

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman

Case No. 2017-CP-32-03043
2017-LP-32-745
Appellate Case No. 2018-001044

RECEIVED
FEB 19 2019
SC Court of Appeals

Stephens Remodeling, LLC,.....Respondent,

v.

Demetric Hayes and Carla Marshall,.....Petitioners,

**RESPONDENT'S RESPONSE TO PETITIONERS'
MOTION TO STAY PROCEEDINGS**

Respondent, by and through its undersigned counsel, hereby respectfully responds to Petitioners' Motion to Stay Proceedings Due to Respondent's Alleged Unlawful Sale of Property.

On September 19, 2017, Petitioners filed a Lis Pendens under docket number: 2017-LP-32-745. On April 4, 2018, Respondent filed a Notice of Motion and Motion to Cancel Defendants' Lis Pendens on an Expedited Basis. A Form 4 Order granting the cancellation of Defendants' Lis Pendens was issued by the Honorable Jocelyn Newman on May 7, 2018. Thereafter, on May 11, 2018, the Honorable R. Knox McMahon issued a Cancellation of Lis Pendens in case number 2017-LP-32-745. On June 5, 2018, Petitioners filed a Notice of Appeal regarding the Order cancelling the Lis Pendens. Thereafter, Appellants filed their Initial Brief with this Court on November 5, 2018. Respondent filed its Initial Brief on January 7, 2019. On February 8, 2019,

Petitioners filed a Motion to Stay Proceedings Due to Respondent's Alleged Unlawful Sale of Property.

Rule 241(a) of the South Carolina Appellate Court Rules provides as follows:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR. Once the notice of appeal has been served, "any party may move for an order lifting the automatic stay in cases which involve the general rule." Rule 241(c)(1), SCACR. However, "the granting of supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking." Rule 241(c)(3), SCACR.

In the present matter, the service of Petitioners' Notice of Appeal acted to automatically stay further proceedings based upon the Order cancelling Defendants' Lis Pendens (the "Order") pursuant to the general rule set out in Rule 241(a), SCACR. *Lebovitz v. Mudd*, 289 S.C. 476, 347 S.E.2d 94, 96 (1986) (the appeal of an order cancelling a lis pendens acts as an automatic stay of further proceedings upon the order). Following service of their Notice of Appeal, Petitioners have not moved this Court for an order lifting the automatic stay of the Order.

However, the Petitioner's Notice of Appeal on its own does not place an automatic stay on the enforcement of the underlying Order. Rule 62(d), SCRCR, states

When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing

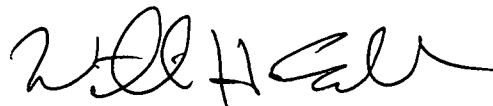
the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Here, Petitioners have not offered any evidence that they obtained a supersedeas bond or sought to obtain an order from the Court to stay the enforcement of the underlying Order subject of their appeal. Therefore, because the Petitioners did not follow the proper procedure to stay the Order cancelling the Lis Pendens, Respondents have not violated any laws of this state with the subsequent sale of the property at issue.

Furthermore, in their Motion to Stay Proceedings, Petitioners failed to state the specific relief sought, as well as what exactly they would do with the Stay. As a result, staying the proceedings would prove pointless as there is no relief which may be obtained by Petitioners.

Respectfully submitted,

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February 18, 2019.

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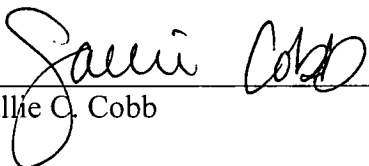
v.

Demetric Hayes and Carla Marshall.....Appellants.

PROOF OF SERVICE

I certify that I have served the Respondent's Response to Petitioners' Motion to Stay Proceedings by US Mail, postage prepaid, upon counsel for the Respondent at the address listed below:

Demetric Hayes and Carla Marshall
PO Box 2572
West Columbia, SC 29171



Sallie C. Cobb

February 19, 2019