

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2014-CP-40-3488
Appellate Case No. 2015-000997

David F. Ford, II,

Respondent,

v.

Richard G. Campanaro,

Appellant.

RESPONDENT'S RETURN
TO APPELLANT'S MOTION TO STAY

FACTUAL AND PROCEDURAL BACKGROUND

Respondent David F. Ford, II ("Ford") obtained a money judgment against Appellant Richard G. Campanaro ("Campanaro") in the amount of \$14,198.30 that was filed on April 7, 2015. Thereafter, on or about May 8, 2015, Campanaro filed the present appeal *pro se*. Ford has domesticated the judgment in Pennsylvania and is proceeding with collection on the judgment in that state. A sheriff's sale is scheduled in Lancaster County, Pennsylvania on April 29, 2016 and a Debtor's claim hearing is scheduled for May 19, 2016.(Exhibits 1 and 2).

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SC Court of Appeals

Since filing his appeal in South Carolina, the court has sent Campanaro multiple deficiency notices for various reasons including the filing fee, ordering the transcript, paying the court reporter and failure to file an initial brief and designation of matter compliant with Rules 208 and 209 SCACR. (Exhibit 3 C-Track Report) To the best of Respondent counsel's knowledge, Campanaro has yet to file a compliant initial brief and designation of matter.

According to C-Track, Campanaro filed a letter requesting the court to accept it as his "motion to stay" on March 25, 2016. Respondent's counsel received this request to stay on March 28, 2016. Respondent's counsel also received a letter from this court dated March 25, 2016 requesting that respondent file and serve an expedited return within five (5) days of the date of this letter. Respondent's expedited return follows.

ARGUMENT

1. **CAMPANARO'S MOTION SHOULD BE SUMMARILY DENIED BECAUSE HE FAILED TO FIRST MOVE BEFORE THE LOWER COURT FOR RELIEF AS REQUIRED BY RULE 241(d)(1) SCACR.**

Campanaro requests "a motion to stay matters involving the Case listed above until such time the request for appeal is heard or ruled upon." While not expressly stated by Campanaro, presumably he is moving this court pursuant to Rule 241 SCACR to stay further collection activity on Ford's money judgment which is excepted from the general stay of Rule 241(a) SCACR. See Rule 241(b) (1) SCACR, **Exceptions** (1) Money judgments as provided in S.C. Code Ann. § 18-9-130. However, Rule 241(d)(1) SCACR provides as follows:

- (1) Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas **must first be made to the lower court** or administrative tribunal which entered the order or decision on appeal. (Emphasis added.)

Campanaro did not make an application with the lower court or recite any

extraordinary circumstances why it would be impracticable to do so. As noted in the factual background, any proceeding in Pennsylvania was a month away. Because he failed to first move before the lower court as required by Rule 241 (a) SCACR, his motion/application should be denied.

2. CAMPANARO'S MOTION SHOULD BE DENIED BECAUSE HE FAILED TO COMPLY WITH THE REQUIREMENTS OF RULE 241(d)(3) and (4) SCACR.

In addition to failing to comply with Rule 241(d)(1) by not first moving before the lower court, Campanaro also failed to comply with the requirements set forth in Rule 241(d)(3) and (4) addressing the requirements for the petition. First, Campanaro failed to file a written petition but instead mailed a letter. Second, his letter is not verified. Third, he fails to contemporaneously file a certified copy of the judgment or order and a copy of the notice of appeal. Fourth, Campanaro includes numerous disputed factual assertions in his letter without any supporting affidavits or other sworn statements. Fifth, Campanaro fails to make any legal arguments with supporting points and authority. Sixth, since he failed to even make an application with the lower court, Campanaro must include in his motion the extraordinary circumstances which made it impracticable, which he failed to do.

For all these failures to comply with the basic requirements of Rule 241(d)(3) and (d)(4) SCACR, the motion should be denied.

3. THE MOTION SHOULD BE DENIED ON ITS MERITS BECAUSE A STAY IS NOT NECESSARY TO PRESERVE JURISDICITON OF THE APPEAL OR PREVENT A CONTESTED ISSUE FROM BECOMING MOOT.

As previously noted, Ford has a simple money judgment. Rule 241(b)(2) SCACR provides that "In determining whether an order should issue pursuant to this Rule, the ... appellate court, or 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. Neither of these considerations are present in this case. This court will still have jurisdiction of the appeal without the issuance of a stay. Likewise, the contested issues of notice of trial and entry of the judgment will not become moot without a stay. As discussed in Argument 5, *infra*, Campanaro has a remedy if he posts a bond equal to the judgment. This court should deny the motion as being unnecessary.

4. THE COURT SHOULD DENY THE MOTION AND DISMISS THE APPEAL BECAUSE CAMPANARO HAS FAILED TO TIMELY FILE THE MOTION AND PROSECUTE THIS APPEAL.

