THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity

Case No. 2013-CP-40-5959

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 the Treasury – Internal Revenue Service, State of South Carolina Department of Revenue and First Financial Corporation,

Defendants,

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

Intervenors/Appellants.

INITIAL BRIEF OF RESPONDENT

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I. WHETHER THE LOWER COURT PROPERLY DETERMINED THAT APPELLANTS WERE NOT ENTITLED TO INTERVENE IN THE UNDERLYING FORECLOSURE ACTION.

II. WHETHER THE LOWER COURT'S RULINGS ON 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 SHOULD BE DISTURBED.

STATEMENT OF THE CASE

This appeal arises from a foreclosure action brought by Respondent Sterling Lending Group, Inc., as Agent for Regent Bank ("Sterling") in the Richland County Court of Common Pleas, Case No. 2013—CP-40-05959 ("Underlying Action"). Sterling filed the Summons and Complaint in the Underlying Action with the Clerk of Court for Richland County ("Clerk") on October 1, 2013. On June 6, 2014, the Clerk filed the Order of Foreclosure and Sale issued by the Richland County Master-In-Equity ("Master") in the Underlying Action [Order of June 4, 2014]. On December 31, 2014, the Master issued a supplemental Order of Foreclosure and Sale filed January 21, 2015 concerning the real property that was the subject of the Underlying Action commonly known as 2144 Long Trail, Columbia, SC 29061 ("Subject Property") [Order of December 31, 2014]. The Master sold the Subject Property at public auction on February 2, 2015.

Sterling was the successful bidder for the Subject Property at the public auction. On March 9, 2015, a deed of conveyance to Sterling was executed, delivered, and recorded on March 12, 2015 in the Office of the Register of Deeds for Richland County ("ROD") in Book 2011 at Page 1553 ("Master's Deed") [Title to Real Estate dated March 9, 2015].

Thereafter, on or around June 26, 2015, Amie S. Seebauer and Kenneth W. Steiner, III ("Appellants") filed a Motion to Vacate Sale or in the alternative Stay of Sale Until Title is Clear [Motion of June 21, 2015]. Appellants were neither parties nor intervenors to the Underlying Action, and styled their appearance as Petitioners. Appellants' position in their June 2015 motion was based on a belief

that an October 27, 2008 conveyance by Warranty Deed of the Subject Property recorded on November 7, 2008 in Book 1474 at Page 3767 in the ROD ("Probate Deed") was voidable pursuant to S.C. Code Ann. § 62-3-713, because Tamara L. Steiner, along with Laurie L. Steiner, as Personal Representatives of the Estate, conveyed the Subject Property to Thomas Williams, Jr., and Tamara L. Steiner as joint tenants with a right of survivorship ("Defendant Grantees"). The Defendant Grantees were in default in the Underlying Action and did not contest foreclosure or appear at any hearing in the Underlying Action [Order of June 4, 2014].

In September 2015, the Master heard arguments and examined evidence offered by Appellants in their June 2015 Motion. The Court ruled that Sterling's mortgage was valid and properly foreclosed, and that Sterling was a bona fide mortgagee or lender for value without notice under general principles of South Carolina law and S.C. Code Ann. § 62-3-910 (a) [Order of October 29, 2015]. Further, the Court found that the Probate Deed was one of the types of "instruments" contemplated in S.C. Code Ann. § 62-3-910 (a). Finally, the Court noted that the Appellants knew or should have known of the Probate Deed that was recorded in 2008 [Warranty Deed dated October 27, 2008], and thus should have brought their action within the applicable three-year statute of limitations. For the above reasons, the Master-in-Equity denied the Appellant's motion to Vacate Sale or in the alternative Stay of Sale Until Title is Clear [Order of October 29, 2015].

Appellants then filed three separate motions: (1) one on November 13, 2015 captioned as a Motion for Reconsideration and/or Amendment of Judgment; (2) another on December 3, 2015 captioned as a Motion to Intervene and Vacate

Foreclosure; and (3) a third motion on February 2, 2016 captioned as a Motion to Intervene and Vacate Foreclosure. Appellants claimed in the December 2015 and February 2016 motions that they should have a right to intervene on behalf of the Estate of Phillip Chappell, Jr. All three of these motions proceeded to hearing on February 23, 2016.

