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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No. 2014-002633

RECEIVED
AUG 15 2016
SC Court of Appeals

Thomas M. Ferro and
Lorraine B. Ferro

Appellant

v.

Stephen Dudek and
Doreen Cross

Respondent

APPELLANTS FERRO MOTION TO COMPEL RESPONSE FROM RESPONDENTS DUDEK/CROSS FOR PROOF OF LENDING

The Appellants/Defendants Thomas Ferro and Lorraine Ferro, pro se, moves pursuant to Rule 26(b)(1), SCRCP, for an Order compelling the Respondents/ Plaintiffs/ Defendants, Stephen Dudek and Doreen Cross, to produce valid documentation and lender contact information to confirm Respondents ability to [apply] and obtain financing per court Order of November 6, 2014.

On November 6th, 2014, the Master of Equity ruled in favor of Respondents/ Defendants/ Plaintiffs Stephen Dudek and Doreen Cross for specific performance on a real estate contract for 788 E. Butternut Rd, Summerville, SC, which includes the house and 6 acres of land, and an Order was filed with the Clerk of the Court.

In December 2014, Appellants Ferro appealed said Order.

Per S.C.A.C.R. 241(b)(4), "*Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170*[1]," the issued court Order does not have an automatic stay. Per *S.C. Code Ann. § 18-9-*170, if the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant. No written undertaking requesting a stay of said Order has been executed by the appellant(s). Respondents were required to move forward on the sale of said property.

On January 8, 2015, Respondents stated they were going to move forward on said Court Order, by filing the appropriate motions with the judge and the courts (Attachment 1).

On March 25th, 2015, Plaintiffs/Defendants Dudek and Cross filed a motion compelling the court to order Appellants Ferro and Appellant Morphew to post a Supersedeas Bond in order to stay further proceedings in this action, including the sale and delivery of the real property at issue. Said motion also included and compelled the courts to hold Appellant Morphew in contempt [for obstructing Respondents ability to perform their due diligence per said Order].

On May 13th, 2015, the hearing for Respondents Motion took place, at which time the courts did not make a ruling, but instead allowed 10-days for the courts and the Respondents attorney, David Collins, to review and respond to the Appellants Answer to said Motion. No response to Appellants Answer from opposing party/attorney. All parties were directed to continue to proceed with the sale of the property (home inspections, appraisals, bank financing), specifically directing Dudek and Cross to contact Appellants Ferro to obtain access to said property so that they could perform their due diligence; included within the hearing, the court confirmed on record that Appellant Morphew will allow Respondents physical access to property to perform their due diligence. There has been no movement forward by Respondents, nor any communications to the Appellants Ferro.

[1] If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking.

It has been a year since the May 13th, 2016 Motion hearing, and a year and a half since the court Order of November 6th, 2014. Though Dudek and Cross have communicated several times since 2014 they are required to comply with the court's Order and were proceeding to move forward with said purchase, Respondents Dudek and Cross have questioningly failed to do so.

When requested to provide proof of current ability to make application and secure financing per court order, via lender letter and/or lender contact information for seller's direct communication to the lender, there has been no response (see Attachment 2).

1. That discovery in the form of a written e-mail request [for proof of Respondents ability to apply and obtain financing, and confirmation that First Federal (now South State) was going to again be Respondents mortgage lender] was submitted on April 27th, 2016 to the Respondents attorney. Attorney Collins answered, "*My clients will be willing and able to close upon the courts ruling.*"[2] Under Rule 37(a)(3), the attorney's answer is to be treated as a failure to answer.[3]

2. That discovery in the form of a written e-mail request for proof of Respondents ability to apply and obtain financing via current pre-approval letter/confirmation letter from their financial institution was requested - along with confirmation Appellants Ferro may contact First Federal (now South State) - was again submitted, to the Respondents attorney, on April 27th, 2016. No answer.

3. That discovery in the form of a written e-mail request for proof of Respondents ability to apply and obtain financing via current pre-approval letter/confirmation letter from their financial institution was requested - along with confirmation Appellants Ferro may contact First Federal (now South State) - was again submitted, via e-mail to the Respondents attorney, on May 3rd, 2016. No answer.

