

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

OCT 27 2014

The Honorable Mikell R. Scarborough, Master in Equity

SC Court of Appeals

Case No. 2013-CP-10-4248

Belle Hall Plantation Homeowner's Association, Inc.;
John A. Murray, Trustee of the John E. Murray and
Gloria C. Murray Family TrustRespondent,

v.

John A. Murray, Trustee of the John E. Murray and
Gloria C. Murray Family Trust.....Defendant,

Of whom David Conor Keys & Karen Keys are the Appellants.

PETITION FOR REHEARING OF APPELLANTS' MOTION TO STAY AND FOR
AN ORDER OF SUPERSEDEAS DATED OCTOBER 7, 2014

The Appellants, David Conor Keys and Karen Keys, hereby petition the South Carolina Court of Appeals, pursuant to Rules 240 and 241, SCACR, for rehearing of Appellants October 7, 2014, Motion to Stay and for an Order of Supersedeas, which was denied by an Order of this Court filed on October 15, 2014. The petition is based upon the grounds as set forth below, as well as the pleadings of record for this action filed with the Court of Common Pleas in Charleston County.

1. Rule 240(i) states: "[t]he court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." 240, SCACR.

2. In issuing its Order on Appellants Motion this Court stated: “Rule 241(c)(2), SCACR (“In determining whether an order should issue pursuant to this Rule, . . . the judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” October 15, 2014, Order denying Appellants’ Motion to Stay.

3. Appellants would respectfully assert that this Court’s denial of Appellants Motion to Stay makes a contested issue moot and has the effect of finally deciding Appellant’s Appeal of Order of the Honorable Mikell R. Scarborough filed on August 20, 2014, which denied the Appellants Motion to Stay and for Order of Supersedeas moved on by Appellants before the lower Court on July 22, 2014.

3. In this action the Honorable Mikell R. Scarborough on or about April 8, 2014, granted foreclosure and filed an Order of Foreclosure and Sale in this matter.

4. On May 6, 2014, after proper advertisement, the Court sold the subject property by judicial sale to the Appellants as the successful bidders for the amount of \$100,000.00.

5. On May 16, 2014 the Master executed a deed to the subject property in favor of the Appellants, where upon Appellants took title to the real property which is the subject of this action.

6. After Appellants had taken title to the subject property on May 19, 2014, the Respondent, John A. Murray, Trustee of John E. Murray Gloria C. Murray Family Trust (hereinafter “Murray”) filed a Motion to Vacate the Entry of Default and Judgment and to Set Aside the Sale pursuant to Rules 59 and 60, SCRCP.

7. On July 22, 2014, the Court filed an Order stating: “This matter came to hearing on July 3, 2014, by Defendant’s Motion to Vacate the Judgment of Foreclosure and Set Aside the

Sale in this action filed July 22, 2013. . . The Court finds that in the interest of equity and for good cause shown the Defendant's motion be granted. . . IT IS THEREFORE ORDERED THAT: . . The Master's Deed dated May 16, 2014 conveying the title to David Conor Keys and Karen Keys recorded in Book 0406, Page 909, of the RMC Office for Charleston County on May 23, 2014 is VOID and title is restored to and vested in John A. Murray, *individually* as previously acquired by a certain deed recorded in Book 0380 Page 338, of the RMC Office for Charleston County on December 23rd, 2013."

8. The Order of July 22, 2014, took away Appellants title to the subject real property, the title which Appellants had acquired through the purchase of the property at a public judicial sale.

9. The Order further instructed that the Court return the \$100,000.00 dollars of purchase money to the Appellants.

10. On July 22, 2014, Appellants filed a Motion to Stay the Order Vacating the Sale and Order of Foreclosure and moved for an Order of Supersedeas, wherein the Court would hold the purchase money in bond until resolution of the Appeal.

11. Appellants would respectfully assert that it makes logical sense for the purchase money to remain in the custody of the Court because if Appellants are successful on this Appeal then the Appellant will again have to pay the \$100,000.00 purchase price to the Court.

12. Appellants would further assert that a stay of the Order which vacated the title of Appellants in collaboration of an Order of Supersedeas whereby the Court holds the purchase money in bond, makes logical sense because it maintains the status quo until resolution of the Appeal, and prevents any party from suffering irreparable harm.

