

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2013-001412

RECEIVED
OCT 22 2013
SC Court of Appeals

HSBC Bank USA, National Association, as
Trustee for MLCC 2007-2 Respondent,

vs.

S. Russell Fielden; Deborah M. Fielden; and Coastal States
Bank..... Defendants,

Of whom

S. Russell Fielden and Deborah M. Fielden, are..... Appellants.

**RESPONDENT’S RETURN TO APPELLANTS’ MOTION TO REQUEST FOR A
STAY OF THE SALE OF THE SUBJECT PROPERTY TO A THIRD PARTY
DURING APPEAL AND MEMORANDUM OF LAW**

Respondent HSBC Bank USA, National Association, as Trustee for MLCC 2007-2 (“Respondent”) hereby responds to the arguments raised by S. Russell Fielden and Deborah M. Fielden (“Appellants”) in their Motion to Request for a Stay of the Sale of the Subject Property to a Third Party During Appeal (“Motion”) dated October 10, 2013.

The sale of the subject property became final on June 5, 2013. The Respondent was the successful purchaser of the subject property for a sum of \$629,091.67 and a Foreclosure Master In Equity Deed was subsequently issued to the Respondent and

recorded with the Beaufort County Register of Deeds. (See Exhibits A and B attached hereto).

Appellants' argument that a further sale of the subject property by the Respondents "may likely render the subject's title unmarketable" is without a legal basis. Respondent is now the record owner of the property pursuant to the Foreclosure Master in Equity Deed and it may now sell the property.

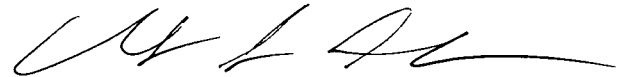
Appellants' argument that if the Respondent sells the property to a third party, "Appellant's title to the property may be further clouded and potentially cause the Appellant to suffer damages and irreparable harm" is also without a legal basis. Any and all interest of the Appellants in the subject property has been extinguished by the Judgment of Foreclosure and Sale and subsequent judicial sale of the property. Appellants have no title or interest in the property.

Appellants' argument that Respondent's will not suffer any damages if a stay is put in place to prevent the Respondent from selling the property is false. Following the sale of the property on June 5, 2013 Respondent released its right to a deficiency judgment against the Appellants because the successful purchase of the subject property left a minimal deficiency judgment to collect. Respondent released this deficiency judgment because it now owns the property and has the opportunity to recover its losses through a subsequent sale of the subject property. The Appellants debt has been extinguished, yet the Respondent continues to suffer harm unit it is able to sell the property to a third party to cover all or part of its damages. "Section 18-9-170 of the South Carolina Code (1985) indicates if the judgment appealed from directs the sale or delivery of possession of real property, the execution of the judgment *shall not be stayed*

unless the party against whom judgment is entered obtains a bond with two sureties guaranteeing the property will not be wasted during the pendency of the appeal.” C-Sculptures, LLC, No. 3 v. Brown, 393 S.C. 27, 32, 709 S.E.2d 705, 707 (Ct.App.2011) (emphasis added). The opportunity for the Appellants to post a bond to stay the sale of the property has passed.

Respectfully submitted,

October 21, 2013



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HSBC Bank USA, National Association, as
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vs.

S. Russell Fielden; Deborah M. Fielden; and Coastal States
Bank Defendants,

Of whom

S. Russell Fielden and Deborah M. Fielden, are Appellants.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **RESPONDENT'S RETURN TO APPELLANTS' MOTION TO REQUEST FOR A STAY OF THE SALE OF THE SUBJECT PROPERTY TO A THIRD PARTY DURING APPEAL AND MEMORANDUM OF LAW** on Appellants Russell Fielden and Deborah M. Fielden and other Defendants by depositing copies of it in the United States Mail, postage prepaid, on October 21, 2013, at the addresses shown on the attachment listing Other Counsel of Record and Parties.

October 21, 2013



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LICENSED IN SOUTH CAROLINA



October 21, 2013

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
OCT 22 2013
SC Court of Appeals

RE: HSBC Bank USA, National Association, as Trustee for MLCC 2007-2 v. S. Russell Fielden; Deborah M. Fielden; CoastalStates Bank AND Coastal State Bank v. S. Russell Fielden and Deborah M. Fielden
Appellate Case # 2013-001412
Civil Action# 2010-CP-07-2927
Our File # 511227.448

Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of the Respondent's Return to Appellants' Motion to Request for a Stay of the Sale of the Subject Property to a Third Party During Appeal and Memorandum of Law, along with a Proof of Service. Please return a filed copy of the document to me in the enclosed self-addressed, postage pre-paid envelope provided for your convenience.

By copy of this letter, I am serving a copy of the Respondent's Return to Appellants' Motion to Request for a Stay of the Sale of the Subject Property to a Third Party During Appeal and Memorandum of Law and Proof of Service on all parties to this appeal.

Thank you for your assistance in this matter.

With kind personal regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Charles S. Gwynne Jr.", written in a cursive style.

Charles S. Gwynne Jr.

/mt
Enclosures as stated

cc:

S. Russell Fielden
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Pro Se Appellant

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