In its Order Denying Motion for Reconsideration and/or Amendment of Judgment, Motion to Intervene and Vacate Foreclosure dated March 25, 2016 and filed March 28, 2016, the Court denied Appellants' November 2015 motion to reconsider and/or amend its judgment [Order of March 25, 2016]. Further the Court denied Appellants' December 2015 and February 2016 motion for the reasons stated therein including the following: (1) the Appellants were not in a proper procedural posture to represent a class of heirs or the Estate of Phillip Chappell, Jr. and claim an interest relating to the Subject Property or transaction; (2) that the same arguments being made had already been argued and ruled upon by the Court in the previous motion and its hearing in September 2015; and (3) that request for intervention was improper and untimely under Rule 24, SCRCP and Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991).

STATEMENT OF THE FACTS

In 2000, Phillip Chappell, Jr. passed away and the probate of his estate began in the Richland County Probate Court, Case Number 2000-ES40-01277 ("Estate"). Unfortunately, probate lasted an unusually long time, eventually leading to an Order filed June 21, 2007 ("2007 Probate Order") that more-or-less set out the status and scheduling of the closing of the Estate. [Order of June 21,

2007]. Appellant Kenneth W. Steiner, III ("Mr. Steiner") acted as the personal representative of the Estate during a portion of the time that the Estate was administered. Mr. Steiner was present at the hearing related to the 2007 Probate Order, though Appellant Amie S. Seebauer, despite being notified, did not attend the hearing. [Id.] In the 2007 Probate Order, the Probate Court was informed by the personal representative's attorney that the personal representative "wanted to sell the Decedent's residence to a family member if at all possible." [Id.]

Further, the personal representative had in place a signed contract with a family member calling for a cash payment of $125,000.00 to be combined with a distribution from the Estate to cover the purchase price of the Decedent's residence, which is the Subject Property related to the Underlying Action. [Id., *see also* Contract of Sale dated August 27, 2008].

Following the above-referenced hearing and issuance of the 2007 Probate Order, the previously mentioned contract of sale fell through and the closing of the Estate was not completed as scheduled by the Probate Court. Shortly thereafter on October 22, 2008, the Probate Court named two other family members as co-personal representatives in an effort to complete and close the Estate of Phillip Chappell, Jr.

On October 27, 2008, the new co-personal representatives executed a Warranty Deed (the Probate Deed) conveying the property to the Defendant Grantees for the same $125,000.00 purchase price mentioned in the 2007 Probate Order [Warranty Deed dated October 27, 2008]. Tamara Steiner, one of the Defendant Grantees, was one of the new co-personal representatives at the time of

the Probate Deed. The Probate Deed stated that it was authorized by the Last Will and Testament of Phillip Chappell, Jr., who was referred to as the Grantor. In fact, the Last Will and Testament provides that the personal representative "is authorized in its absolute discretion ... to sell ... any property, real or personal, constituting part of my estate, or trust estate for cash or upon credit ... at such times and upon such terms and conditions as they may deem best....". [Last Will and Testament of Philip C. Chappell, Jr.].

The Defendant Grantees gave a promissory note to Sterling in exchange for loan proceeds to purchase the Subject Property. The Defendant Grantees contemporaneously gave Sterling a mortgage securing the repayment of the promissory note. The Defendant Grantees ultimately defaulted on the debt and Sterling commenced the Underlying Action for foreclosure against the Defendant Grantees. An Order of Foreclosure and Sale was issued on January 21, 2015 and the Subject Property was sold at public auction on February 2, 2015 [Order of January 21, 2015]. Sterling was the successful bidder at the public auction and the Master in Equity for Richland County executed and delivered the Master's Deed conveying the Subject Property on March 9, 2015 to Sterling, which was recorded in the ROD on March 12, 2015 in Book 2011 at Page 1553 [Title to Real Estate dated March 9, 2015].