13. Rule 241(a), SCACR states: “As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. However, Rule 241(b), SCACR states: “A list of some, but not all, of the exceptions to the general rule is: (3) Judgments directing the execution of conveyances or other instruments as provided in S.C. Code Ann. § 18-9-160; [and] (4) Judgments directing the sale or delivery of possession of real property as provided in S.C. Ann. . § 18-9-170. Therefore the Order vacating Appellants title to the subject property was not stayed in this case, and the Court’s Vacating Order had the effect of taking title and possession of the property away from Appellants and returned title and possession to Murray.

14. Appellants Motion to Stay and for Order of Supersedeas dated October 7, 2014, did not request that this Court lift an Automatic Stay imposed by the Appeal rather the Motion requested that this Court impose a stay of Master’s July 22, 2014, Order and additionally grant an Order of Supersedeas holding the purchase money in bond akin to the requirements of S.C. Ann. . § 18-9-170.

15. Traditionally in a foreclosure action, the owner of the real property as part of an appeal of an order of foreclosure will petition the Court to for order of supersedes whereby in exchange for placing a bond with the Court, the owner is able to postpone the judicial sale of the real property and maintain title and possession of the real property until after the resolution of the appeal. The bond in such a circumstance has “the effect that during the possession of such property by the appellant [or owner] 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. Ann. § 18-9-170.

16. In this instance the action for foreclosure proceeded past the traditional situation where a motion to stay and order of supersedeas is petitioned for by the party holding title to the real property. In this instance the real property was sold by the Court to Appellants at a public judicial sale, the court transferred title to Appellants and extinguished any title which Murray possessed in the property by the Order of Foreclosure. However, Murray filed a Motion to Vacate the Order of Foreclosure and Sale and thereafter the Court granted Murray’s motion and vacated the Order of Foreclosure and Sale extinguishing Appellants title and possession of the property and returning title and possession of the property to Murray.

17. At current Murray who was the owner of the property prior to the Order of Foreclosure is in possession of the property as would be the circumstance of the traditional foreclosure appeal scenario. However, in contrast to such a typical scenario Murray has not petitioned the court for an order of supersedeas nor paid any bond to the Court so “that during the possession of such property by [Murray] he will not commit or suffer to be committed any waste thereon and that if the judgment be [overturned] 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. Ann. . § 18-9-170.”

18. In this case Murray, defendant in the foreclosure matter is not the appellant, rather the purchasers at judicial sale are the Appellants, and Appellants requested of the lower Court and this Court that the Master’s July 22, 2014, Order be stayed and that an Order of Supersedeas be granted in order to maintain that status quo and to protection Appellants from irreparable harm. Such irreparable harm includes Appellants loss of the benefits of the use and enjoyment

of the property as well as the potential that Murray may commit or suffer to be committed any waste upon the property when there is to bond in place to protect appellants from such potential waste. This irreparable harm was caused by the lower court vacating the Order of Foreclosure and Sale.

19. By contrast if this Court were to grant Appellants Motion thus returning the property to Appellants and Order that the purchase money be held in bond, then bond would protect Murray from harm while the property is in possession of Appellants during the pendency of the Appeal.

20. The lower court removed Appellants title and possession of the subject property as well as the benefits of the use and enjoyment of the subject property when the Court Vacated the Order of Foreclosure and Sale.

21. On July 22, 2014, Appellants filed a Motion to Stay the Vacating Order and for Order of Supersedeas with the lower Court., but the lower Court denied that Motion by an Order file on August 20, 2014, without hearing Appellants oral arguments on the motion.

22. Thereafter Appellants filed this Notice of Appeal on or about September 22, 2014, wherein one of the Orders which Appellants are appealing is the August 20, 2014, Order of the Master denying Appellants Motion to Stay and for Order of Supersedeas.

23. On October 7, 2014 Appellants petitioned this Court to Stay the Vacating Order of the Master which extinguished Appellants title to the subject Property. Appellants further petitioned this Court to grant an Order of Supersedeas. Appellants Petition to this Court is essentially the same petition Appellants made to the Master prior to filing this Appeal and which the Master Denied by the August 20, 2014, Order Appellants are now appealing.

