

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2015-000367

RECEIVED

AUG 05 2015

SC Court of Appeals
76851

Royals Portfolio, LLC, an assignee of
Bank of America, N.A., formerly known as
NationsBank, N.A., which is Successor in
Merger to NCNB South Carolina, Respondent,

v.

Charlie Kelly and Dorothy Simpson, Appellants.

MOTION TO STAY

Robert F. Anderson, Chapter 7 Trustee ("Trustee") for the Chapter 7 Bankrupt Estate of Dorothy M. Simpson (the "Debtor") hereby files this Motion to Stay Appeal and submits the following:

1. The public record shows that Royals Portfolio, L.L.C., filed a foreclosure action against the Debtor and Charlie Kelly on November 28, 2012, C/A 2012-CP-40-07878 (the "Foreclosure Action").
2. At the conclusion of the foreclosure hearing, the public record reflects that the Debtor and Mr. Kelly made a motion to stay the Foreclosure Action.
3. On January 12, 2015, the public record reflects that the Master-in-Equity issued an order denying the motion to stay the Foreclosure Action and issued a Master's Decree and

Judgment of Foreclosure and Sale (the "Foreclosure Order"). Both orders were filed on January 26, 2015.

4. On or about February 23, 2015, the public record reflects that the Debtor and Charlie Kelly filed a Notice of Appeal with the South Carolina Court of Appeals, indicating their intent to appeal the Foreclosure Order and the order denying their motion to stay the Foreclosure Action.

5. The public reflects that the Debtor requested and was granted an extension to file her initial brief.

6. The public reflects that the Debtor filed a motion to stay the foreclosure sale, but that motion was denied by the Master-in-Equity because the Debtor did not post a bond to stay the foreclosure sale.

7. The Debtor filed her petition for relief under Chapter 13 of the United States Bankruptcy Code (11 U.S.C. § 101 *et seq.*) on May 1, 2015 ("Petition Date") in the United States Bankruptcy Court for the District of South Carolina ("Bankruptcy Court").

8. Upon entry of the order for relief, the automatic stay of 11 U.S.C. § 362(a) went into effect thereby staying, among other things, the foreclosure sale and the continuation of any judicial, administrative, or other action or proceeding against the Debtor. *See Platinum Fin. Servs. Corp. v. Byrd (In re Byrd)*, 357 F.3d 433 (4th Cir. 2004) ("The plain language of Section 362 stays appellate proceedings in actions originally brought against the debtor, even when it is the debtor who files the appeal."); *but see, Southern Bank & Trust Co. v. Harley*, 368 S.E.2d 908, 295 S.C. 423 (S.C. Sup. Ct. 1988).

9. Nevertheless, Debtor filed her initial appellate brief with the South Carolina Court of Appeals on May 7, 2015 (and it was received by the Court of Appeals on May 12, 2015).

10. Royals has been granted two extensions by the Court of Appeals to file its initial respondent's brief. That brief is now due on August 7th, absent another extension or stay.

11. On July 21, 2015, the Bankruptcy Court entered a Consent Order converting the Debtor's bankruptcy case to Chapter 7, for cause.

12. On July 22, 2015, the Office of the Assistant United States Trustee appointed the undersigned Robert F. Anderson as the Chapter 7 Trustee for the Debtor's estate.

13. By operation of law, and pursuant to 11 U.S.C. § 541, all property of the Debtor of whatever kind and nature, became property of the Bankruptcy Estate. *United States v. Whiting Pools, Inc.*, 103 S.Ct. 2309, 462 U.S. 198, 76 L.Ed.2d 515, 10 BCD 705 (1983).

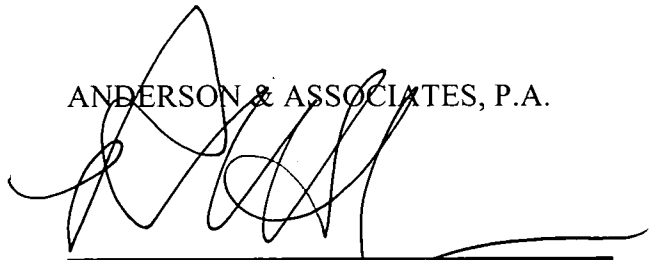
14. The Chapter 7 Trustee now controls the Debtor's appeal and must decide whether to continue pursuing the appeal.

Relief Requested

15. The Trustee, charged with administering the Debtor's estate and assets, hereby requests that the pending appeal and all related deadlines associated therewith be stayed as a consequence of the Debtor's bankruptcy filing, in order that the Trustee have time to review the Debtor's affairs to determine whether there is any value to the Debtor's estate in pursuing the appeal or whether dismissing the appeal or abandoning it back to the Debtor is in the estate's best interest.

WHEREFORE, the Trustee requests that the Court of Appeals enter an order staying the appeal pending further motion from the Trustee or parties after obtaining Bankruptcy Court approval to do so, and for such other and further relief as the Court of Appeals deems just and appropriate.

ANDERSON & ASSOCIATES, P.A.



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*Chapter 7 Trustee for Dorothy M. Simpson's
Estate*

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CERTIFICATE OF SERVICE

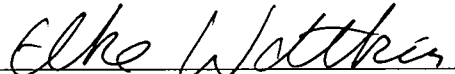
The undersigned, Elke Watkins, hereby states that she mailed the foregoing Motion to Stay to the following parties in interest:

Kathleen Chewning Barnes, Esq.
Barnes Law Firm
P.O. Box 29924
Hampton, SC 29924

Brian L. Boger, Esq.
Phillip A. Curiale, Esq.
Law Offices of Brian L. Boger
1331 Elmwood Ave., Suite 210
Columbia, SC 29201

Paul D. Harrill, Esq.
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, SC 29211

by depositing same in the Post Office, postage prepaid, at Columbia, South Carolina, where there is regular communication by mail, and that same was mailed postage prepaid on August 5, 2015.


Elke Watkins, Bankruptcy Paralegal
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