The instant appeal comes from post-trial motions filed by Appellants in the Underlying Action following the final Order of the Court, the sale of Subject Property to Sterling by the Master, and the expiration of the appeal period on the final rulings in the Underlying Action.

ARGUMENT

I. THE LOWER COURT PROPERLY DETERMINED THAT APPELLANTS WERE NOT ENTITLED TO INTERVENE IN THE UNDERLYING FORECLOSURE ACTION.

In order to allow intervention, a party must: (1) establish 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 impede its ability to protect that interest; and 4) demonstrate that its interest is inadequately represented by other parties. Rule 24(a)(2) SCRCP; See Ex Parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661 (1993). Appellants fail to meet all of these prongs, and therefore, the lower court properly denied the motion to intervene.

A. Appellants failed to timely move to intervene in the case below.

Timeliness of intervention is determined by considering (i) the time that has passed since the applicant knew or should have known of his or her interest in the suit, (ii) the reason for the delay, (iii) the stage to which the litigation has progressed, and (iv) the prejudice that original parties would suffer from granting intervention and the applicant would suffer from denial. Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991).

(i) Appellants knew or should have known of their interest for over 7 years.

In this case, the Appellants waited approximately seven (7) years after the Probate Deed was recorded in the ROD before raising their purported interest. They knew or should have known of their purported interests and raised them in

2008. Not only is Appellants' motion to intervene untimely, but their claims should also be barred by the statute of limitations and the equitable doctrine of laches.

Further, Appellants motion to intervene in the Underlying Action came approximately two (2) years after the filing of the Summons and Complaint, well after the Master issued his final ruling and judgment, and after the Master's Deed was signed, delivered, accepted and recorded in the ROD. As the Master correctly points out, the Underlying Action was over other than Sterling's pursuit of a Writ of Assistance to evict the Defendant Grantees from the Subject Property. [Transcript of Proceedings of September 10, 2015 at p. 10-11].

Finally, Appellants' created a procedural web concerning the timing of their eventual motion to intervene filing. Appellants filed their motion to set aside the foreclosure and sale in 2015, but did not seek to intervene in the Underlying Action at that time [Motion dated June 21, 2015]. They styled themselves as "Petitioners."

At oral argument on Appellants' motion to set aside the foreclosure and sale, Sterling's counsel questioned the standing of Appellants due to the fact that they had not moved to intervene. [Transcript of Proceedings of September 10, 2015 at p. 7, 24]. The Master-In-Equity, nonetheless and graciously, allowed Appellants to make their presentation and argue their motion even though they were not parties to the then-completed foreclosure and sale in the Underlying Action. Following the ruling and denial of that motion, Appellants filed a Rule 60, SCRCP motion to reconsider and then waited yet another three weeks to file their motion to intervene [Motions dated November 13, 2015 and December 3, 2015]. There is no justification for the untimeliness of Appellants' motion to intervene.

(ii) Appellants do not have a justifiable reason for delay.

Appellants's Brief does not provide a reason for its delay in moving to intervene. In the transcript of hearing and in Section 1 of the Appellants' Motion for Reconsideration filed September 23, 2015, Appellants cite ignorance of the law, specifically S.C. Code Ann. § 62-3-713, as their reason for not raising their purported rights between 2008 and 2015. [Transcript of Proceedings of September 10, 2015 at p. 5, 28-29]. and Motion dated June 21, 2015]. Just because the Appellants did not become aware of S.C. Code Ann. § 62-3-713 until 2015, which the Master correctly held does not provide Appellants the relief they request, does not mean that they are not charged with knowledge of the law. Gregory v Gregory, 292 S.C. 587, 589, 358 S.E.2d 144, 146 (Ct. App. 1987). As the Master correctly held, the Appellant's reasons for the delay are without merit.

(iii) The Underlying Action is completed.

Again, as the Master opined, Appellants waited until the Underlying Action was over before they eventually moved to intervene [Transcript of Proceedings of September 10, 2015 at p. 7, 24, 27; Transcript of Proceedings of February 23, 2016 p. 5]. Appellants did not choose to seek to intervene until the Underlying Action was completed, and the Subject Property sold at public auction. The Appellants now attempt to undo the results of a case that they neglected to raise their purported interest in during its pendency.