4. That discovery in the form of a written e-mail notification that an applicable motion will be filed due to Respondents lack of response to Appellants Ferro e-mail requests (as repeated above). Respondents response, "*Lorraine, please feel*

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2 Upon further clarification, 'courts' is specifically to mean the Court of Appeals.

3 S.C.A.C.R 37(a)(3), FAILURE TO MAKE OR COOPERATE IN DISCOVERY: SANCTIONS; Evasive or Incomplete Answer. " *For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.*"

free to file any motions that you feel are necessary to protect your interests."

Failure to answer.[4]

Past history shows that, though Respondents Dudek and Cross testified they had lending previously secured on said sales contract but could not go to closing due to the breach of Appellants Ferro, they in fact had never provided the lender with a complete application to be processed and were denied lending due to 'an incomplete application' and failure to respond to a 10-day notice, and furthermore failed to disclose this material fact to the opposing parties and to the courts. Appellants Ferro argue that perjury and non-disclosure of material facts is valid ground to in which to question Respondents actions in good faith and fair dealings, plus their ability to obtain financing.

Due to these points and facts, and to the Respondents intentional avoidance to supply the requested documentation and lender point of contact information for confirmation, Appellants Ferro question Respondents current ability and willingness to comply with the court Order. The Appellants Ferro feel this entire situation has caused unnecessary financial hardships and an undue amount of time and emotional distress on their family. The Dorchester County Tax assessor has categorized the said property as a non-South Carolina residence, and is taxed at the highest possible rate, leading the said property to be listed on the Delinquent Tax Sale list for the past two years. If in fact financing cannot be achieved by Respondents, it would be a true waste of the SC Court of Appeals' time. The Appellants Ferro respectfully ask to expedite the case, looking forward to avoid any unnecessary further delays enacting Rule 241, SCACR.

WHEREFORE, the Appellants Ferro move for an Order compelling the Respondents to produce complete and executed answers, and the required document(s) within 10 days.

Respectfully Submitted,

Dated 8/13/16

Thomas M. Ferro, pro se
76 Elk Range Drive
Snowmass, CO 81654

[4] ID3

Lorraine B. Ferro DATED 8-13-16

Lorraine B. Ferro, pro se
76 Elk Range Drive
Snowmass, CO 81654
(843) 327-1262

DORCHESTER COUNTY
DELINQUENT TAX OFFICE
NOTICE OF SEIZURE, LEVY, AND TAX SALE
TELEPHONE 843-563-0110 OR 843-832-0110
www.dorchestercounty.net

128-00-00-090000C
FERRO THOMAS M & LORRAINE B
C/O LORRAINE FERRO
76 ELK RANGE DR
SNOWMASS CO 81654-9303

5/06/2016

FINAL NOTICE BEFORE SALE

The property described below will be advertised and sold at public auction on Monday, October 31, 2016 if taxes, assessments, penalties and costs are not paid by 5:00 P.M., Friday, October 28, 2016.

ONLY CERTIFIED CHECKS, US POSTAL MONEY ORDERS OR CASH WILL BE ACCEPTED AS PAYMENT AFTER FRIDAY, SEPTEMBER 23, 2016.

Property Description:	E BUTTERNUT RD 788 Tax District: 209	Year 2015 Taxes	6,845.08
		Penalties	1,056.76
Receipt No.	R-2015-00009224-00	Prior Year's Bal.	.00
Tms No.	128-00-00-090000C	SWCF	.00
		SWUF	75.00
		STWMF	31.33
		Total Due Now:	8,008.17
		Total Due After 5pm September 23, 2016*	8,068.17

**** NOT PAID BY 5:00 P.M.OCTOBER 28, 2016, PROPERTY WILL BE SOLD AT TAX SALE****

PLEASE BE REMINDED THAT THE DELINQUENT TAX OFFICE IS LOCATED AT 201 JOHNSTON STREET, ST. GEORGE, SC. THIS IS THE ONLY LOCATION WHICH WILL ACCEPT PAYMENT. NO CREDIT OR DEBIT CARD PAYMENTS.

