

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2012-CP-10-04981

Reverse Mortgage Solutions, Inc., Respondent,

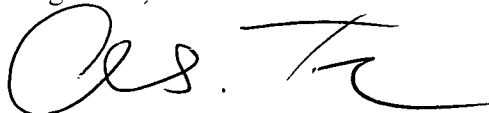
v.

Elvenia Bowens, Petitioner.

RETURN IN OPPOSITION TO PETITION FOR WRIT OF SUPERSEDEAS

Reverse Mortgage Solutions, Inc., responds to Elvenia Bowen's Petition for Writ of Supersedeas of matters provided in the Honorable Mikell R. Scarborough's order of Judgment and Foreclosure sale as issued on August 20, 2013.

October 10, 2013



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Other Parties of Record:

Elvenia Bowens
5381 Hwy. 174
Adams Run, SC 29426
(843) 889-0526
Appellant

Marvin Lamar Bowens
6059 Roper Run Rd. Lot 58
Ravenel, SC 29470
(704) 492-3390
Representative

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THE RESPONDENT HEREBY PROVIDES ITS RETURN IN OPPOSITION TO THE PETITION FOR WRIT OF SUPERSEDEAS PURSUANT TO RULE 240(E), SCACR:

1. Respondent filed its Summons and Complaint, 2012-CP-10-04981, seeking foreclosure against the secured property owned by Appellant on July 31, 2012 alleging Appellant breached the terms of the Note and Mortgage in failing to maintain fire and hazard insurance coverage on the secured property. Respondent's Summons and Complaint similarly alleged that Appellant entered into a Note and Mortgage with Respondent on November 9, 2009 securing 5381 Highway 174, Adams Run, SC 29426 in the amount of \$127,500.00. Finally, Plaintiff alleged there existed an outstanding balance on the loan in the amount of \$64,418.53 as of June 30, 2012.

2. Petitioner filed her Answer in response to Respondents Summons and Complaint on September 6, 2012 setting forth a general denial without recognized defenses or counterclaims.

3. On December 7, 2012 Respondent's foreclosure action was referred to the Charleston Master in Equity, the Honorable Mikell R. Scarborough.

4. A final hearing was held on August 7, 2013 and Petitioner attended. Marvin Lamar Bowens, Petitioner's son, also attended and addressed the Court. Mr. Bowens is not, however, a named defendant in the pending foreclosure action nor has he properly moved to intervene. Mr. Bowens is also not a member of the South Carolina Bar Association.

5. On August 20, 2013, the Master in Equity executed an order finding for the Respondent in the amount of \$71,546.01 and entitling it to have the secured property sold at foreclosure sale.

6. Petitioner, along with Mr. Bowens, filed her Motion for Reconsideration and Amended Motion for Reconsideration on August 19, 2013 and September 9, 2013, respectively.

7. On September 27, 2013 Petitioner filed her Notice of Appeal in the Charleston County Court of Common Pleas. Respondent received Petitioner's Notice of Appeal by Certified Mail on October 2, 2013 as served on September 27, 2013.

8. On October 3, 2013 the Master in Equity issued a Form 4 order denying Petitioner's Motion for Reconsideration as lacking in merit and further denied Petitioner's request that the foreclosure sale be stayed pending appeal for failing to post the requisite bond securing the property.

9. Petitioner and Mr. Bowens served their Petition for Writ of Supersedeas of the foreclosure sale on Respondent on October 7, 2013.

10. Respondent now respectfully submits pursuant to Rule 241(b), SCACR, S.C. Code Ann. § 18-9-170 and the Honorable Mikell R. Scarborough's Form 4 Order issued on October 3, 2012 that Petitioner's Writ of Supersedeas should be denied where she has not obtained the requisite bond securing the real property in order to effect a stay of the foreclosure sale pending appeal.

11. "As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order," however, "[t]he exceptions to the general rule are found in statutes." Rule 241(a)-(b), SCACR. "Where specific conditions must be met before the exception applies, those conditions must be strictly complied with. *Id.* Rule 241(b) specifically references Section 18-9-170 which provides, "[i]f the judgment appealed from direct the sale or delivery of possession of real property, the

execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment.” S.C. Code Ann. § 18-9-170.

12. Section 18-9-170 further provides, “[w]hen the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale” *Id.*

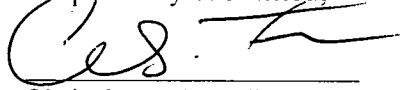
13. Plaintiff’s firm contacted the Charleston County Assessor’s Office in response to Petitioner’s Motion for Reconsideration and has been informed that the property was valued at \$86,400.

14. The Respondent’s firm and the Master in Equity, as evidence by the Form 4 Order issued October 3, 2013, have not received any evidence of a bond as obtained by Petitioner to secure the property and overcome the requirement of Section 18-9-170 sufficient to stay the foreclosure sale pending appeal.

For the reasons stated, Respondent respectfully requests that the Court DENY Petitioner's request for a Writ of Superseadeas to stay the foreclosure sale where the strict requirements of Section 18-9-170 remain unsatisfied.

October 10, 2013

Respectfully submitted,



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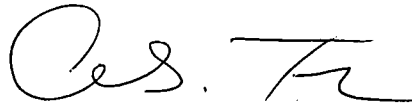
Reverse Mortgage Solutions, Inc., Respondent,

v.

Elvenia Bowens, Petitioner.

PROOF OF SERVICE

I certify that I have served Respondent's Return in Opposition to Petition for Writ of Supersedeas on Elvenia Bowens by depositing a copy of it in the United States Mail, postage prepaid, on October 10, 2013 addressed to Appellant Elvenia Bowens at 5381 Hwy. 174, Adams Run, SC 29426 and Marvin Lamar Bowens by depositing a copy of it in the United States Mail, postage prepaid, on October 10, 2013 addressed to Representative Marvin Lamar Bowens at 6059 Roper Run Rd., Lot 58, Ravenel, SC 29470.



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