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Oct 22 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Judge James B. Jackson, Jr., Master in Equity

Case No. 2024-001614

Elaine C. Rice and Whitnee Dash-Braithwaite,

Appellants,

v.

SC Home Holdings, LLC,

Respondent.

MOTION FOR LEAVE TO FILE MOTION
WITH CIRCUIT COURT UNDER RULE 60(b)(3)

Now come Appellants, by and through the undersigned attorneys, requesting leave from the Court to file with the Circuit Court a Motion under SCRCP 60(b)(3) in this matter. A copy of said Motion is attached showing the grounds. Appellants would show that the Final Order filed September 29, 2023, contains findings which are the result of fraud, misrepresentation, or other misconduct of an adverse party and these findings are not corrected or dealt with in the Order on Plaintiffs' Motion to Reconsider dated September 6, 2024. Giving the Lower Court the opportunity to correct these findings prior to the appeal proceeding promotes judicial economy by possibly reducing the issues to be addressed in the appeal.

Counsel for Appellants has discussed this request with counsel for Respondent, and he consents to the Motion being granted.

WHEREFORE, for the reasons stated above, Appellants request an Order granting leave

to file the attached Motion under SCRCP 60(b)(3) and staying the appeal until such time as the Motion has been heard and decided.

October 22, 2023

Orangeburg, SC

s/Russell A. Blanchard, IV

Russell A. Blanchard IV, SC Bar No. 76369

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Attorneys for Respondent SC Home Holdings, LLC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG) IN THE COURT OF COMMON PLEAS
) C/A #2020-CP-38-01433

Elaine C. Rice and Whitnee Dash-Brathwaite,)
)
) Plaintiffs,)
))
) vs.)
) **MOTION FOR RELIEF FROM**
) **ORDER PURSUANT TO RULE**
 SC Home Holdings, LLC,) **60(b)(3)**
))
) Defendant.)
))

Plaintiffs, by and through the undersigned attorneys, give notice of their intent to move at such time and place as the Court may direct, and do now move to have the Final Order dated September 29, 2023, and the Order on Plaintiffs’ Motion to Reconsider dated September 6, 2024, corrected or amended. This motion is made pursuant to SCRPC 60(b)(3).

Plaintiffs’ motion is made on the following grounds and on such grounds as may be presented at a hearing on Plaintiffs’ motion:

- 1) The proposed Final Order submitted by Defendant SC Home Holdings LLC’s attorney, Spencer A. Syrett, contained information not supported by any testimony or evidence at the hearing and provides false information to the Court. This incorrect information became Finding of Fact No. 26 and influenced the Court’s conclusions made in the Analysis and Conclusions of Law in the September 29, 2023, Final Order. Specifically, Defendant’s proposed Order and the Final Order contained requirements that the parties “agree on the fair market value of the property” or “have the property appraised by a licensed appraiser” which is not supported by the evidence presented. The Court’s September 6, 2024, Order on Plaintiff’s Motion to Reconsider does not correct the false information.

2) The incorrect information mentioned above combined with inconsistent testimony and differing amounts stated in Defendant's pleadings misled the Court and undermined the integrity of its findings. This confusion resulted in the Court applying the Betterment Statute, SC Code Section 27-27-10, et seq., despite it not being applicable and no parties requesting relief pursuant to said Statute.

3) Defendant SC Home Holdings LLC, Julie Henline, and Your Midlands Real Estate Services, LLC, intentionally concealed their ownership relationship from the Plaintiffs during the property transaction. This concealment deprived Plaintiffs of the opportunity to present evidence of the ownership relationship at trial and prevented the Court from considering this crucial evidence prior to making its decision. Your Midlands Real Estate Services is owned by the parties in the following shares: Diversified Investments Holdings, Inc.- 70%; Julie Henline- 20%; and Je Tax Solutions Ltd. Co.- 10%. Diversified Investments Holdings, Inc. is owned by Benjamin Cognata (80%) and Jeremiah Cooke (20%). Benjamin Cognata is the owner of a 99% interest in Defendant SC Home Holdings, LLC.

4) Defendant SC Home Holdings, LLC, further failed to produce numerous documents which were in its possession and related to the matters at issue in this case. After failing to produce the relevant documents, Defendant SC Home Holdings, LLC, attempted to introduce them at trial. The documents were excluded from evidence, but this created confusion and resulted in the Court making legal and factual conclusions that were not supported by any evidence presented at trial.

1) The actions outlined herein have violated Plaintiffs' due process rights by denying them the opportunity to present their case and oppose defenses raised by Defendant.

2) The above issues were not addressed or corrected in the Court's ruling on

Plaintiffs' Motion to Reconsider.

On the above grounds and on such other grounds as may be presented to the Court, Appellant requests that the Court correct or amend the Orders issued in this matter pursuant to SCRPC 60(b)(3).

October ____, 2023

Orangeburg, SC

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Attorneys for Plaintiffs

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PROOF OF SERVICE

I certify that I have served Appellants' Motion for Leave to File Motion with Circuit Court Under Rule 60(b)(3) on Respondent by emailing their attorney of record, Spencer Andrew Syrett, at his AIS email address (syrettelaw@sc.rr.com) on October 22, 2024.

October 22, 2024

Orangeburg, SC

s/Russell A. Blanchard IV

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