

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

15120

Townes at Pelham Owners' Association, Inc.,
Respondent,

v.

Donna Boyd, Bank of America, N.A. by Assignment
From Mortgage Electronic Registration Systems,
Defendants,

And

Donna Boyd, Third Party Plaintiff

v.

Eric Hedrick, in his Individual and Official Capacity as
Owner or President of Cornerstone Realty, Inc. and
Cornerstone Realty, Inc., Third Party Defendants,

Of whom Donna Boyd is the Appellant

Appellate Case No. 2014-000701

The Honorable Charles B. Simmons, Jr.
Greenville County
Trial Court Case No. 2012CP2303686

MOTION TO HOLD CASE IN ABEYANCE

NOW COMES, the Respondent, Townes at Pelham Owners' Association, Inc., by and through its undersigned counsel, and hereby moves the Court to hold this case in abeyance for the reasons set forth below.

STATEMENT OF FACTS

Lakeview Loan Servicing, LLC (hereinafter "Lakeview") is the first mortgage lienholder against the real property owned by Appellant and the subject property in this case.

Respondent, Townes at Pelham Owners' Association, Inc.'s Notice of Lien and foreclosure action against Donna Boyd, et. al., tried in the Court of Common Pleas for Greenville County having Case No. 2012-CP-23-03686 is subordinate to the purchase money mortgage and first mortgage lien held by Lakeview loan Servicing, LLC.

After Appellant filed this appeal in the above-referenced case, Lakeview, as Foreclosure Plaintiff, initiated a mortgage foreclosure action against Appellant/Defendant Boyd by filing a Lis Pendens, Summons, Complaint, and Notice of Foreclosure on August 22, 2014 in the Court of Common Pleas for Greenville County bearing Case No. 2014-CP-23-04648. Respondent was also named a defendant in the above-referenced action. A copy of said Lis Pendens, Summons, Complaint, and Notice of Foreclosure Intervention are attached hereto as Exhibit A and incorporated herein by reference.

Appellant/Defendant Boyd was properly served with the stated pleadings on September 23, 2014. A copy of the certified mail receipt signed by Appellant/Defendant Boyd and Certificate of Service filed by Lakeview is attached hereto as Exhibit B and incorporated herein by reference.

Notice of Denial of Loan Modification or other means of loss mitigation was mailed to the Appellant/Defendant Boyd on December 19, 2014. A copy of the said Notice and Certificate of Service filed by Lakeview is attached hereto as Exhibit C and incorporated herein by reference.

An Affidavit of Default containing verification that Appellant/Defendant Boyd had "failed to answer or otherwise plead in the case" and Motion and Order of Reference for the case to be

heard by the Honorable Charles B. Simmons, Jr., Master-in-Equity for Greenville County was filed with the Court on January 23, 2015.

The Master-in-Equity office in Greenville County will confirm a final foreclosure hearing has been set for this matter for February 24, 2015 at 10:30 AM.

Upon information and belief, Lakeview, as Foreclosure Plaintiff, will seek the relief contained within the Complaint, including the following:

“That the said Plaintiff’s mortgage be declared a purchase money mortgage and that the said Plaintiff have judgment of foreclosure (against Appellant/Defendant)...”

“That the mortgaged premises be sold under the direction of this Court...”

“For an Order directing and empowering the Sheriff of Greenville County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property...”

Furthermore, upon information and belief, the subject property of this appeal will be sold by order of the Court within the next sixty (60) days and the Appellant will not have any right, title, or interest in the subject property nor will Appellant have any standing before this Court to continue this appeal.

ARGUMENT

The Court should hold this appeal in abeyance until such time as the Foreclosure Plaintiff, Lakeview, has properly adjudicated its pending mortgage foreclosure action in the Court of Common Pleas in Greenville County. By granting a stay of these proceedings for a limited period of time, the Court will ensure that Appellant’s interest in the subject property can be properly adjudicated and determined by the lower Court before proceeding with this appeal. At the same time, neither Appellant nor the Respondent will be prejudiced by a stay because both parties’

standing before this Court will be preserved during the pendency of the stay. Respondent believes that administrative and judicial economy will be well served and resources appropriately conserved by holding this proceeding in abeyance pending resolution of the mortgage foreclosure. Furthermore, the resolution of the pending mortgage foreclosure could be dispositive of some or all of the issues associated with the present appeal.

“A court has inherent power to stay proceedings in control of its docket – after balancing the competing interest[s].” *Dellinger v. Mitchell*, 442 F.2d 782, 786 (D.C. Cir. 1971); *see also American Life Ins. Co. v. Stewart*, 300 U.S. 203, 215 (1937) (“A court has control over its own docket.”). “The determination by a district judge in granting or denying a motion to stay proceedings calls for an exercise of judgment to balance the various factors relevant to the expeditious and comprehensive disposition of the causes of action on the court’s docket.” *United States of America v. Georgia Pacific Corporation* 562 F2d 294 (1977) *See also Landis v. North America Co.*, 299 U.S. 248, 254 (1936). While competing interests will vary from case to case, the primary factors to be balanced in determining whether a stay is appropriate are the benefits and hardships to the parties. *See Landis* 299 U.S. 248, 259.

