

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

New York Community Bank,

PLAINTIFF,

vs.

Scott L. Butler; Jacqueline Butler; Mortgage Electronic Registration Systems, Inc., as nominee for Northstar Mortgage Group, LLC; and LVNV Funding, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-29-0892

ORDER  
**RECEIVED**

JUN 02 2016

SC Court of Appeals

FILED  
OFFICE OF CLERK  
OF COURT  
LANCASTER, SC  
2016 MAY -2 AM 11:44

This matter came before the Court for a hearing to set a bond pursuant to S.C. Code Ann. § 18-9-170 during the pendency of an appeal by Defendants Scott L. Butler and Jacqueline Butler. Defendants have appealed the Judgment of Foreclosure and Sale Order entered herein on March 2, 2016, and seek a stay of the public auction on June 6, 2016.

After hearing the arguments of counsel and presentations of pertinent facts, the Court set an appeal bond in accordance with § 18-9-170. The Court found that the value of the subject property is \$483,100.00 based upon the tax assessed value of the property for 2015. Defendants contested this value based upon a plat which shows the approximate border of North Carolina and South Carolina running through the property. Defendants claimed that roughly half of the subject property is located in North Carolina, and is therefore unmarketable and incapable of valuation. Defendants have also filed a motion to obtain leave from the Court of Appeals to file a Motion for Relief from Judgment under Rule 60, SCRCF, based upon their contention that a portion of the property is located in North Carolina.

Upon review of the tax assessor's records for Lancaster County, South Carolina, Mecklenburg County, North Carolina, and the related GIS imagery for both states, the Court determined that the amount of the appeal bond in order to stay the enforcement of the sale would be \$603,875.00, equaling 125 percent of the property value as assessed exclusively by Lancaster County, South Carolina. The property has not been assessed, appraised, or taxed by North Carolina. The Court did not address the

*Handwritten initials and scribbles at the bottom left corner.*

Defendants' argument as to the validity of the judgment, as the amount of the undertaking required to stay the sale was the sole issue before the Court.

Pursuant to South Carolina Rules of Appellate Practice Rule 241, "the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal," unless one of several exceptions apply. In the case at hand, this exception is found in Rule 241(b)(4) which states "the exception to the general rule is . . . [j]udgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170." S.C. Code Ann. § 18-9-170 requires the appellant from judgment directing the sale of real property to post a bond with two sureties in order to overcome the exception to the automatic stay of Rule 241(b)(4).

The basis for the bond issued here was to protect Plaintiff against the possibility of waste or destruction, and to secure, if necessary, the value of Defendant's use of the property (rental value) during the pendency of the appeal. The rate of 125 percent of value is consistent with the rate prescribed by the U.S. District Court for the District of South Carolina in Local Civil Rule 62.01; while not binding on this Court, nonetheless this Court did find it useful in setting a fair and reasonable bond. Local Rule 62.01 provides in pertinent part:

The appellant shall not be entitled to a stay of execution of the judgment pending appeal unless the appellant executes a bond with good and sufficient sureties, approved by the Clerk of Court, payable to the Clerk of Court with condition, failing the appeal, to satisfy such judgment as the appellate court may render, when the judgment is: (A) For the payment of money only, in an amount equal to 150% of the amount of the judgment if the judgment does not exceed ten thousand dollars (\$10,000) or 125% if the judgment exceeds ten thousand dollars (\$10,000).

The Court found this instructive determining the bond amount required in York County case *U.S. Bank v. Means* (Civil Action No.: 2011-CP-46-00982) and Richland County case *Opportunity Investment Capital, Inc. v. Rivers* (2012-CP-40-0068). In *Means*, following the foreclosure sale of a property, the occupants of such property appealed the Order of a Writ of Assistance requiring the occupants to vacate said property. The Court refused to stay the Writ of Assistance during the appeal unless the occupants posted a bond of 125% of the property value, secured by two sureties. Similarly in *Rivers*, the Court


B  
2  
MA

found 125% of the tax assessed property value to be fair and reasonable under the circumstances, following the mortgagor's appeal of the Order of Judgment of Foreclosure and Sale. Similarly, the Court finds that 125 percent of the judgment amount would be appropriate based purely upon the plain language of Local Rule 62.01; however, this being a foreclosure action sounding in equity, the Court determined that 125 percent of the property's tax assessed value, being the lower figure, was appropriate under the facts of this case and applicable law.

The Court therefore ordered Defendants to present to the Court with copy to counsel for Plaintiff by 5:00 p.m. on Friday, May 27, 2016, the names of two sureties reflecting a written undertaking in the amount of \$603,875.00 in accordance with S.C. Code Ann. § 18-9-170.

Accordingly, the Court orders that if no such bond is timely made, the Order of Sale shall not be stayed while Defendants' appeal proceeds.

IT IS SO ORDERED.

  
\_\_\_\_\_  
William C. Tindal  
Special Referee for Lancaster County

Lancaster, South Carolina

Date:   MAY 2, 2016  



STATE OF SOUTH CAROLINA  
COUNTY OF LANCASTER  
IN THE COURT OF COMMON PLEAS  
New York Community Bank,  
PLAINTIFF

FORM 4  
JUDGMENT IN A CIVIL CASE

C/A NO: 12-CP-29-0892

Scott L. Butler; Jacqueline Butler; Mortgage  
Electronic Registration Systems, Inc., as nominee for  
Northstar Mortgage Group, LLC; and LVNV  
Funding, LLC,

DEFENDANT(S)

Submitted by: FINKEL LAW FIRM LLC  
Magalie A. Creech (SC Bar 78855)

Attorney for: Plaintiff; Defendant;  
or Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

**JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

**DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

**ACTION DISMISSED.** (CHECK REASON) Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43 (k), SCRCP (Settled); Other \_\_\_\_\_

**ACTION STRICKEN.** (CHECK REASON) Rule 40(j), SCRCP; Bankruptcy; Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other \_\_\_\_\_

**DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (Check applicable box):

Affirmed; Reversed; Remanded; Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** See attached order (formal order to follow). Statement of Judgment by the Court: The required bond to stay the June 6, 2016 foreclosure sale is \$608,875.00. Defendants execute a written undertaking, with two sureties, in accordance with the requirements of Section 18-9-170, SC Code of Laws, delivering same to the court with a copy to Plaintiff's attorney not later than 5:00 p.m., on Friday, May 27, 2016.

**ORDER INFORMATION**

This order ends does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

FILED  
OFFICE OF CLERK  
OF COURT  
2016 MAY -2 AM 11:45  
CLERK OF COURT  
LANCASTER, SC



