

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Thomas E. Player, Jr., Special Referee

Appellants Case No. 2022-000601

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SC Court of Appeals

John WeibleRespondent,

v.

Russell Self and Brandy Brunson Appellants.

MEMORANDA REGARDING SUPREME COURT
MAY 17, 2023 ORDER

The Court of Appeals by order filed April 11, 2024, requested memoranda be served and filed within 20 days of the date of that order “regarding the effect of the Supreme Court’s May 17, 2023 Order on the matters on appeal in this case.”

This memoranda constitutes the position of the Appellants.

Judicial decisions are typically given full retroactive effect. See *Harper v Virginia Dept of Taxation*, 509 US 94 (1993) (“[B]oth the common law and our own decisions’ have ‘recognized a general rule of retrospective effect for the constitutional decisions of this Court.”), quoting *Robinson v Neil*, 409 US 505, 507; 93 S Ct 876; 35 L Ed 2d 29 (1973).

The May 17, 2023, Supreme Court Order (2023-05-17-01), hereafter referred to as the May 2023 Order, stated that the 2009 and 2011 Orders were rescinded. Those two orders are cited as South Carolina Supreme Court Administrative Order 2009-05-22-01 (May 22, 2009), and South Carolina Supreme Court Administrative Order 2011-05-02-01, Re: Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E. 2d 908 (2011), and are hereafter referred to as the 2009 and 2011 Orders. The May 2023 Order did not state that the 2009 and 2011 Orders were rescinded retroactively, which possibly could have had the effect of holding that a lack of compliance by the Plaintiff with the 2009 and 2011 Orders could now be forgiven. In fact, the May 2023 Order specifically says that “nothing in this order should be read to imply that Mortgagee-plaintiffs in foreclosure actions are not required to comply with applicable federal regulations with respect to loss mitigation in foreclosure actions in South Carolina.” The Court went on to say that “nothing in this Order prohibits the... (trial Court) from inquiring about the status of loss mitigation or requiring that counsel... confirm or certify that there are no ongoing loss mitigation efforts underway... (etc.) prior to scheduling a final hearing, entering a final order of foreclosure or conducting a sale.” In addition, “counsel for Mortgagees...shall continue to serve as the point of contact between their clients and Mortgagors with respect to loss intervention.”

Thus it is clear that the intent of the May 2023 order was to continue to offer protections to homeowners in foreclosure cases. To withdraw the protections that the 2009 and 2011 orders granted to Defendants prior to the May 2023 order would be contrary to that judicial intent expressed by the Supreme Court in its May 2023 Order.

Lawsuits are resolved on the basis of the laws that applied to the facts at the time when those facts occurred. The facts in this case occurred from roughly 2017 until 2022, all while the

2009 and 2011 orders were in effect. If a law changes subsequent to those facts, that law change would not affect the legality of actions at the time that they occurred, unless the laws were changed with retrospective effect. The May 2023 order did not state that it would have retrospective effect.

“Generally, a statute is presumed to operate prospectively unless the Legislature either expressly or impliedly indicates an intention to give the statute retroactive effect.” Allstate Ins Co. v Faulhaber, 157 Mich App 164, 166; 403 NW2d 527 (1987).

For example, consider the following: Suppose a restaurant was charged with health code violations in 2017, but the health code at that time stated that the restaurant would have a reasonable defense to the potential fine or punishment if it took ‘reasonable steps’ to cure the violations. If the restaurant took those ‘reasonable steps’ and the violations were resolved, then the fines would be waived. Suppose then that the law changed in 2018 so that if violations were found, fines for the violations would be enforced in spite of subsequent corrections, and the fines would still be required to be paid. That new law would not allow the health department to go back and charge the restaurant that had deficiencies in 2017 but resolved them, prior to the new law, to now require the restaurant to pay the fine because there had been deficiencies in 2017, and the new 2018 law would have imposed the fine without giving the chance to correct those deficiencies.

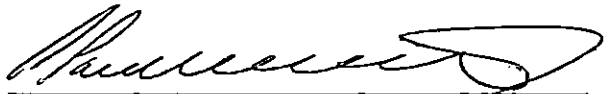
The law that existed pursuant to the 2009 and 2011 orders required the Plaintiff to provide certain notifications to the Defendant, which the Plaintiff failed to do in violation of those requirements, and Plaintiff obtained a default in the foreclosure case. The defense then timely raised those violations by the Plaintiff, but the Special Referee did not require the Plaintiff to amend and thereby correct those the violations but continued to hold the Defendants

in default even though the required notices which would have given the Defendant a chance to file an answer were not provided. The 2023 Order that made a change in the law should not now allow the Plaintiff to be forgiven for Plaintiff's violations of the laws that existed at the time the mortgage foreclosure action was commenced, especially since those violations were detrimental to the rights of the Defendants.

For the reasons set forth herein, the appellants submit that the 2009 and 2011 Supreme Court orders are still the law of the case, and that their rescission by the May 2023 Order does not affect the requirements for the conduct by Plaintiff of presenting the foreclosure case, including the requirements requiring Plaintiff to give to the Defendants certain notices that the 2011 Order imposed on the Plaintiff at the time that the case was filed and subsequently heard.

Therefore, it is respectfully submitted that the Court should remand the case and require the Plaintiff to comply with the requirements of the 2009 and 2011 Orders and direct the special referee to conduct a new hearing on damages, and grant such other and further relief to the Defendants as may be just and proper.

RESPECTFULLY SUBMITTED:



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April 26, 2024
Sumter, SC

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A. Paul Weissenstein, Jr.

April 29, 2024

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

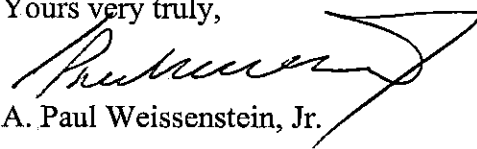
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SC Court of Appeals

IN RE: John Weible vs Russell Self and Brandy Brunson
Case No: 2022-000601

Dear Ms. Kitchings,

There are enclosed and presented to you for filing Memoranda Regarding Supreme Court May 17, 2023 Order. By copy of this letter to Michael Jordan, we are showing service by Appellants on the Respondent.

Yours very truly,


A. Paul Weissenstein, Jr.

APWjr/jab
Enclosure

cc: Michael Jordan

WEISSENSTEIN LAW FIRM, LLC

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