KEEP TOP PORTION FOR YOUR RECORDS

PLEASE DETACH AND RETURN BOTTOM PORTION TO ENSURE PROPER CREDIT

MAKE CHECK PAYABLE AND REMIT TO:
DORCHESTER COUNTY DELINQUENT TAX COLLECTOR
201 JOHNSTON STREET
ST. GEORGE, SC 29477

128-00-00-090000C
FERRO THOMAS M & LORRAINE B
C/O LORRAINE FERRO
76 ELK RANGE DR
SNOWMASS CO 81654-9303

Receipt No.	R-2015-00009224-00
Tms No.	128-00-00-090000C
Amount Enclosed:	

Please make any corrections to your mailing address below:

NAME: _____

ADDRESS: _____

CITY: STATE: ZIP:

The State of South Carolina
In The Court of Appeals

RECEIVED
AUG 15 2016
SC Court of Appeals

Case No. 2014-002633

Thomas M. Ferro and
Lorraine B. Ferro

Appellant

V.

Stephen Dudek and
Doreen Cross

Respondent

CERTIFICATE OF SERVICE

I, Thomas M. Ferro and Lorraine B. Ferro, Appellants [and pro se] for said case, hereby certify that we have, on this date indicated below, served Respondents with the **APPELLANTS FERRO MOTION TO COMPEL RESONSE FROM RESPONDENTS DUDEK/CROSS FOR PROOF OF LENDING** by mailing a copy of same via certified United States Mail to the following address:

Stephen Dudek and Doreen Cross
236 Cady Drive
Summerville, SC 29483

Date 8/13/16

Thomas M. Ferro
76 Elk Range Drive
Snowmass, CO 81654
(843) 304-7133

Date 8-13-16

Lorraine B. Ferro
76 Elk Range Drive
Snowmass, CO 81654
(843) 327-1262

ATTACHMENT 1

Subject: Re: Civil Action No.: 2013CP1800074 consolidated in Civil Action No. 2013CP1800183; Appeal Notice
From: davidacollins2@aol.com (davidacollins2@aol.com)
To: firegirl0926@yahoo.com;
Cc: lbferro3200@gmail.com; kkorda@scnlaw.com;
Date: Monday, January 12, 2015 8:58 AM

Molly, I respectfully disagree with your assessment of the rules. This case is not automatically stayed Should you wish to have the protection of the automatic stay you will have to post the bond. We will be filing the appropriate motions with Judge Chellis and the Court of Appeals.

ATTACHMENT 2

From: **David Collins** <davidacollins2@aol.com>
Date: Fri, May 20, 2016 at 10:23 AM
Subject: Re: Butternut Property Sale
To: Lorraine Ferro <lbferro3200@gmail.com>

Lorraine, please feel free to file any motions that you feel are necessary to protect your interests.

Sent from my iPhone

> On May 20, 2016, at 11:35 AM, Lorraine Ferro <lbferro3200@gmail.com> wrote:
>
> David,
> With regards to your clients not responding to my repeated requests as contracted buyers of the Butternut property to provide me with a confirmed pre-approval of their financing, I have no other recourse but to file a motion to compel with the court. This is a disappointing outcome. As buyers expecting a resolution from the SC Appellate Court in the coming months, the task of financing should be one that they have set in motion and ready to finalize for closing.
>
> I will be filing the motion unless I hear back from you with their cooperation to my request.
>
> Regards,
> Lorraine Ferro

From: Lorraine Ferro <lbferro3200@gmail.com>
Date: May 3, 2016 at 10:30:03 AM MDT
To: "davidacollins2@aol.com" <davidacollins2@aol.com>
Subject: Re: Financing, second request

David,
I have not heard back from you. Who are your clients going to be using for their financing? Avoiding this issue inclines me to think that there is a potential problem. Please let me know if they are continuing with First Federal or using a different lender.

Thank you,
Lorraine

On Wed, Apr 27, 2016 at 6:19 PM, Lorraine <lbferro3200@gmail.com> wrote:
David,
I assume then I can contact First Federal for a current approval letter? I need a confirmation letter from their financial institution so we know we are not wasting our time, and this applies to all buyers. It is a stipulation of the sales contract, and though I would love to take your word on this, I need a current letter of approval.

