

-MR. EARNEST Fleming
1057 SAM LEE RD
SCRANTON, SC 29391

RECEIVED

JUL 16 2014

SC Court of Appeals

Phone → (843) 373-5026

FAX → (843) 389-3709

E-mail → KIE99EFleming at Yahoo.com

ATTN: CLERICAL Dept. (Mrs. Claire Alters)

Please Note, I have called your
(South Carolina Court of Appeals) and
spoke to one of the Clerks. for an
extension in order for me to
get the copy of special referee
order that you requested.

I have enclosed a copy of
the "order" and "motion".

Please accept my apology for any
delay(s). I have had Renal Surgery
done in March of 2014.

Mr. E. Fleming
7/12/14

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JUL 16 2014

SC Court of Appeals

FILED
14 JUL -1 AM 9:56
CONNIE REL-SHEARIS
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
B & A Enterprises,)
Plaintiff,)
V.)
Ernest Fleming,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR TWELFTH JUDICIAL CIRCUIT

Civil Action No.: 2010-CP-21-3635

MOTION PURSUANT TO RULE 59

SOUTH CAROLINA RULES OF CIVIL PROCEDURE

TO: B & A Development, Plaintiff in the above action, and James C. Harrison, Esquire, their attorney:

YOU WILL PLEASE TAKE NOTICE, that the Defendant, will move before the Honorable Haig Porter, Special Referee, at 10:00 a. m. in the forenoon or as soon thereafter as Defendant may be heard, for an Order altering or amending the Order of the Special Referee denying Defendant's Motion to stay enforcement of the Writ of Assistance issued on June 26, 2014, requiring that the property be vacated on July 31, 2014. The motion will be based upon, but not limited to, the following:

1. That Defendant's Motion to Stay Enforcement of the Writ of Assistance was his attempt to comply with the stay requirements outlined in S.C. Code Ann. § 18-9-170 by requesting the Special Referee to set a bond to allow the stay to be granted.
2. That the hearing on the motion went off course when Mr. Radaker was allowed to argue that the stay should not be allowed.
3. That Defendant was aware of the necessity to post the bond required by South Carolina Law and was attempting to do so by having the Special Referee set the bond.
4. That Defendant is requesting that the Order be amended to set a reasonable bond with Defendant being allowed a reasonable time to obtain the bond.

By: *Ernest Fleming*
Ernest Fleming, Defendant

6/26/14

CERTIFIED A TRUE COPY

Connie Rel-Shearis

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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JUL 16 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

B&A Enterprises,)
Plaintiff,)

Case No.: 2010-CP-21-3635

v.)

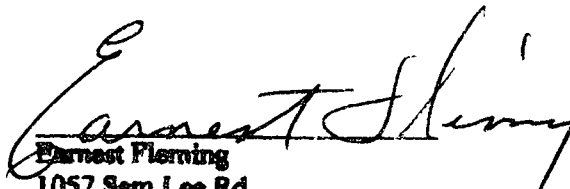
CERTIFICATE OF SERVICE

Earnest Fleming,)
Defendants.)

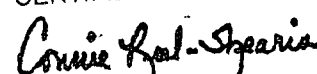
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2014 JUL -1 AM 9:56
CONNIE REEL-SHEARER
CLERK OF COURT C P & G S
FLORENCE COUNTY, S C

The undersigned hereby certifies that I, Earnest Fleming, has served a copy of **MOTION PURSUANT TO RULE 59 SOUTH CAROLINA RULES OF CIVIL PROCEDURE** in the above-captioned case by placing the same in the United States mail, with proper postage affixed thereon and return address clearly visible addressed to the following:

James Harrison, Esquire
Harrison & Radaker, PA
P.O. Box 50143
Columbia, SC 29250


Earnest Fleming
1057 Sam Lee Rd
Scranton, SC 29591
843-373-5026
843-389-3709

Scranton, South Carolina
6/26/14, 2014

CERTIFIED A TRUE COPY

CLERK OF COURT C P & G S
FLORENCE COUNTY, S C.

HC 2014-1845

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JUL 16 2014

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE CIRCUIT COURT
SC Court of Appeals

B&A Development Company,)
Plaintiff,)

Case No.: 2010-CP-21-3635

vs.

Order Denying Motion
Relief from Judgment

Ernest Fleming, Jr., a/k/a Earnest Fleming,)
Gwendolyn G. Fleming, Franklin Scott,)
American General Financial Services and)
State of South Carolina Department of)
Revenue)

Defendants.

(Non-Jury - Foreclosure)

2014 MAY 19 PM 12:22
FILED
CANNON REEL-SHEARIN
& ASSOCIATES
FLORENCE COUNTY, S.C.
CERTIFIED TRUE COPY
Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter is before the court on Defendant Ernest Fleming's motion for relief from the judgment in the above-captioned action. A hearing on this motion was held on May 7, 2014, at 3:00 p.m. Based on the record and the arguments presented, the Court denies the motion.

Defendant Fleming's motion was served on April 23, 2014. The underlying foreclosure judgment was rendered on May 9, 2012. Pursuant to a foreclosure sale, the Plaintiff in this action happened to be the successful bidder at that sale. A writ of assistance was issued on March 10, 2014. Though not obligated to do so, the Court held the operation of the writ of assistance in abeyance pending the hearing of the instant motion.

Defendant Fleming's motion acknowledges that he failed to meet the conditions of a number of post-judgment settlement agreements in this case. If he had met all the requirements of any of the agreements, that would have resulted in a satisfaction of the foreclosure judgment by settlement. Each agreement, however, provided that if Defendant Fleming did not meet its requirements, the Plaintiff would be entitled to proceed with the foreclosure sale. Defendant Fleming argues that he is

#1
HP

entitled to relief from the judgment on the grounds that "each contractual agreement constitutes a novation which supersedes the previous agreement and settled the controversy over the debt for the property" and that "the novations entered into by the parties constitute a reaffirmation of the debt and require that a new foreclosure action be filed upon failure of the parties to see the repurchase action through to completion."

