

with the
returned to Ct
of Appeals
11/21/18

2010-CP-10-3586

The South Carolina Court of Appeals

Florida Citizens Bank, Appellant,

v.

Sustainable Building Solutions, Inc., John Porretto, Sr.,
Sue A. Porretto, The County of Charleston, and Island
Preservation Partnership, Defendants,

Of whom John Porretto, Sr. and Sue A. Porretto are the
Respondents.

Appellate Case No. 2016-000971

RECEIVED
NOV 29 2018
SC Court of Appeals

FILED
J. ARMSTRONG
CLERK OF COURT
NOV 29 1 18 PM 2:38

ORDER

Appellant filed a motion to recall remittitur. After careful consideration of the motion and accompanying affidavit, the motion is granted and this appeal is reinstated. Appellant has fifteen days to file a petition for rehearing in accordance with Rule 221(a), SCACR.

Respondents' motion for costs is denied as premature because this court has recalled the remittitur.

Thomas C. Hoff

J.

John D. Beathan

J.

Stephanie P. McDonald

J.

FILED

November 2, 2018

Columbia, South Carolina

cc:

Robert T. Lyles, Jr., Esquire

Paul E. Tinkler, Esquire

Julie J. Armstrong



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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June 29, 2018

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Florida Citizens Bank v. Sustainable Building Solutions
Lower Court Case No. 2010CP1003586
Appellate Case No. 2016-000971

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Robert T. Lyles, Jr., Esquire
Paul E. Tinkler, Esquire

FILED
of SC
2018
Clocked in
Julie J. Armstrong
Clerk of Court
CANCELED

2010-CP-10-3586

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Florida Citizens Bank, Appellant,

v.

Sustainable Building Solutions, Inc., John Porretto, Sr.,
Sue A. Porretto, The County of Charleston, and Island
Preservation Partnership, Defendants,

Of whom John Porretto, Sr. and Sue A. Porretto are the
Respondents.

Appellate Case No. 2016-000971

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Unpublished Opinion No. 2018-UP-255
Submitted March 1, 2018 – Filed June 13, 2018

AFFIRMED

Robert T. Lyles, Jr., of Lyles & Associates, LLC, of
Charleston, for Appellant.

Paul E. Tinkler, of Law Office of Paul E. Tinkler, of
Charleston, for Respondents.

FILED
Clerk of Court
JULIE J. ANTONIO
CLERK OF COURT
2018 Jun 13 PM 2:36
date Canceled

PER CURIAM: Florida Citizens Bank appeals the Master-in-Equity's order granting John Porretto and Sue Porretto (the Porrettos) relief from judgment for a suit on a mortgage guaranty pursuant to Rule 60(b)(5), SCRCP. On appeal, Florida Citizens Bank argues the Master erred by (1) finding it released its rights against the Porrettos as guarantors, (2) holding that a waiver of deficiency judgment released its rights to pursue a guaranty judgment against the Porrettos, and (3) granting the Porrettos relief from judgment pursuant to Rule 60(b)(5) because the motion was not timely. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to issues 1 and 2: *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992) ("Whether to grant or deny a motion under [Rule 60(b), SCRCP,] is within the sound discretion of the [Master]."); *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 47, 590 S.E.2d 502, 504 (Ct. App. 2003) ("On review, [appellate courts] are limited to determining whether the [Master] abused its discretion in granting or denying such a motion."); *Wilson v. Dallas*, 403 S.C. 411, 425, 743 S.E.2d 746, 754 (2013) ("An abuse of discretion occurs when a court's order is controlled by an error of law or there is no evidentiary support for the court's factual conclusions."); S.C. Code Ann. § 29-3-660 (2007) ("[I]f the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor *the plaintiff may make such person a party to the action* and the court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises against such other person and may enforce such judgment as in other cases." (emphasis added)).

2. As to issue 3: *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996) ("Whether or not [a movant] made his Rule 60 motion within a reasonable time is a matter addressed to the [Master's] sound discretion, and an appellate court will not disturb that determination absent abuse of discretion."); *Perry*, 357 S.C. at 48, 590 S.E.2d at 505 (finding four years was unreasonable but noting "we are reluctant to proclaim that four years is a per se unreasonable period of time").

AFFIRMED.

HUFF, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 02, 2018

Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

Re: Florida Citizens Bank v. Sustainable Building Solutions
Appellate Case No. 2016-000971

2010-CP-10-3586

Dear Clerk of Court:

Please see the enclosed order recalling remittitur in this matter. You are requested to return the original remittitur within fifteen days of the date of this letter. Your attention to this matter is greatly appreciated.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert T. Lyles, Jr., Esquire
Paul E. Tinkler, Esquire

