appellant.

Appellate Case No. 2023-001826

ORDER

Appellant filed a notice of appeal concerning an order of foreclosure and sale. Appellant filed a motion for an order to show cause on December 20, 2023. Respondent did not file a return. This court denied the motion for an order to show cause on January 12, 2024. On February 6, 2024, Appellant filed a motion to dismiss, asking this court "to dismiss this case entirely" because Respondent did not respond to his motion for an order to show cause and that under Rule 240(g) of the South Carolina Appellate Court Rules, "[f]ailure of the moving party to perform any act required by this [r]ule may be deemed an abandonment of the motion or petition." Respondent filed a return on February 16, 2023, expressing no objection to dismissing the appeal, but objecting to dismissing the underlying state court action. Appellant sent an email to this court on February 22, 2024, which this court construed as a reply to the return. Appellant then submitted a formal reply on February 29, 2024. In his reply, Appellant explained he was not asking for dismissal of the appeal, but he was asking for dismissal of the underlying state court action. He argued Respondent was in contempt for not filing a return to his motion for an order to show cause. He also argued he had not received a transcript in the case. The remainder of Appellant's arguments concern the merits of the appeal and may be resolved only after briefing. Appellant filed an amended¹ motion to dismiss on March 12, 2024. This amended motion adds another argument concerning the merits, which may be resolved only after briefing.

¹ We note Appellant did not file a motion to amend his motion to dismiss. Nevertheless, we review the amended motion to dismiss in the interest of judicial economy.

We deny Appellant's motion to dismiss the underlying state court action based upon Respondent not filing a return to Appellant's motion for an order to show cause. *See* Rule 240(e), SCACR ("Failure of a party to timely file a return *may* be deemed a consent by that party to the relief sought in the motion or petition." (emphasis added)). To the extent Appellant requests this court dismiss the underlying state court action because he has not received a transcript in the case, we deny the motion.



FOR THE COURT

Columbia, South Carolina

cc:
Sherman-Lanarous Smith
James Martin Page, Esquire
Don Maxwell Sims, Esquire

FILED
Mar 28 2024