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In the Court of Appeals

JUL 29 2016

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Joseph M. Strickland, Master-In-Equity

Case No.: 2013-CP-40-5959

Ex Parte: Amie S. Seebauer and Kenneth W. Steiner, III.....Intervenors/Appellants,

In Re: Sterling Lending Group, Inc., as agent for Regent Bank.....Respondent,

v.

Tamara L. Steiner, Thomas Williams, Jr., Ben Staples, SC Housing Corp.,
acting through South Carolina State Housing Finance and Development
Authority's South Carolina Homeownership and Employment
Lending Program, Terry Huffstetter and Tin Huffstetter,
Joan L. Miller, Atlantic Credit & Finance, Inc., Department of
Treasury – Internal Revenue Service, State of South Carolina
Department of Revenue, and First Financial Corporation.....Defendants.

BRIEF OF APPELLANT

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ATTORNEYS FOR INTERVENORS/APPELLANTS

July 29, 2016

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STATEMENT OF ISSUES ON APPEAL

1. Did the Master-In-Equity err in refusing Intervenors/Appellants' Rule 24(a)(2) Motion to Intervene?
2. Are the Master-In-Equity's rulings on Intervenors/Appellants' Motion to Vacate Foreclosure, Motion to Stay Sale, Rule 59 Motion to Reconsider, Rule 60 Motion to Vacate Judgment, and Motion for Continuance to Conduct Discovery invalid and nonbinding because Intervenors/Appellants were denied the right to intervene?

STATEMENT OF THE CASE

This matter was initially a foreclosure action instituted by Respondent, Sterling Lending Group, Inc., as Agent for Regent Bank (“Sterling Lending”), against Defendants, Tamara L. Steiner (“T. Steiner”), Thomas Williams, Jr., (“T. Williams, Jr.”), et al. Defendants T. Steiner and T. Williams, Jr., defaulted. On June 6, 2014, an Order of Foreclosure and Sale was filed with the Clerk of Court for Richland County, South Carolina.

Intervenors/Appellants, Kenneth W. Steiner, III, (“K. Steiner, III”) and Amie S. Seebauer (“A. Seebauer”), Individually, on behalf of the Estate of Phillip Chappell, Jr., and as Fiduciary of Clifton Steiner, a minor under the age of eighteen (18) years, filed a Petition to Vacate the Foreclosure and Sale Order on the following grounds:

1. The transfer of the foreclosed property at 2144 Long Trail, Hopkins, South Carolina, to Defendants T. Steiner and T. Williams, Jr., was voidable pursuant to S.C. Code §62-3-713. (The transfer of estate property to a personal representative of an estate is voidable unless the decedent’s will expressly authorized the transaction, the transfer was approved by the Probate Court, or the transfer was expressly consented to by the heirs);
2. The Last Will and Testament of Phillip Chappell, Jr., did not expressly authorize the sale of estate property to the personal representative;
3. Because a minor is involved, the Master in Equity should reopen the foreclosure “ex mero motu” to protect the interest of the minor; and
4. Allow Intervenors/Appellants to conduct discovery prior to ruling on their Petition to Vacate.

The Respondent Sterling Lending asserts (1) adequate consideration of One Hundred and Twenty-Five Thousand Dollars (\$125,000.00) was allocated for the encumbrance, (2) the general principals of law pertaining to a bona fide purchaser for value will protect the title to property in the hands of such purchaser who obtained it without notice of the conflict of interest or act of

self-dealing, (3) S.C. Code §62-3-910(A) protects Respondent Sterling Lending from a voidable sale; and (4) Intervenor/Appellants' action is barred by a three (3) year statute of limitations.

On November 3, 2015, an Order was issued denying Intervenor/Appellants' Motion to Vacate the Order of Foreclosure and Sale. (R. pp. 5 – 9). Intervenor/Appellants then filed a Rule 59 Notice of Motion and Motion for Reconsideration (R. pp. 10 – 18) because the November 3, 2015 Order (1) did not address Intervenor/Appellants' request for a continuance to conduct discovery on the statute of limitation issues (R. pp. 3 – 4), (2) the Court's Order interpreting S.C. Code §62-3-713 essentially voids S.C. Code §62-3-713, (3) Intervenor/Appellants requested a continuance to conduct discovery regarding the conflict of interest in the October 2008 real property transfer, and (4) Intervenor/Appellants requested that the Court apply *ex mero motu* to protect the minor heir of the Estate of Phillip Chappell, Jr., and vacate the Order of Foreclosure and Sale.