Rule 60(b), SCRPC, provides that:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

To prevail on a Rule 60(b) motion, a party must also demonstrate a meritorious defense to the claim adjudicated in the judgment. See, e.g., Bowers v. Bowers, 304 S.C. 65, 67, 403 S.E.2d 127 (Ct. App. 1991).

Defendant Fleming cites Rule 60(b)(5) in his motion but also contends that the judgment subject of this case is void, which would implicate Rule 60(b)(4). Defendant Fleming is entitled to relief under neither of these subsections of the rule.

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HD

A void judgment "is one that, from its inception, is a complete nullity and is without legal effect." Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659 (Ct. App. 2002). A judgment is void where the court issuing it lacked the power to render the judgment. Id. The definition of "void" under Rule 60(b)(4) "only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." Linda Mc Company v. Shore, 390 S.C. 543, 552, 703 S.E.2d 499, 503 (2010) (internal quotation marks omitted). Defendant Fleming does not contend, and the record does not support, a conclusion that either the foreclosure judgment or any other order in this case is void. This court had personal and subject matter jurisdiction, and Defendant Fleming was afforded ample due process. Defendant Fleming is not entitled to relief on the ground that any order in this case is void.

#3
AD

Defendant Fleming is also not entitled to prevail under Rule 60(b)(5). "Generally, the standard to be applied in determining whether an order or judgment has prospective application within the meaning of Rule 60(b)(5) is whether it is executory or involves the supervision of changing conduct or conditions by the court." Saro Investments v. Ocean Holiday Partnership, 314 S.C. 116, 120 fn. 3, 441 S.E.2d 835, 838 fn. 3 (Ct. App. 1994). While the foreclosure judgment in this case was executory before the sale occurred, it ceased to be so after the sale. The foreclosure judgment has operated in full, and someone other than the Defendant (someone who simply happens to have been the Plaintiff in the underlying case) now owns the subject property. Once the foreclosure judgment operated and the property was sold, it effected a "one-time change in the ownership of property[,]" which our Court of Appeals has held does not bring a judgment within the ambit of one that has prospective application such as to subject it to Rule 60(b)(5)'s application. Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 590 S.E.2d 502, 505-06 (Ct. App. 2003). Further,

given that the post-judgment agreements all provided that the Plaintiff would be entitled to proceed with the sale if Defendant Fleming did not fully comply with them, and given Defendant Fleming's acknowledgement that he did not comply with them, it is difficult to see the inequity in allowing the foreclosure judgment to stand.

Defendant Fleming has made no showing of any meritorious defense to the foreclosure claim on which judgment was rendered in the Plaintiff's favor.

Finally, Defendant Fleming has no explanation for why he only makes this motion now, on the cusp of his removal from the property by a writ of assistance. Rule 60(b) provides that even motions for relief under subsections (4) and (5) must be made within a reasonable time. Defendant Fleming did not raise the issues subject of this motion within a reasonable time, despite his representation by counsel while the events subject of his motion occurred.

IT IS THEREFORE ORDERED that Defendant Fleming's motion for relief from the judgment is denied;

IT IS THEREFORE FURTHER ORDERED that the Sheriff of Florence County is to forthwith execute the writ of assistance filed in this case on March 10, 2014, *on or before 11 AM on June 10, 2014.*
AND IT IS SO ORDERED THIS 15th day of May, 2014.

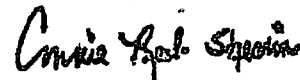

Haigh Porter
SPECIAL REFEREE FOR FLORENCE COUNTY

Florence, South Carolina

2014 MAY 19 PM 12:22
CONNIE REEL-SHEARIN
DCCP & GS
FLORENCE COUNTY, SC

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CERTIFIED: A TRUE COPY


CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-21-3635

B&A Development Company

Ernest Fleming, Jr., etc., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Andrew S. Radeker	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 12(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$ N/A CERTIFIED: A TRUE COPY
		\$ <i>Amie K. Shuman</i>
		\$ CLERK OF COURT C.P. & G.S. FLORENCE COUNTY, S.C.

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

W. J. Porter, Jr.
Circuit Court Judge

Judge Code

5-15-14
Date

FILED
 2014 MAY 19 PM 12:22
 CORNIE REEL-SHEPHERD
 CLERK OF COURT & G.S.
 FLORENCE COUNTY, SC

For Clerk of Court Office Use Only

This judgment was entered on the 19 day of May, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of May, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Harrison & Radaker, P.A.
PO Box 50143
Columbus, SC 29250
ATTORNEY(S) FOR THE PLAINTIFF(S)
W. H. Porter (special referee) Hand Delivered

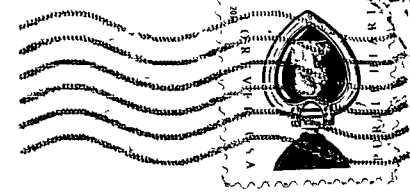
Joseph Henry, P.C.
1708 B. Richmond St.
Columbia, SC 29201
ATTORNEY(S) FOR THE DEFENDANT(S)
Connie Raef Shearin
CLERK OF COURT

Court Reporter:

Mr. Ernest [unclear]
1057 Sam Lee Rd
Spartanburg, SC 29591

663261026Z

COLUMBIA SC 290



15 JUL 2014 PM 11

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JUL 16 2014

SC Court of Appeals

The South Carolina Court of Appeals
Deputy Clerk - Ms. Val Clair
Allen
1015 Sumter Street
Columbia, SC 29201