Campanaro filed this appeal on May 8, 2015, almost a year ago. Since that time, this court has sent him numerous deficiency notices with the last being December 7, 2015 for a deficient Appellant's initial brief. (See C-Track, Exhibit 3) Now, almost a year later, Campanaro still has not filed an initial brief and designation of matter which are compliant with Rules 208 and 209 SCACR. Or at least this court has not notified Respondent's counsel that he has done so and C-Track does not show an accepted filing. This court should not allow Campanaro to ignore its rules for almost a year and then come to this court asking for extraordinary relief.

In any event, if a motion for stay were so critical to Campanaro, he should have filed it at the beginning of the appeal and not waited almost a year. This court should not only deny Campanaro's motion but should also dismiss his appeal for lack of prosecution.

5. CAMPANARO'S MOTION SHOULD BE DENIED BECAUSE HE HAS FAILED TO POST A BOND OR OFFER TO POST A BOND.

Campanaro has a remedy, but apparently does not want to pursue it. If Campanaro does not want Ford pursuing collection as allowed under S.C. Code §18-39-130, he can post a bond with sufficient surety equal to the judgment or

can pay the judgement amount into court. In lieu of that, Campanaro simply mailed this court a letter asking for a stay. This letter provides absolutely no protection to the Respondent who will be forced to wait, perhaps for another year or more, with no security for payment of his money judgment if that judgment is affirmed on appeal. While Ford believes the motion should be denied and Campanaro's appeal dismissed, if this court decides to grant the motion despite these arguments, it should be conditioned upon the posting of an appropriate bond equal to the judgment amount with interest and supported by sufficient surety.

CONCLUSION

For all the reasons set forth herein, this court should deny the motions and dismiss the appeal.

TOBIAS G. WARD, JR., PA



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Columbia, SC 29250
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tw@tobywardlaw.com

March 30, 2016

SHERIFF'S SALE

By Virtue of a Writ of Execution

CI-16-00652

Issued out of the Court of Common Pleas of Lancaster County, Pennsylvania and to me directed, I will expose the following described property at public sale at

137 SCARBOROUGH LANE, MILLERSVILLE, PA 17551-9523
ON

Tuesday, April 26, 2016
10:30 AM

Prevailing Time, the following described property, to wit:

Case Number: CI-16-00652

Zone	Levy Item Name	Quantity
GARAGE	TRUE TEMPER YELLOW SNOW SHOVEL	1
GARAGE	CENTRAL FORCE BLACK AND YELLOW HAMMER	1
GARAGE	RED LOUISVILLE STEP LADDER	1
GARAGE	MONKEY DOOR STOP	1
GARAGE	FOUR PRODUCTION TROPHIES	1

Any person claiming any interest in said personal property shall file the same prior to the sale, with the Sheriff's Office. A schedule of distribution will be filed in the Sheriff's Office no later than five (5) days after the date of the sale, and distribution made ten (10) days thereafter unless exceptions are filed with the Sheriff's Office prior thereto.

Seized and taken into execution to be sold as the property of BANK OF AMERICA in suit of DAVID F FORD, II vs. BANK OF AMERICA and to be sold by me.

(4140) Defrauding Secured Creditors. A person commits a misdemeanor of the second degree if he destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest or after levy has been made thereon with intent to hinder enforcement of such interest.

Attorney for the Plaintiff:
APPEL & YOST LLP
LANCASTER, PA

Mark S. Reese, Sheriff
LANCASTER COUNTY, Pennsylvania

Eric Schelin Rothermel
Attorney I.D. No. 307093
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ATTORNEYS FOR PLAINTIFF

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

ENTERED AND FILED
2016 MAR 18 AM 10:05
PROthonotary of the
LANCASTER, PA.

DAVID F. FORD, II :
: VS. : No. CI-16-00652
: RICHARD G. CAMPANARO :

ORDER

AND NOW, this 16th day of March, 2016, it is hereby Ordered that the Debtor's Claim hearing presently scheduled for Tuesday, March 22, 2016, at 1:30 p.m. in Courtroom No. TBA before the Honorable Leonard G. Brown, III, is hereby rescheduled to May 19, 2016, at 1:30 o'clock P.m. in Courtroom No. TBA before the Honorable Leonard G. Brown, III of the Lancaster County Courthouse, Lancaster, Pennsylvania.

BY THE COURT:

LEONARD G. BROWN
JUDGE

J.

cc: Eric S. Rothermel, Esq.
Richard G. Campanaro, 137 Scarborough Lane, Millersville, PA 17551
Bank of America, 720 W. Uwchlan Avenue, Exton, PA 19341

COPY

NOTICE OF ENTRY OF ORDER OR DECREE
PURSUANT TO PA. R.C.P. NO. 236
NOTIFICATION - THE ATTACHED DOCUMENT
HAS BEEN FILED IN THIS CASE
PROTHONOTARY OF LANCASTER CO., PA

DATE: 3.18.16



CLERK'S OFFICE
SUPREME COURT
COURT OF APPEALS

South Carolina Appellate Case Management System

C-Track: the browser-based CMS for Appellate Courts

Appellate Case No. ...