(iv) The original parties would suffer great and undue prejudice if intervention were granted.

Sterling would suffer extreme prejudice if the Master had unwound a 2013 case in 2015 following the sale of the Subject Property. Sterling has expended time

and valuable resources in successfully prosecuting foreclosure and Appellants' post-trial motions, as well as bidding upon and marketing the Subject Property. Furthermore, Appellants do not take issue with or claim an interest in the Underlying Action, but rather wish to make arguments centered around the 2008 probate matter. Therefore, the only potential prejudice in delaying or unwinding this foreclosure action would be unduly borne by Sterling.

Further, even though the Master technically denied Appellants' Motion to Intervene, he actually heard and ruled upon their substantive motions as if they had intervened [Order of October 29, 2015; Order of March 25, 2016; and Transcript of Proceedings of February 23, 2016 at 11]. Bearing these rulings in mind, what possible prejudice could Appellants have suffered?

Using the Davis v. Jennings factors, the Master correctly concluded that Appellants' motion to intervene was untimely, thus also failing the first prong of Rule 24(a)(2), SCRCP.

B. Appellants claim a purported interest in the Subject Property as heirs of the Estate that distributed the Subject Property in 2008, but Appellants have no interest in the Underlying Action of foreclosure.

Appellants sought to intervene in the Underlying Action in an effort to have the judgment of foreclosure and sale set aside. Appellants have no interest in Sterling's debt on its Note with its borrowers, or its ability to foreclose its Mortgage against its borrowers on the Subject Property. Appellants claim an interest in a former asset of the Estate (Subject Property) that was distributed in 2008.

Any attempt by the Appellants to disturb the 2008 Probate Deed needs to be brought in the Probate Court rather than through a completed foreclosure action.

Further, Appellants do not represent the complete class of heirs and devisees of the Estate, and the Probate Court is better situated to handle such a hearing. In fact, Appellants claim in the Underlying Action to have "simultaneously moved for ***Subsequent Administration to Re-Open the Estate of Phillip Chappel, Jr.***" in their filings in the Underlying Action. [Motion dated June 21, 2015].

Appellants are confounding two different actions, and attempting to backdoor their way into the probate of the Estate through a long-since completed foreclosure action. This is not the standard prescribed by Rule 24(a)(2), SCRCP, and thus, the lower court properly denied Appellants' motion to intervene.

C. Appellants are unable to demonstrate that they would be impaired from protecting their purported interest in the Subject Property.

Appellants fail to show an interest in the Underlying Action. Accordingly, Appellants cannot demonstrate any impairment they may suffer from the Master establishing a debt and foreclosing security for that debt, which is wholly unrelated to any purported interest that Appellants may claim.

To the extent that they have not prejudiced themselves, estopped themselves, and time-barred themselves, they still have the ability to protect any purported interest they may claim in the Subject Property, but the Underlying Action is not the appropriate forum to raise such claims and purported interests.

Therefore, the lower court was correct to deny Appellants' motion to intervene.

D. Appellants were unable to demonstrate that they had an interest and therefore, also failed to demonstrate that such an interest was inadequately represented by other parties.

Appellants do not make arguments related to the foreclosure or sale. Instead, they focus their arguments on probate matters and the Estate. Sterling's borrowers, the Defendant Grantees in the Underlying Action, were the appropriate parties to raise defenses to the debt, foreclosure and sale. Appellants' purported interests do not concern the foreclosure and sale.

Even still, Appellants, and all of the other heirs, had every opportunity to make their arguments as far back as 2008, when the Estate sold the Subject Property. Failing to do so, and waiting approximately 7 years, Appellants now seek to use their status as heirs to reach into a separate foreclosure action to which they have never been a party or had any interest. Simply put, intervention into the Underlying Action is not the correct vehicle in which to drive Appellants' probate arguments.

E. The Master correctly denied Appellants' motion to intervene, and any perceived error in that decision would amount to harmless error.