Intervenor/Appellants also filed a Rule 60 Notice of Motion and a Rule 24(a)(2) Motion to Intervene and a Motion to Vacate Foreclosure based upon (1) newly discovered evidence and (2) fraud, misrepresentation, or other misconduct of an adverse Party. (R. pp. 19 – 22).

STATEMENT OF FACTS

In 2000, Phillip Chappell, Jr., died and devised his property pursuant to a valid Last Will and Testament. The Last Will and Testament of Phillip Chappell, Jr., devised his property at 2144 Long Trail, Hopkins, South Carolina (“Subject Property”), to Intervenor/Appellant K. Steiner, III, Intervenor/Appellant A. Seebauer, Defendant T. Steiner, Defendant Laurie L. Steiner, Defendant Kenneth W. Steiner, Jr., and Defendant Clifton B. Steiner. [Defendant Clifton Steiner was two (2) years old at the time of his Great Grandfather, Phillip Chappell, Jr.’s, death].

In 2008, Defendants T. Steiner and T. Williams, Jr., were residing at the Subject Property. Defendants T. Steiner and T. Williams, Jr. are not married. Defendant T. Williams, Jr., approached a Mortgage Broker, Gulfstream Financial Services, Inc. (“Gulfstream Financial”), to obtain a cash-out loan to purchase the Subject Property from the Estate of Phillip Chappell, Jr. Defendant T. Williams, Jr.’s, loan application falsely reported that the loan was (1) a refinance, (2) that Defendant T. Williams, Jr., inherited the Subject Property, and (3) that Defendants T. Steiner and T. Williams, Jr., were married. Defendant T. Steiner did not complete a loan application. Defendant T. Williams, Jr.’s, credit scores were reported as “567 – 551 – 436.” Gulfstream Financial then contacted Respondent Sterling Lending, another Mortgage Broker, wholly owned by Regent Bank. Respondent Sterling Lending also required Defendant T. Williams, Jr., to complete a loan application. Defendant T. Steiner did not complete a loan application. (R. pp. 23 – 62).

On October 27, 2008, Defendant T. Steiner and Laurie Steiner, as Personal Representatives of the Estate of Phillip Chappell, Jr., sold the Subject Property to Defendants T. Steiner and T. Williams, Jr. The October 27, 2008 “Warranty Deed” conveying the Subject

Property stated the transaction was authorized by the Last Will and Testament of Phillip Chappell, Jr. Phillip Chappell, Jr.'s, Last Will and Testament did not expressly authorize a Personal Representative to sell estate property to themselves. (R. pp. 39 – 47). “Exhibit A” to the October 27, 2008 “Warranty Deed” conveying the Subject Property expressly states that a “Deed of Distribution” from the Estate of Phillip Chappell, Jr., would be filed. However, a “Deed of Distribution” was never issued or filed.

The President of Respondent Sterling Lending, Phillip Shannon, was actually present at the time the “Warranty Deed” and mortgage were executed by Defendant T. Williams, Jr., and at the closing of the Subject Property. Phillip Shannon witnessed signatures and help execute the Probate.

Sometime prior to the October 27, 2008 transfer of the Subject Property, Respondent Sterling Lending agreed to lend Defendant T. Williams, Jr., a personal cash-out adjustable rate loan on the same day that Respondent Sterling Lending had Defendants T. Williams, Jr., and T. Steiner execute an adjustable rate mortgage on the Subject Property to secure the personal cash-out loan to Defendant T. Williams, Jr., from Respondent Sterling Lending. The conveyance of the Subject Property and execution of the mortgage was witnessed by Respondent Sterling Lending's President, Phillip Shannon.

ARGUMENTS

I. **Because Intervenors/Appellants were denied a Rule 24(a)(2) Intervention of Right, Intervenors/Appellants are entitled to a new hearing.**

Rule 24(a)(2) of the South Carolina Rules of Civil Procedure, SCRPC, provides, in pertinent part,

“Upon timely application, anyone shall be permitted to intervene in an action.....(2) when the applicant claims an interest relating to the property or transaction which is subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest unless the applicant’s interest is adequately represented by existing parties.”

A party seeking intervention under Rule 24(a)(2) must (1) establish a timely application, (2) assert an interest relating to the property or transaction which is the subject of the action, (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impeded its ability to protect that interest, and (4) demonstrate that its interest is inadequately represented by other parties. In re: Horry County State Bank, LLC, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004).

In the spring of 2015, Intervenors/Appellants discovered the Subject Property had been sold to Respondent Sterling Lending.