Cases

Case Search

Participant Search

Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing.

Case Information: 2015-000997

Court:	Court of Appeals	Classification:	Appeal - Common Pleas - Other
Short Title:	David Ford, II v. Richard Campanaro	Case Status:	Initial Briefing
	View Full Title		
Consolidated:			
Filed Date:	05/06/2015	Oral Argument Date:	
Disposition Date:		Disposition Type:	
Remittitur Date:			
Lower Court or Tribunal:	Richland (2014CP4003488)		

Party Information

Appellate Role	Party Name	Former	Attorney(s)
Appellant	Richard G. Campanaro	N	Self Represented
Respondent	David F. Ford, II	N	Tobias Gavin Ward, Jr.

Views

Display:

Event Information

Filed Date	Event Information	Doc
03/25/2016	Correspondence - Outgoing (Letter - Request for Expedited Return to Motion to Stay)	
03/25/2016	Motion - Stay / Supersedeas (including lifting of automatic stay)	
12/07/2015	Deficiency - Attempted Correction of Appellant's Initial Brief	
11/23/2015	Deficiency - Deficiency Letter Sent Regarding Designation of Matter	
11/23/2015	Deficiency - Deficiency Letter Sent Regarding Appellant's Initial Brief	
10/27/2015	Designation of Matter - Designation of Matter Filed	
10/27/2015	Initial Brief - Appellant	
10/22/2015	Correspondence - Incoming (Other)	
10/16/2015	Transcript Documents - Transcript Delivered - Direct Appeal	
09/28/2015	Transcript Documents - Other Correspondence	
09/17/2015	Transcript Documents - No Transcript to be Ordered - Direct Appeal	
09/14/2015	Transcript Documents - (Letter - Transcript Update Request)	
09/02/2015	Correspondence - Outgoing (Transcript Not Ordered Properly)	
08/03/2015	Correspondence - Incoming (Other)	
07/13/2015	Correspondence - Incoming (Requesting Information Regarding Case Status)	
06/22/2015	Correspondence - Incoming (Other)	
06/22/2015	Transcript Documents - Transcript Ordered	
06/15/2015	Correspondence - Outgoing (Email to Parties)	
06/15/2015	Correspondence - Incoming (Response from Respondent's attorney)	
06/15/2015	Correspondence - Outgoing (Order Only)	
06/15/2015	Non-Dispositional Decision - Reinstatement of Appeal or Matter	
06/15/2015	Correspondence - Incoming (Email from appellant regarding erroneous dismissal)	
06/12/2015	Dispositional Decision - Order	
06/11/2015	Correspondence - Outgoing (transcript order request)	
06/08/2015	Correspondence - Incoming (Other)	
06/04/2015	Correspondence - Outgoing (transcript overdue letter)	
05/18/2015	Deficiency - Correction	

05/12/2015	Notice of Appeal (Civil) - Initial
05/08/2015	Deficiency - Deficiency Letter Sent regarding the filing fee
05/08/2015	Correspondence - Outgoing (Letter - Notice of Appeal Initial Letter)



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David F. Ford, II,

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PROOF OF SERVICE

I certify that I have served the Respondent's Return to Appellant's Motion to Stay on the Appellant by mailing a copy on March 30, 2016, by United States Mail, postage prepaid and addressed as follows:

Richard G. Campanaro
137 Scarborough Lane
Millersville, PA 17551-100



Tobias G. Ward, Jr.

TOBIAS G. WARD, JR., PA
— ATTORNEYS AT LAW —

TOBIAS G. WARD, JR.
tw@tobywardlaw.com

J. DERRICK JACKSON
dj@tobywardlaw.com

March 30, 2016

Hand Delivered

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

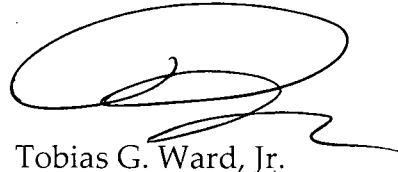
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MAR 30 2016
SC Court of Appeals

Re: David Ford II vs. Richard Campanaro
Appellate Case No. 2015-000997

Dear Ms. Kitchings:

Enclosed for filing are the original and seven copies of the Respondent's Return to Appellant's Motion To Stay, and Proof of Service in the above referenced matter. Please file the original and return the clocked copies to our courier.

Respectfully,
Tobias G. Ward, Jr., PA



Tobias G. Ward, Jr.

Cc: David Ford, II
Richard Campanaro
Eric Schelin Rothermel, Esquire