25. This Court's October 15, 2014, Order denying Appellants October 7, 2014, Petition has the effect of making moot the contested issues on appeal with regard to Appellants Motion to Stay and Order of Supersedeas. If Appellants are successful on their Appeal of the August 20, 2014 Order deny the Motion to Stay and Order of Supersedeas, the issue will already be moot. The purpose of Appellants July 22, 2014, Motion to Stay before the lower Court and the October 7, 2014, Motion to Stay before this Court was for Appellants to regain title and possession of the subject property so that Appellants may benefit from the use and enjoyment of the subject property during the pendency of the Appeal. If the August 20, 2014, Order is overturned on Appeal the resolution of the contested issue of whether or not Appellants are entitled to have title and possession of the property during the pendency of the Appeal will be moot because Appellants will not have benefited from title, use and enjoyment of the subject property during the pendency of this Appeal. Appellants are currently and will continue to be irreparably harmed by the loss of that title, benefit and use. Appellants will have no recourse to remedy that irreparable harm.

26. Additionally this Courts October 15, 2014, Order denying Appellants October 7, 2014, Petition acts has the de facto effect dismissing Appellant's Appeal of the August 20, 2014, Order because it is in effect a denial of the same motion or petition the lower Court denied and which Appellants are now appealing.

27. Therefore Appellants respectfully request and Petition this Court to Rehear Appellants Petition Stay that certain Order of the Honorable Mikell R. Scarborough filed on July 22, 2014, Vacating the Sale and Order of Foreclosure, and voiding Appellants deed. Further Appellants respectfully request that this Court instruct the Circuit Court to hold in bond the purchase money from the subject judicial sale, which is currently in the possession of the Circuit

Court until after a decision on this Appeal is entered. Appellants further request that if such action is necessary this Court instruct the Honorable Mikell R. Scarborough to undertake those steps necessary to reinstate the deed to the subject property back to Appellants to place Appellants back in possession of the subject property.

The undersigned hereby certifies and affirms in accordance with Rule 11(a) of the South Carolina Rules of Civil Procedure that prior consultation with opposing counsel for the purpose of resolving the matter, will serve no useful purpose.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read "D. Conor Keys", written over a horizontal line.

D. Conor Keys
843 Robert E. Lee Blvd.
Charleston, SC 29412
Phone: 843-906-3998
dconorkeys@gmail.com
*Individually and as
Attorney for Appellant*

October 24, 2014
Charleston, SC

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2013-CP-10-4248

Belle Hall Plantation Homeowner's Association, Inc.;
John A. Murray, Trustee of the John E. Murray and
Gloria C. Murray Family Trust Respondents,

v.

David Conor Keys & Karen Keys Appellants.

PROOF OF SERVICE

I certify that on this 24th day of October 2014, I have served the Appellant's Petition for Rehearing on all counsel of record by depositing a copy in the United States Mail, postage prepaid addressed as follows:

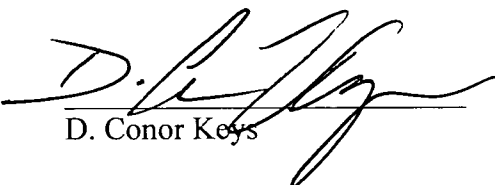
Amanda Reece
Reece Law Firm, LLC
871 Low Country Blvd. #
Mt. Pleasant, SC 29464
*Attorney for John A. Murray,
Trustee of the John E. Murray and
Gloria C. Murray Family Trust*

Stephanie C. Trotter
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Homeowner's Association, Inc.*

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D. Conor Keys

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October 24, 2014

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

RE: Belle Hall Plantation Homeowner's Association, Inc. v. John A. Murray, Trustee of John E. Murray Gloria C. Murray Family Trust Case: 2013-CP-10-4248

Madam Clerk:

Please find enclosed, with regard to the above referenced matter, the Third Party Purchasers, David Conor Keys and Karen Keys' Petition for Rehearing, Certificate of Service for the Petition, and a corresponding check for the petition. I kindly request that you file the Petition.

With kind regards,



D. Conor Keys

Enclosures:
(as stated)
CC:
Amanda Reece
Stephanie Trotter

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OCT 27 2014

SC Court of Appeals

D. Conor Keys
843 Robert E. Lee Blvd.
Charleston, SC 29412



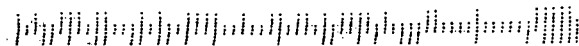
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