

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2014-001384

**RECEIVED**  
FEB 09 2015  
**SC Court of Appeals**

FV-I, Inc., in trust for Morgan Stanley Mortgage  
Capital Holdings LLC.....Respondent,

vs.

Byron J. Dolan; Lisa S. Dolan; First Citizens Bank and  
Trust Company, Inc.; Wells Fargo Bank, N.A.; Branch  
Banking and Trust Company .....Defendants,

Of whom

Byron J. Dolan and Lisa S. Dolan, are..... Appellants.

**RESPONDENT’S REPLY TO APPELLANTS’ RETURN TO RESPONDENT’S  
MOTION TO LIFT STAY UNDER RULE 42(b), SCRPC**

FV-I, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC  
 (“Respondent”) hereby submits its Reply to Appellants’ Return to Respondent’s Motion  
 to Lift Stay Under Rule 42(b), SCRPC.

**Appellants’ Return fails to address the issue of how an award of monetary  
 damages in the jury trial would result in inconsistent verdicts.**

The scenario of inconsistent verdicts described in the last section of Appellants’  
 Return is not a possible result in this matter. Appellants only sought monetary damages  
 at the jury trial on April 17, 2014 for Plaintiffs alleged breach of an agreement signed

over six years after the signing of the Note and Mortgage. During the jury trial on April 17, 2014, at no time did the Appellants argue to the jury that the Plaintiff breached the terms of the subject Note and Mortgage. A potential award of monetary damages at some point in the future on the legal counterclaims would not form the basis of a defense to Appellant's right to foreclose its mortgage in the bifurcated foreclosure trial. The verdict form approved by all parties only lists damages for the breach of contract claim in the form of monetary damages. (See Exhibit F to Respondent's Motion).

**The consent Order bifurcating the claims in this case is the law of the case.**

The Appellants' argument in their Return that the order filed on October 11, 2013 is controlling on the issue of the order of trial does not take into account the fact that in the subsequent consent Order filed on May 1, 2014, the parties consented and stipulated to bifurcate the action and sever the legal claims from the equitable claims. Appellants agreed to bifurcate the case pursuant to Rule 42(b), SCRCP, and by doing so consented and acknowledged that the bifurcated claims have distinct issues, a trial of each alone would not result in injustice, and that there are no overlapping legal and factual questions that would result in inconsistent verdicts or judgments. (See Creighton v. Coligny Plaza Ltd. Partnership, 334 S.C. 96, 512 S.E.2d 510, (Ct.App. 1998) and Fortune v. Gibson, 304 S.C. 279, 403 S.E.2d 674 (Ct.App.1991)). Appellants' were free to change their position in the case about the nature of the claims and seek an order from the Court to that affect. Appellants should now be bound by that decision.

February 6, 2015

Respectfully submitted,



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Jason D. Wyman (SC Bar # 100271)  
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Attorney for the Respondent  
Rogers Townsend & Thomas, PC and its staff are debt collectors

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Trust Company, Inc.; Wells Fargo Bank, N.A.; Branch  
Banking and Trust Company ..... Defendants,

Of whom

Byron J. Dolan and Lisa S. Dolan, are ..... Appellants.

**PROOF OF SERVICE**

I HEREBY CERTIFY that I have served the **RESPONDENT'S REPLY TO APPELLANTS' RETURN TO RESPONDENT'S MOTION TO LIFT STAY UNDER RULE 42(b), SCRCP** on Appellants and other Defendants by depositing copies of it in the United States Mail, postage prepaid, on February 6, 2015, at the addresses shown on the attachment listing Other Counsel of Record and Parties.

February 6, 2015



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February 6, 2015

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

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RE: FV-I, Inc. in trust for Morgan Stanley Mortgage Capital Holdings LLC v. Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank, Wells Fargo Bank, N A., Branch Banking and Trust Company  
Appellate Case # 2014-001384  
Our file: 511792.00355

Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of the Respondent's Reply to Appellants' Return to Respondent's Motion to Lift Stay Under Rule 42(b), SCRPC, 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 Reply to Appellants' Return to Respondent's Motion to Lift Stay Under Rule 42(b), SCRPC 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,

Charles S. Gwynne Jr.

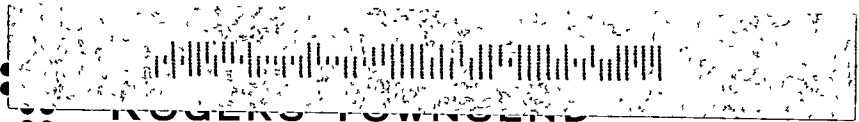
/dm

Enclosures as stated

cc:

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