

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Branch Banking and Trust Company,
PLAINTIFF,

VS.

Richard Brady a/k/a Rick Brady; First
Community Bank; County of Richland; and
East Richland County Public Service District,

DEFENDANT(S).

(141008.01016)

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-40-5244

RECEIVED

OCT 20 2015

SC Court of Appeals

ORDER

JEANETTE W. MCCORMICK
C.C.P. & G.S.

2015 SEP -9 AM 10:12

RICHLAND COUNTY
FILED

This matter comes before the Court by way of Defendant Richard Brady's Motion to Set Bond. A hearing was held before me on August 27, 2015. Leonard R. Jordan, Jr., Esq., appeared for Defendant Brady. Vance L. Brabham, III, Esq., appeared for the Plaintiff. Also appearing were Lauren S. Hogan, Esq., representing Richland County and Jeffrey L. Silver, Esq., representing First Community Bank.

The code section applicable to the setting of an appellate bond in this matter is S.C. CODE ANN. §18-9-170, which states in part:

If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant 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, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking.

The process for the posting of the appellate bond is described in S.C. Code § 18-9-200, which states:

The undertakings prescribed by Sections 18-9-130, 18-9-140 and 18-9-170 may be in one instrument or several, at the option of the applicant, and a copy, including the names and residences of the sureties, must be served on the adverse party with notice of the appeal unless a deposit is made as provided in Section 15-1-250, and notice thereof given.

S.C. Code § 18-9-210 provides the respondent to the appeal a method for objecting to the sufficiency of the sureties offered, stating in part:

An undertaking upon an appeal shall be of no effect, unless it be accompanied by the affidavit of the sureties that they are each worth double the amount specified therein. The respondent may, however, except to the sufficiency of the sureties within ten days after receipt of the notice of appeal; and unless they or other sureties justify before a judge or clerk of the court below, as prescribed by Sections 15-17-270 and 15-17-280, within ten days thereafter, the appeal shall be regarded as if no undertaking had been given.

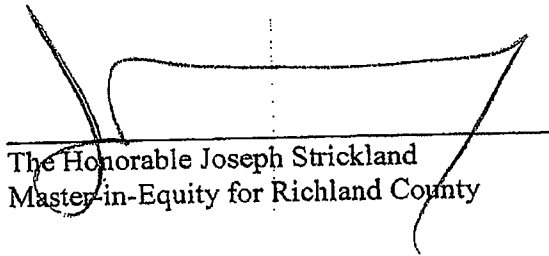
Here, Defendant Brady served a proposed Appeal Bond on the parties just prior to the instant hearing. At hearing, Plaintiff excepted to the sufficiency of the bond arguing that the bond fails to specify a specific amount and that there is no evidence that the sureties to the bond have adequate assets to cover the undertaking. Plaintiff has since filed and served a formal exception to the sufficiency of the sureties and argues that the appeal bond has been submitted untimely.

In reviewing the Appeal Bond and the affidavits of the sureties and in consideration of the exception of the Plaintiff to the bond, I find that there is not adequate evidence before the Court of the sureties' financial ability to cover the obligations of the surety that they have given. The affidavits contain only bare statements that the affiants are worth more than double the amount of the obligation, which is not specified. I find that in light of Plaintiff's exception, the appeal bond should not operate as a stay on the foreclosure sale until such time as additional evidence is

presented as to the sufficiency of the sureties in accordance with S.C. Code Ann. §18-9-210 and, if necessary, a further hearing is held on these matters.

THEREFORE, IT IS ORDERED, that the appeal bond offered by the Defendant Brady at hearing shall not operate as a stay on the foreclosure sale at this time.

AND IT IS SO ORDERED:



The Honorable Joseph Strickland
Master-in-Equity for Richland County

~~Sept.~~
August 8, 2015
Columbia, South Carolina