On June 19, 2015, Intervenors/Appellants filed their initial pro-se Motion to Vacate Foreclosure and/or Motion to Stay Foreclosure until the Subject Property’s “Title” was cleared. Neither Intervenors/Appellants were ever served with Notice of the Foreclosure Action. Clearly, Intervenors/Appellants timely moved to vacate the foreclosure and/or stay the foreclosure until the Subject Property’s “Title” was cleared.

Both Intervenors/Appellants are beneficiaries pursuant to the Last Will and Testament of Phillip C. Chappell, Jr. The Subject Property that is the subject of this action is an estate asset.

By way of their Petition to Vacate the Order of Foreclosure, Intervenor/Appellants plead sufficient facts that could establish the 2008 sale of the Subject Property to the Personal Representative of the Estate of Phillip C. Chappell, Jr., was voidable. S.C. Code §62-3-713.

It is without dispute, Defendant T. Steiner, as Personal Representative of the Estate of Phillip C. Chappell, Jr., transferred "Title" of the Subject Property to herself. Absent consent of the beneficiaries of the Estate of Phillip C. Chappell, Jr., express authority by the Last Will and Testament of Phillip C. Chappell, Jr., or a Probate Court Order authorizing the transfer of the Subject Property, the transfer of the Subject Property is voidable. S.C. Code §62-3-713.

In the present appeal, none of the three (3) actions set forth in S.C. Code §62-3-713 were effected and therefore the transfer of the Subject Property by the Personal Representative of the Estate of Phillip Chappell, Jr., Defendant T. Steiner, is voidable.

Without intervention, the Intervenor/Appellants cannot protect their beneficiary interest in the Subject Property.

Finally, neither the Respondent Sterling Lending nor the original Defendants to the foreclosure action can adequately represent the Intervenor/Appellants positions. Defendants T. Williams, Jr., and T. Steiner failed to answer and were declared to be in default.

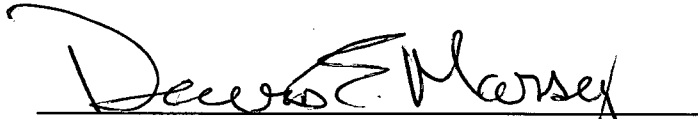
II. The Master-In-Equity's ruling on Intervenor/Appellants' Motion to Stay Foreclosure, Motion to Reconsider, Amend, or Alter, and Motion to Vacate Judgment are invalid because the Master-In-Equity refused to allow Intervenor/Appellants to intervene and therefore the rulings are without standing and premature.

The Master-In-Equity should have only entered an Order denying the Intervenor/Appellants' Rule 24(a)(2) Motion to Intervene. By disallowing the Intervenor/Appellants' intervention, the Master-In-Equity lacked standing and jurisdiction to rule on all other issues raised by Intervenor/Appellants' Motion to Stay Foreclosure, Motion to Reconsider, Amend, or Alter, Motion to Vacate Judgment, their Brief in support thereof, and Motion for Continuance.

CONCLUSION

The Master-In-Equity erred by denying Intervenor/Appellants' Rule 24(a)(2) Motion to Intervene. By denying Intervenor/Appellants' Rule 24(a)(2) Motion to Intervene, the Master-In-Equity lacked standing and jurisdiction to rule on Intervenor/Appellants' Motion to Stay Foreclosure, Motion to Reconsider, Amend, or Alter, and Motion to Vacate Judgement. This matter should be remanded back to the Master-In-Equity.

RESPECTFULLY SUBMITTED:



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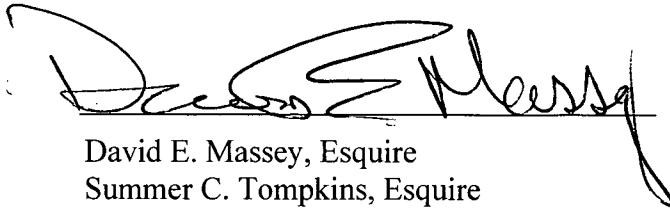
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Department of Revenue, and First Financial Corporation.....Defendants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complied with Rule 211(b), SCACR.



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July 29, 2016

CERTIFICATE OF SERVICE

I certify that I have, on the date specified below, served a copy of the following documents on counsel for Respondents by:

- Depositing a copy of them in the United States Mail, with first-class postage prepaid thereon;
 Depositing a copy in the U.S. Mail, Certified Mail, Return Receipt Requested; or
 Hand-Delivery

CASE:

**Ex Parte: Amie S. Seebauer and Kenneth W. Steiner, III
Case No. 2013-CP-40-5959**

DOCUMENT(S):

1. Brief of Intervenor/Appellant
2. Record on Appeal (Volumes 1)

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