

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
James E. Reeves, Special Referee

Case No. 2013-000965

SCBT, N.A.,Respondent,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman, South Carolina Department of Revenue, Baird
Transport, Inc., Defendants.

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is theAppellant.

RESPONDENT'S REPLY TO APPELLANT'S RETURN TO MOTION TO CANCEL LIS
PENDENS, OR, IN THE ALTERNATIVE, REFER TO SPECIAL REFEREE FOR
EXPEDITED HEARING AND SUPPORTING MEMORANDUM

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JUL 25 2014

SC Court of Appeals

Respondent SCBT, N.A. (“SCBT” or “Respondent”), now known and doing business as South State Bank, hereby submits its Reply to Appellant Shelton Hoffman a/k/a Shelton F. Hoffman’s (“Hoffman” or “Appellant”) Return to Motion to Cancel Lis Pendens, or, in the alternative, Refer to Special Referee for Expedite Hearing.

As of the date of this Reply, more than twenty (20) days has passed since the filing of the Lis Pendens and no action “affecting the title to real property” has been filed as required by the Lis Pendens statute.

In an action affecting the title to real property the plaintiff (a) not more than twenty days before filing the complaint or at any time afterwards or . . . a defendant when he sets up an affirmative cause of action in his answer and demands substantive relief, at the time of filing his answer or any time afterwards if such answer be intended to affect real estate, may file with the clerk of court of each county in which the property is situated a notice of the pendency of the action . . . If the action be for the foreclosure of a mortgage such notice must be filed twenty days before judgment and must contain the date of the mortgage, the parties thereto and the time and place of recording such mortgage.

S.C. CODE ANN. § 15-11-10.

“Since the filing of a lis pendens is an extraordinary privilege granted by statute strict compliance with the statutory provisions is required.” Pond Place Partners, Inc. v. Poole, 351 S.C.1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002). The Lis Pendens filed on July 1, 2014 to block Respondent’s sale of property referenced therein does not meet the strict requirements of the statute. It was improperly filed more than twenty days ago under the caption of this appeal and the underlying foreclosure action, without meeting any of the statutory requirements. First, twenty days has passed since the filing of the lis pendens and no new action affecting title has been filed to date. Second, Appellant’s answer filed in the underlying foreclosure action does not raise any affirmative causes of action demanding substantive relief. Finally, despite being filed under the caption of the mortgage foreclosure action, the Lis Pendens was not filed until after the

foreclosure judgment. Therefore, the Lis Pendens fails according to the statute and should be cancelled.

Instead of providing support that his Lis Pendens is valid, Appellant again argues that a bond is unnecessary to stay a foreclosure sale and/or a foreclosure sale can be set aside if the purchaser of the property is not a bona fide purchaser for value. In addition, Appellant argues that his inability to afford a bond excuses him from complying with Rule 241 and section 18-9-170, despite the fact that he never requested a bond, and therefore does not know whether or not he could have afforded the bond. The case law cited to support his theories is misplaced and his arguments are contrary to the express language of Rule 241, section 18-9-170 and South Carolina case law. See S.C. CODE ANN. § 18-9-170; Rule 241(b), SCACR. Instead, Appellant's filing of the Lis Pendens on the eve of the closing date of the sale of property¹ by Respondent amounts to an unlawful collateral attack on the underlying foreclosure and judicial sale, and public policy dictates that it must be cancelled. See S.C. CODE ANN. § 15-39-870 (1977).

Despite the fact that Appellant's Return does not address the validity of the Lis Pendens, Respondent notes that several of the cases cited by Appellant in support of his argument in opposition to Respondent's Motion address jurisdictional concerns and are entirely irrelevant to the issues presented within the subject appeal. Notably, Hoffman also fails to cite any South Carolina authority supporting his position that the Court could void the sale of the subject property where, as here, the appealing party participated in the underlying hearing and sale that followed, and failed to make a motion for a bond, post bond or otherwise move to stay the sale.

The law of this State is clear. Where there is a decree ordering the sale of property, a notice of appeal does not stay the sale unless an undertaking is given by the appellant as required

¹ Notably, since the filing of Respondent's Motion to Cancel Lis Pendens, Respondent has lost another contract on the property which is the subject of the Lis Pendens.

by the applicable statute. Carsten v. Wilson, 241 S.C. 516, 521-22, 129 S.E.2d 431, 435 (1963), Ex parte Andrews, 152 S.C. 325, 150 S.E. 313, 314 (1929). The facts in South Carolina National Bank v. Blossom are similar to the facts in the current case. In Blossom, a bank foreclosed upon and subsequently purchased property previously owned by appellants at public auction. South Carolina Nat'l Bank v. Blossom, 321 S.C. 110, 111-12, 467 S.E.2d 767, 768 (Ct. App. 1996). On appeal, appellants argued that the time period for applying for an appraisal was stayed by the appeal of the deficiency judgment. Id. In ruling against appellants, this Court found that appellants' failure to move for an order staying the execution of the judgment and to post bond precluded any argument as to the appropriateness of the underlying judgment. Id. 241 S.C. at 113, 467 S.E.2d at 769. See also S.C. CODE ANN. § 18-9-170 (requiring the posting of a bond in order to stay an order directing the sale of property). The fact that the respondent was the successful purchaser of the property was not a factor in the Court of Appeals' holding. Id.

