THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE JAMES O. SPENCE
MASTER IN EQUITY

APPELLATE CASE NO. 2016-000990

Charles E. Strickland, III, Latisha D. Strickland and Justin R. Dillon,

PETITIONERS ~~Appellants~~

v.

Marjorie E. Temple,

Respondent,

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Court of Appeals err in dismissing the appeal on account of late filing based on its finding that the Appellants' received written notice of the entry of the Order by e-mail of a clocked copy of the Order on June 4, 2015, but did not file their Motion to Reconsider under Rule 59(e), SCRCP until June 24, 2015, more than ten (10) days later?

STATEMENT OF THE CASE

The Respondent disagrees with portions of the Petitioner's statement of the case and submits the following:

This is an action to foreclose an Installment Land Contract.

In July, 2014, the Respondent conceded that there was no equity in the property. Pursuant to Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S.E.2d 361 (2002) and Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E.2d 697 (Ct.App. 2006)., on August 5, 2014, the Master signed an Order terminating the Respondent's interest in the Contract because there was no equity in the property.

On April 17, 2014, the Appellants filed a motion seeking a separate award of attorneys fees as a money judgment and sanctions pursuant to Rule 11, SCRCP.

On June 4, 2015, the Master signed and filed an Order stating that pursuant to Rule 70, SCRCP, the attorney fees must be added to the contractual debt to determine whether there is equity in the property. The Master ruled that the Appellants were not entitled to a separate judgment for an award of attorneys and in addition, there was no right to obtain a deficiency judgment and were not entitled to the imposition of sanctions.

The Master e-mailed a copy of the order to each of the attorneys of record on June 4, 2015.

On June 16, 2015, the Clerk of Court e-mailed another clocked copy of the Order together with the Judgment Cover Sheet to each of the attorneys of record.

On June 24, 2015, the Appellants served a motion to alter or amend the Judgment (Rule 59(e), SCRCP). The Appellants filed their Motion on June 26, 2015. On July 27, 2015, the Respondent filed a return to the Motion in which Respondent argued, inter alia,

that the Motion to Alter or Amend was not timely served or filed.

On September 1, 2015, the Master signed and filed an Order denying the Appellants' Motion to Alter or Amend but finding that the Motion was timely filed.

On September 28, 2015, the Respondents filed this appeal with the Supreme Court. The Supreme Court transferred the appeal to the Court of Appeals.

On October 30, 2015, the Respondent filed a Motion to Dismiss the Appeal. The Appellants filed a Return to the Motion

By Order dated January 13, 2016, the Court of Appeals dismissed the appeal.

On January 19, 2016, the Respondents filed a Motion to Reconsider.

By Order dated April 13, 2016, the Court of Appeals denied the Motion to Reconsider.

On May 10, 2016, the Respondents served the Petition for a Writ of Certiorari.

ARGUMENT

Did the Court of Appeals err in dismissing the appeal on account of late filing based on its finding that the Appellants' received written notice of the entry of the Order by e-mail of a clocked copy of the Order on June 4, 2015, but did not file their Motion to Reconsider under Rule 59(e), SCRCP until June 24, 2015, more than ten (10) days later?

1. Appellants argue that the Respondent should have appealed the Master's Ruling on the timeliness of the Motion filed pursuant to Rule 59(e), SCRCP.

An appeal of this finding was not necessary and therefore the Master's Order is not the law of the case. In his orders, the Master denied all of the relief sought by the Appellants. Only a party aggrieved by an order ... may appeal. Rule 201 (b), SCACR. Therefore a party is not entitled to appeal a ruling which is completely favorable to the party even if the ruling is based on some alternative theory to which the party may take exception. The situation is analogous to the Court's ruling in Futch v. McAllister Towing of Georgetown, 335 S.C. 598, 518 S.E.2d 591 (1999). In that case, the Court declined to address a second issue because it ruled that an appellate court need not address remaining issues when disposition of a prior issue is dispositive.

2. The Appellant argues that the clocked order e-mailed by the Master did not constitute notice of entry of the order because no Form 4 was included in the e-mail.

> Appellate courts recognize — or at least they should recognize — an overriding rule of civil procedure which says: whatever doesn't make any difference, doesn't matter. McCall v. Finley, 294 S.C. 1, 362 S.E.2d 26 (Ct.App. 1987)

The Order that the Master sent to the parties had the standard clocking by the Clerk of Court. The Courts have repeatedly said that an Order becomes effective (and the Judge loses any power to change it) when the order hits the clock in the Clerk's office.

The presence or absence of the Form 4 in the email makes no difference. It is not a notice of the entry of the order: the clocking on the Order is.

It should be noted that nowhere in the Appellants' return to the Motion does the attorney for the Appellants state that he did not receive the Master's email on the day it

was sent.

3. The Appellants then argue that the notice received by email does not comply with Rule 5 and Rule 77, SCRCP. The Appellants further argue no service other than by mail or personal delivery is valid.

These arguments were presented to the Court of Appeals and rejected in Wells Fargo v Fallon Properties. (2015-08-26-01) Rule 77 states that mailing of notice is not necessary if a party has already received notice. Clearly the Master's e-mail with the clocked order attached was sufficient notice.

It should be noted that the Clerk of Court for Lexington delivers all Orders, judgments and court notices by e-mail. It does not mail anything to attorneys. The Clerk does maintain boxes for attorneys in the Courthouse lobby but that box is usually used only for the return of documents which would need to be processed, scheduled and then served (e.g. Summons, Complaint and Motion for Temporary Relief in Family Court).

The Respondent is aware that there is a pending petition for a writ of certiorari in the Wells Fargo case.

The attorneys for the Respondent do not necessarily agree with the logic of the Order in Fallon but unless and until this Court issues a contrary opinion, it is the standard upon which attorneys are to operate.

CONCLUSION

The Court of Appeals properly dismissed the appeal as not timely filed. The Petition for a Writ of Certiorari should be denied.

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PROOF OF SERVICE

I certify that I have served the Respondent's Reply to Appellants' Petition for Writ of Certiorari Appellants, by depositing a copy of it in the United States Mail, postage prepaid, on June 9, 2016, addressed to the attorney of record, Frederick I. Hall, III, P.O. Box 1898, Lexington, SC, 29071.

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June 9, 2016