Even if the denial of the motion to intervene could be found to be in error, such an error was harmless because the Appellants were still afforded a full opportunity to argue their other motions. The Master allowed Appellants to make their arguments they filed in the Underlying Action in not one, but two motions hearings based upon the four motions they filed. The Appellants chose which motions to file and the order in which they filed their motions, and the lower court afforded Appellants a full opportunity to advance their position. As such, the lower court treated the Appellants as if they were intervening parties to the Underlying Action. Therefore, the lower court was more than accommodating and gave

Appellants every opportunity to make their points and have their day in court. Those points were heard and ruled upon. Thus, even if it were found to be error to deny the motion to intervene, no harm was done to Appellants' ability to advance their claims.

II. THE LOWER COURT'S RULINGS ON 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 SHOULD NOT BE DISTURBED.

Appellants controlled the timing, order and substance of the motions they filed in the Underlying Action. They also controlled the forum in which they filed those motions. Appellants asked the Master to hear and rule upon the four motions they filed. The Master heard and ruled upon the motions. The Appellants now request a perverse finding that the rulings they sought were without standing, premature and lacked jurisdiction.

A. Appellants' argument that the lower court should have limited its ruling to denying Appellants' motion to intervene confounds reason and Appellants should be estopped from making such an argument.

In their brief, Appellants argue that the lower court erred in considering their other motions, but rather should have only denied their motion to intervene. [Initial Appellants Brief at p.8]. This very argument highlights the untimeliness of Appellants' motion to intervene. As emphasized above, Appellants failed to move to intervene until well after filing all of their other motions and briefs, well after the initial motions hearing on their motion to stay foreclosure, and well after receiving the order on that motion.

Furthermore, the Appellants admitted in the first motions hearing that they had not moved to intervene and were not parties to the Underlying Action [Transcript of Proceedings of September 10, 2015 at 7, 24]. Appellants, nevertheless moved forward with their arguments, and sought orders on their motions. Appellants, in their brief, are attempting to have those orders nullified because Appellants chose to bring their motions in the wrong order, and then opted to continue pursuing the substantive relief in those motions. Appellants should be estopped from arguing to This Court that their first bite at the apple should not count and they should be granted another. It was, after all, Appellants whose filings initiated and drove the actions giving rise to this appeal.

Even if This Court were to find that the lower court erred in its denial of the Appellants' motion to intervene and that the denial amounted to a reversible error, the relief sought in Appellants' brief is to remand the case back to the Master to then Rule upon Appellants' non-intervention motions. However, the lower court has already considered the Appellants' arguments and ruled upon them. In effect, the Master gave Appellants the benefit of the doubt on their circuitous motions practice by denying their motion to intervene while also ruling on the balance of Appellants' motions. The Master ordered factually and legally sound rulings that should not be disturbed.

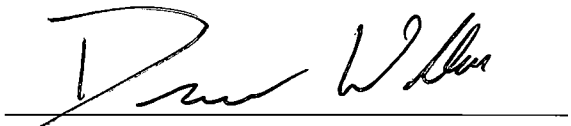
CONCLUSION

The Master appropriately denied the Appellants untimely and unsubstantiated attempt to intervene in the Underlying Action. Further, the

Master's rulings that Appellants brought before the Court to be ruled upon should not be disturbed after hearings, rulings and reconsideration.

For these reasons, the decision of the lower court must be affirmed.

Respectfully Submitted,



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August 29, 2016.

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Defendants.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondents on 8/29/16 by delivering a copy via U.S. Mail in an envelope addressed as follows:

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August 29, 2016

Via Hand-Delivery to:

The Honorable Jenny Abbott Kitchings
Clerk for the SC Court of Appeals
PO Box 11629
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Re: Sterling Lending Group, Inc. v. Tamara L. Steiner
Appellate Case No.: 2016-000896

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Initial Brief of Respondent and a Certificate of Service for filing in the referenced matter. Please file the original and return a filed copy to me via the courier.

Thank you for your assistance with this matter. Please contact our office with any questions.

Sincerely,

Drew B. Walker

Enclosures

cc: David E. Massey, Esq. *(via U.S. Mail)*
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