

The South Carolina Court of Appeals
H. Thad White, Respondent 79256

V.
Petrel International, LLC and
Haiyan Lin, Appellant
Appellate Case No. 2014-002764

Petition For Writ of Supersedeas

The appellant, Haiyan Lin, here by
files a petition For Writ of Supersedeas,
pursuance to Rule 241, SCACR, to
suspend illegal execution of writ of
the Assistance issued by Haigh Porter,
Special Referee for Darlington County.
to preserve and to protect her due pro-
cess right and equal protection right
under the law.

April 12, 2016

RECEIVED

APR 13 2016

SC Court of Appeals

Appellant
Haiyan Lin
P.O. Box 8776
Columbia, SC 29202

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.
2016 APR 12 PM 3:55

FILED

The South Carolina Court of Appeals
H. Thad White, Respondent

V.
Petrel International, LLC
and Haiyan Lin, Appellant
Appellate Case No. 2014-002764

Memorandum In Supporting
Petition For Writ of Supersedeas

In Supporting the Petition for Writ
of Supersedeas, the appellants shows
the following.

On March 16, 2016, the single
Judge has denied the appellants Motion
to stay the writ of Assistance. The
Rule 241(d)(2), SCACR, specifically
provides that an aggrieved party
may petition the full appellate
court panel for review of the single
Judge's order of denying stays and
supersedeas.

RECEIVED

APR 13 2016

SC Court of Appeals

Pursuant to SC Code Ann § 18-9-220 (Supp. 2014), under the provisions of Section 356 of the Code, appellant's timely appeal of the Decree of Foreclosure Sale acted as an automatic stay of further proceeding below, (Le Conte v. Irwin, 23 S.C. 106, 112 (1885)).

The Rule 241, SCACR provides that "the automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court." In fact, this automatic stay has been in effect until Feb. 29, 2016, when Haugh Power, Special Referee for Darlington County issued Special Referee Deed and Writ of Assistance, without a motion for lifting automatic stay, this Ex Parte order violate the Rule 241 ~~241~~, procedure for obtaining lift of stay or supersedeas.

without lifting automatic stay, the lower court lacks jurisdiction to revive the term of prior order of judicial sale to issue special Referee Deed and the Order for writ of Assistance. The foreclosure sale could not be finalized, until the report by the special referee is confirmed by the circuit court and appeal court. (Wachovia Bank of S e N. A. v. Player 341 S.C. 424, 535 S.E. 2d 128 (2000)). "The master should not have issued a deed during the pendency of the appeal, because the appeal acted as an automatic stay pursuant to §18-9-220 (Wachesaw Plantation East Community services Association v. Todd C. Alexander, 2015) (Ex parte Moore 346 S.C. 274, 294, 550 S.E. 2d 877 (ct. App. 2001), to abide the judgment of the appellate court or the Supreme Court.

At the last stage of the appeal, respondent has filed a motion to dismiss the appeal, or alternatively to require Appellant to post a bond pending the disposition of the appeal. This motion is denied by the appeal court on Jan. 28, 2016, without lifting automatic stay of proceeding below, the lower court over stepped its boundary to issue special Referee Deed and writ of Assistance. It disregards the authority of the appellate court and the Supreme Court in attempting obstruction of justice to make the appeal becoming moot. There is no rule that a judicial sale cannot be appealed unless a writ of Super sededeas has been issued and bond posted. In Antrum v. Hartsville Prod. v. Credit Ass'n, 228 S.C. 201, 89 S.E. 2d 376

(1955), the case is on deciding on petition to set aside foreclosure sale and declaring deed to purchaser void.

Pursuant Rule 241, SCACR, "As a general rule, the service of a notice of appeal in civil matter acts to automatically stay the proceeding below; This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court; The lower court shall have jurisdiction to entertain petition for lifting automatic stay and for writ of Supersedeas; In a case subject an exception, any party may move for an order imposing a Supersedeas of matters where specific condition must be met before the exception applies, those conditions must be strictly complied with" without obtaining an order for lifting automatic stay to consider whether or not a specific condition for the exception of 18-9-170 apply in this case, the lower court issued the Ex Parte order for special Referee Deed

and writ of Assistance. This action is not only in violation of Rule 241, SCACR, but also cause the appellant's due process right and equal protection right to be damaged. The appellant could potentially be prejudiced in the pending appeal case as a result of this action.

Further, Haiyan Lin, as current property owner and occupant, has been evicted from the premiss without an ejection order as provided by SC code § 27-37-20, § 27-37-30, § 27-37-40, and § 27-37-800, she has neither been served with a notice for the rule to vacate, nor has been given an opportunity for the Rule to show cause hearing. Without a writ of Possession from magistrate court, the writ of Assistance has been used by the respondent illegally evicted her.

It is in serious violation of 14th amendment of US Constitution. "The Constitutional guarantee that no state shall deprive any person of life, liberty or property without due process of law or deny any person "equal protection of the laws" (U.S. V. Morrison, 120 S. Ct. 1740).

"The guaranty of equal protection of the laws is a pledge of the protection of equal laws" (Romer V. Evans, 116 S. Ct. 1620).

"Any person has right to demand equal protection right, and to demand that any unequal treatment shall be under strictest judicial scrutiny" (Ho by Ho V. San Fran. School Distrit, 147 F. 3d, 854, 826 F. 2d 160, 646 F. Supp. 1362). "Judges, States, and Federal alike, are bound by oath or affirmation to respect ~~a~~ right arising under U.S. Const. Art. 6." (Heimback V. Chu, 744 F. 2d 11, 105 S. Ct 1842).

For the reasons stated above, the appellants respectfully request that this court issues a writ of Supersedeas to suspend the illegal execution of the writ of Assistance, to prevent a contested issue from becoming moot, to protect due process right of the appellants under equal protection of the law, to restore integrity of the judiciary.

This petition for Writ of Supersedeas is filed in the appellate court under such extraordinary condition in the lower court. The petition is supported by applicable statutory and case law, and any supporting memorandum and affidavits which may be filed with the court prior to the hearing on this petition.

April 12, 2016

Appellant
Haiyan Lin
P.O. Box 8776
Columbia, SC 29202.

The South Carolina Court of Appeal
H. Thad White, Respondent
v.

Petrel International, LLC
and Haiyan Lin, Appellant

Appellate Case No. 2014-002764

Certificate of Services

I, Haiyan Lin, certifies that I
have served the Petition For Writ of Supersedeas
and the Memorandum In Supporting Petition
For Writ of Supersedeas by U.S. mail to:

Bryan W. Braddock
2231 W. Palmeto St.
Florence, SC 29501

and

Haigh Potter
162 S. McQueen St.
Florence SC 29501

on April 12, 2016

Appellant
Haiyan Lin
P.O. Box 8776
Columbia, SC 29202
803-404-7163

RECEIVED

APR 13 2016

SC Court of Appeals

SCOTT B. SUGG
CLERK OF COURTS
DARLINGTON COUNTY

2016 APR 12 PM 3:55

FILED