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**Oct 21 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

The Honorable Dale E. Van Slambrook, Master-in-Equity

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Common Pleas Case No.: 2014-CP-08-00321  
Appellate Case No.: 2024-000658

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Edgefield Holdings, LLC,

Respondent,

v.

Christian E. Hamlin,

Appellant.

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**APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL**

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October 18, 2024

## ARGUMENT

NOW COMES the Debtor, Mr. Christian E. Hamlin, by and through his undersigned attorney, Paul B. Ferrara, III, hereby in reply to the Motion to Dismiss filed by Respondent, Edgefield Holdings, LLC. Respondent's motion is based upon Defendant's contentions that Mr. Hamlin's appeal is now moot because Respondent has decided to forego collection of the judgment at issue. This motion should be denied as several exceptions to the mootness doctrine apply as set forth below.

"In general, a case becomes moot when a judgment, if rendered, will have no practical legal effect upon the existing controversy." *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). Here, Respondent has asserted in its motion that "Edgefield has made the determination that it no longer desires to pursue the relief it obtained under the captioned case number," and therefore "any ruling on appeal will be advisory in nature, as the issues on appeal are now moot." (Respondent's Motion to Dismiss Appeal, p. 1-2.) However, a review of the facts and procedural nature of this case will establish that this case falls within the exceptions to the mootness doctrine.

There are three exceptions to mootness: 1) "If the legal issue to be determined is capable of repetition but generally will evade review, the appellate court can take jurisdiction." *Id.* at 535, 670 S.E.2d at 667; 2) "The appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001); and 3) "If a determination by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the pending case." *See id.* In this case, exceptions 1, 2, and 3 to the mootness doctrine apply.

The “capable of repetition evading review” applies in this case. The Court in *Sloan*, explained the capable of repetition exception and held that it is sufficient if there is a reasonable expectation that the issue could arise again, even if it is not certain that it will always evade review. Here, in all enforcement actions where a sheriff’s sale is ordered within three weeks of the judgment becoming stale, the actual sale will always occur after the three-week notice has been given as is required per S.C. Code Ann. § 15-39-650.

The public importance exception to the mootness doctrine also applies. There is a public interest in reiterating to all judgment creditors that enforcement proceedings must actually be completed prior to the judgment becoming stale per S.C. Code Ann. § 15-39-20. This decision can provide the public and judgment creditors, in a post *Gordan* era<sup>1</sup>, notice that all legal due process, including attachment, must be completed prior to enforcement of a judgment, otherwise the judgment becomes stale. Here, S.C. Code Ann. § 15-39-650 requires three (3) weeks advertisement prior to a public sale taking place. Moreover, the sheriff and debtor failed to attach to the ordered property prior to the judgment becoming stale. Therefore, it is imperative for the public to be reminded that under South Carolina law, creditors must complete the attachment process prior to the expiration of the judgment. Importantly, a debtor who is going through foreclosure sale maintains his or her rights in the property until the sale has been completed.<sup>2</sup> This case illustrates that until the gavel falls at the foreclosure sale, the debtor maintains all rights in the property. Thus, the public interest exception to mootness applies and allows this Court to issue a final determination on the merits of this appeal.

The third exception of collateral consequences is applicable to allow this court to issue an opinion despite Respondent’s contention of mootness. The Debtor, Edgefield Holdings, sought

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<sup>1</sup> *Gordan v. Lancaster*, 425 S.C. 386 (2018).

<sup>2</sup> See *Carrington v. Citizens Bank of South Carolina*, 309 S.C. 323, 422 S.E.2d 123 (S.C. 1992).

and obtained an order allowing a foreclosure of the debtor's LLC interest to satisfy the judgment in this case. S.C. Code Ann. § 33-44-504(e) provides that foreclosing on a member's interest in a limited liability company is the exclusive remedy for a judgment creditor to satisfy a judgment on a member's interest. It appears that once a foreclosure of an LLC member's distributional interest has been sought, that election of remedy, is the sole remedy concerning the debtor's LLC interest.<sup>3</sup>

This collateral issue will be determinative in the ongoing dispute between the parties as elicited below.

In this matter, the future events exception to mootness is applicable as there is a new North Carolina and South Carolina action concerning the judgment which underpins the judgment in this case. The potential future conduct of Edgefield against Hamlin has recently occurred and provides the basis for the collateral consequences exception. Here, Edgefield is currently attempting to domesticate a new North Carolina default judgment it obtained in 2023, which was a suit to enforce the original 2013 judgment that underpinned the 2014 judgment at issue in this matter.<sup>4</sup> In fact, Edgefield has domesticated this North Carolina default judgment in Berkeley County South Carolina in case 2024-CP-08-01165.<sup>5</sup> Currently, Edgefield Holdings appears to be seeking to enforce the 2013 judgment through this new action. Presumably, Edgefield will again seek an order of foreclosure of Hamlin's LLC interest despite having prior elected its remedy per S.C. Code Ann. § 33-44-504(e). Due to Edgefield's past pursuit of this exclusive right, in this current case, it cannot now forego that action in order to avoid the prior election of remedy.

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<sup>3</sup> See *Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594, 596 (S.C. 2014).

<sup>4</sup> See 23-CVS-001078 filed in Henderson County Superior Court division.

<sup>5</sup> This matter is currently stayed until the N.C. 60(b) motion, based in improper service, can be heard per Judge R. Scott Spouse- Order dated August 30, 2024.

The aforementioned demonstrates that this court's order will affect future events, and/or have collateral consequences for the parties in this and parallel litigation. As such, this Court should make a final determination on the merits. To do otherwise would send a message that Edgefield could violate the fundamental fairness that undermines our judicial review process.<sup>6</sup>

WHEREFORE, Appellant respectfully requests this Honorable Court to enter an Order dismissing the motion based upon mootness and allow the matter to be fully briefed.

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<sup>6</sup> See *State v. Lyles*, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008).

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**PROOF OF SERVICE**

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I certify that I have served a copy of the return to Respondent's motion to dismiss by emailing a copy to Mr. Lawrence M. Hershon Esq. at [lawrence@hershonlawfirm.com](mailto:lawrence@hershonlawfirm.com) on October 21, 2024.

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