I look forward to cooperation from all involved.

Lorraine
Sent from my iPhone

On Apr 27, 2016, at 5:32 PM, davidacollins2@aol.com wrote:

Lorraine, all is well. I hope the same for you. My clients will be willing and able to close upon the courts ruling.

-----Original Message-----
From: Lorraine Ferro <lbferro3200@gmail.com>
To: davidacollins2 <davidacollins2@aol.com>
Sent: Wed, Apr 27, 2016 1:05 pm
Subject: Financing, second request

Hi David,
I hope you are doing well. Tom and I are looking to reconfirm financing from your clients as well as Molly, per the last email we sent to you. Please have your clients provide us with confirmation of financing at this point in time. Are they still going to use First Federal for their mortgage? As we had never received final approval in December of 2012, we need to revisit this issue. Please respond to this email at your earliest possible convenience.

Best Regards,
Lorraine Ferro

> On Apr 20, 2016, at 4:36 PM, Lorraine Ferro <lbferro3200@gmail.com> wrote:
>
> Greetings to All,
>
> It has been quite a while since we have been in touch, which leads to the reason for my email. As the sellers of the 788 E Butternut property, we are respectfully requesting all of our contracted buyers to re-establish financial status and current eligibility of financing per the purchase of our property. Nearly four years have passed since our "time is of the essence" December 2012 closing expectation. The appeal of the original court ruling would be moot if one of the contracted buyers is unable to secure financing at this point in time. As the sellers, we need to confirm that all parties are still able to close within 30 days or the shortest reasonable time period available.
>
> Please get back to us to confirm that you have received this, and are aware of our concern and our request.
>
> Best Regards,
> Lorraine and Tom Ferro

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	Civil Action No. 2013CP1800183
THOMAS M. FERRO and LORRAINE B. FERRO,	)	
Plaintiffs,	)	
v.	)	
STEPHEN DUDEK and DOREEN	)	
Defendants	)	
MOLLY MORPHEW,	)	
Plaintiff,	)	
v.	)	
STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE FERRO	)	
Defendants	)	

CERTIFICATE OF SERVICE

I, Thomas M. Ferro and Lorraine B. Ferro, Appellants [and pro se] for said case, hereby certify that we have, on this date indicated below, served counsel below with the **APPELLANTS FERRO MOTION TO COMPEL RESPONSE FROM RESPONDENTS DUDEK/CROSS FOR PROOF OF LENDING** by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

David A. Collins, Esquire
P.O. Box 40578
Charleston, SC 29423

Thomas M. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
(843-327-1262)

Lorraine B. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
(843-327-1262)

May 31, 2016

May 30, 2016

David Athell Collins, Esquire
P.O. Box 40578
Charleston, SC 29405
(843) 760-0220

RE: Thomas M Ferro and Lorraine B Ferro, Defendants vs. Stephen Dudek and Doreen Cross, Plaintiffs, AND Molly M Morphew, Plaintiff vs. Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro, Defendants
Case No. 2013CP1800183

Dear David:

In regards to the above referenced matter, please find a copy each of the **Appellants Ferro Motion to Compel Response from Respondents Dudek/Cross for Proof of Lending**, and the **Certificate of Service**.

Should you have any questions or concerns, please feel free to call me. Thank you for your cooperation and assistance in this matter.

Kindest regards,

Lorraine B. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
(843-327-1262)

Enclosures
Cc: Molly Morphew, pro se
788 E Butternut Rd.
Summerville, SC 29483

Ferro
76 Elk Range Dr
Snowmass, CO 81654

CERTIFIED MAIL®

7015 3010 0001 3449 1452

UNITED STATES POSTAL SERVICE®

1000

29201

U.S. POSTAGE
PAID
SNOWMASS, CO
81654
AUG 13, 16
AMOUNT
$8.20
R2304Y122857-14

FIRST CLASS

Jenny Abbott Kitchings, Clerk
S.C. Court of Appeals
1015 Sumter St.
Columbia, SC 29201