Similarly, in the case at hand, Appellant failed to post bond or otherwise stay the underlying sale. In South Carolina, judicial sales occurring as a result of litigation shall be final, in order to, *inter alia*, assure reliance upon such sales and induce bidding. Appeal of Paslay, 230 S.C. 55, 64, 94 S.E.2d 57, 61 (1958); see also Eastern Savings Bank, FSB v. Sanders, 373 S.C. 349, 355, 644 S.E.2d 802, 805 (Ct. App. 2007) (holding that the purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final); Cumbie v. Newberry, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968) (public policy requires that the validity of judicial sales be upheld).

Accordingly, based on the foregoing, Respondent again submits that Appellant's *Lis Pendens* amounts to an unlawful collateral attack on the underlying foreclosure and judicial sale and an attempt to circumvent the requirements of Rule 241, section 18-9-170, and public policy

dictates that it must be cancelled. See S.C. CODE ANN. § 15-39-870 (1977), Carolina Park Associates, LLC v. Marino, 2011 WL 9369846 at p. 4 (2011) (Trial Order). In addition, as of the date of this Reply, more than twenty (20) days has passed since the filing of the Lis Pendens and the requirements of the Lis Pendens statute have not been met. See S.C. CODE ANN. § 15-11-10.

CONCLUSION AND REQUEST FOR RELIEF

Respondent continues to suffer ongoing harm because it cannot sell the subject property to a third party due to the recorded Lis Pendens. Respondent has now lost the ability to sell its property on two separate occasions because of the recorded Lis Pendens. Accordingly, Respondent reaffirms its request that this Honorable Court order the Clerk of Court for Orangeburg County to cancel the Lis Pendens and order the Appellant to cease interfering with the sale of the property. Respondent further reaffirms its requests that this Honorable Court grant damages to SCBT arising from Appellant's interference with SCBT's sale of the subject property as a result of the filing of the Lis Pendens, reasonable attorney's fees and costs relating to this prosecution of this matter, and for such other and further relief as the Court may deem just and proper. In the alternative, Respondent respectfully requests this matter be referred to the Special Referee for an expedited hearing if this Honorable Court declines to take up the matters addressed herein.

[Signature Page to Follow]

Respectfully submitted,



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July 23, 2014

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
James E. Reeves, Special Referee

Case No. 2013-000965

SCBT, N.A., Respondent,

v.

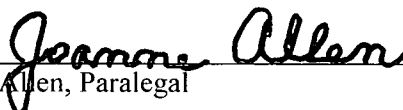
Shelton Hoffman a/k/a Shelton L. Hoffman, South Carolina Department of Revenue, Baird
Transport, Inc., Defendants.

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is the Appellant.

PROOF OF SERVICE

I certify that I have served the **Respondent's Reply to Appellant's Return to Motion to Cancel Lis Pendens or, in the alternative, Refer to Special Referee for Expedited Hearing and Supporting Memorandum** on counsel for Shelton Hoffman a/k/a Shelton L. Hoffman by having a copy hand-delivered to the Law Office of Mark W. Hardee at the address below and by depositing a copy of it in the United States Mail, postage prepaid, on July 23, 2014, addressed to:

Mark W. Hardee
The Hardee Law Firm
2231 Devine Street Suite 202
Columbia, South Carolina 29205



Joanne Allen, Paralegal

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SC Court of Appeals

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July 23, 2014

The Honorable Jenny Abbott Kitching
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: SCBT, N.A. v. Shelton Hoffman et al;
Appellate Case No. 2013-000965
Our File No. 016555-00090

Dear Ms. Kitching:

Please find enclosed the original and six (6) copies of the Respondent's Reply to Appellant's Return to Motion to Cancel Lis Pendens, or, in the Alternative, Refer to Special Referee for Expedited Hearing and Supporting Memorandum. Please file the original documents and return a clocked copy in the enclosed self-addressed, stamped envelope.

If you should need anything further, please do not hesitate to contact me.

With kind personal regards, I am

Yours very truly,



James K. Cluverius, Jr.

JKC/ja
Enclosure
cc: Mark W. Hardee, Esquire (w/enclosure)

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