One consideration relevant to such a determination is the presence of common issues and parties in related proceedings. *See Stewart*, 300 U.S. at 215 (“In the exercise of a sound discretion, [the court] may hold one lawsuit in abeyance to abide the outcome of another, especially where the parties and the issues are the same.”). Indeed, the existence of common legal issues among multiple pending proceedings almost always supports holding certain actions in abeyance due, in part, to the “longstanding policy of the law to avoid duplicative litigative activity.” *Basardh v. Gates*, 545 F.3d 1068, 1069 (D.C. Cir. 2008) (quoting *Envntl. Def. Fund v. Reilly*, 909 F.2d 1497,

1507 (D.C. Cir. 1990)). This policy is based upon, among other things, the conservation of judicial resources, *see Landis*, 299 U.S. at 254-55 (recognizing economy of time and effort on the part of the courts and parties as a benefit in this context).

Another consideration relevant to the balancing to be conducted by the Court is the status of the case on the court's docket. *See B.J. Alan Co., Inc. v. Interstate Commerce Comm'n*, 897 F.2d 561, 563 n.1 (D.C. Cir 1990) (noting that the court had yet to take up the case for preparation and argument at the time one of the parties asked that the action be held in abeyance.) If the case is at an early stage, a stay is more likely to contribute to the goal of conserving the resources of the Court and the parties.

A. The Benefits of a Stay Outweigh any Hardships to Appellant

In comparing the benefits against the hardships in the present matter, the benefits of an abeyance are far more compelling than any perceived hardships that would result to either party. Common issues, including the divestment of the Appellant's interest in the property, the subject property itself, and parties abound in both the present appeal and the pending foreclosure action filed by the Foreclosure Plaintiff.

In contrast to the concrete benefits that would accrue due to an abeyance, any hardships that would result are not apparent. This matter is in its initial stage and neither the parties nor the Court have devoted significant resources to this appeal. Because the Court has not yet set a final briefing schedule for the present appeal, neither the parties nor the Court have expended significant resources or effort that would necessarily have to be repeated if the pending mortgage foreclosure action is not adjudicated in a timely manner.

B. Respondent Will Be Prejudiced in the Absence of a Stay

Hardship, however, would arise if this matter is not held in abeyance until the Foreclosure Plaintiff is allowed to pursue its foreclosure action against the subject property. Respondent has spent over \$15,000.00 in legal fees, costs, and attorney fees pursuing its legal actions against Appellant. If Respondent is forced to continue to litigate this appeal, extra litigation resources and costs will be consumed for an appeal that will be dismissed if Lakeview is successful in its attempt to foreclose against the subject property owned by Appellant/Defendant Boyd.

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CONCLUSION

Due to the benefits that would accrue and lack of prejudice that would result from an abeyance, Respondent requests that the Court hold this matter in abeyance until the pending mortgage foreclosure action filed by the first lienholder, Lakeview Loan Servicing, LLC, can be properly adjudicated before the Court of Common Pleas in Greenville County. Furthermore, Respondent respectfully requests the Court toll the statutory deadline for Respondent to file its initial brief and designation of matter while the Court considers this Motion.

DATED this 19 day of February, 2015.

Respectfully submitted,

By: 

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*Attorney for Respondent, Townes at Pelham
Owners' Association, Inc. and Third-Party
Defendants, Eric Hedrick, in His Individual
Capacity as Owner or President of Cornerstone
Realty, Inc. and Cornerstone Realty, Inc.*

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Charles B. Simmons, Jr., Circuit Court Judge

Case No. 2014-000701

Townes at Pelham Owners'
Association, Inc.

Respondent,

v.

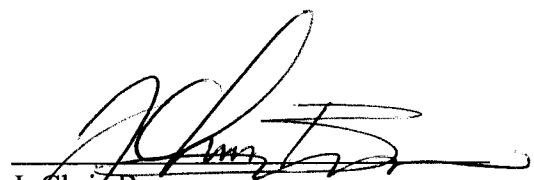
Donna Boyd

Appellant

PROOF OF SERVICE

I certify that I have served the Motion to Hold Case in Abeyance for the above-referenced action by overnight delivery to the South Carolina Court of Appeals at 1015 Sumter Street, Columbia, SC, 29201 and by depositing a copy of it in the United States Mail, postage prepaid on Thursday, February 19, 2015, addressed to the Appellant, Donna Boyd, at Post Office Box 1168, Mauldin, South Carolina, 29662.

February 19, 2015


J. Chris Brown
Attorney for Respondent, Townes at
Pelham Owners' Association, Inc.
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Greenville, SC 29607