

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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MAR 08 2019

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Mikell R. Scarborough, Master In Equity

Case No. 2019-000044

Florida Citizens Bank, Petitioner,

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.

RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

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INDEX

ARGUMENT IN RESPONSE.....3

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE MASTER’S FACTUAL FINDING THAT THE BANK HAD WAIVED ITS JUDGMENT AGAINST THE GUARANTORS3

II. THE COURT OF APPEALS CORRECTLY AFFIRMED THE MASTER, WHO DID NOT MODIFY THE JUDGMENT, BUT INSTEAD CLARIFIED THAT THE PORRETTOS HAD BEEN RELEASED BY VIRTUE OF THE BANK’S WAIVER.....4

III. THE BANK DID NOT PRESERVE THE ISSUE OF TIMELINESS OF THE GUARANTOR’S MOTION UNDER RULE 60(b)(5) AND THUS THE COURT OF APPEALS CORRECTLY AFFIRMED THE MASTER’S ORDER GRANTING THAT MOTION.....4

CONCLUSION.....4

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ARGUMENT IN RESPONSE

None of the considerations set forth in Rule 242 of the South Carolina Appellate Court Rules is present here.

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE MASTER'S FACTUAL FINDING THAT THE BANK HAD WAIVED ITS JUDGMENT AGAINST THE GUARANTORS.

The Master-in-Equity made a factual finding that the Bank had waived the deficiency judgment against the Porrettos. He relied on at least the following evidence: (1) a letter from the Bank's lawyer before the foreclosure sale affirming that the Bank had waived "any" deficiency judgment; (2) that the appraisal process was aborted without the Bank ever requesting that the appraisal process be completed; (3) the issuance by the Bank of a 1099 form imputing to the Porrettos income resulting from the write-off of the loan balance; (4) the failure by the Bank to take any action to enroll the judgment in Texas for about three years.

Where a finding of fact is involved (i.e. the Bank's intent to waive a deficiency judgment against the Porrettos in their capacity as guarantors), an abuse of discretion may be found only if there is "no evidentiary support for the court's factual conclusions." *Wilson v. Dallas*, 403 S.C. 411, 425, 743 S.E.2d 746, 754 (2013). There was abundant evidence of waiver of the deficiency judgment against the Porrettos. Accordingly, the Court of Appeals correctly affirmed the finding of the Master that the judgment had been waived and the Porrettos released. The Master-in-Equity did not abuse his discretion.

II. THE COURT OF APPEALS CORRECTLY AFFIRMED THE MASTER, WHO DID NOT MODIFY THE JUDGMENT, BUT INSTEAD CLARIFIED THAT THE PORRETTOS HAD BEEN RELEASED BY VIRTUE OF THE BANK'S WAIVER.

The Bank contends that the Master-in-Equity "modified" the judgment. However, he did no such thing. Instead, he granted the Porrettos relief from the judgment on the

ground that they had been released due to the bank's waiver. This is one circumstance that Rule 60(b)(5) is designed to address. The Court of Appeals correctly affirmed the Master's proper exercise of discretion because, as noted above, there was evidentiary support for his finding.

III. THE BANK DID NOT PRESERVE THE ISSUE OF TIMELINESS OF THE GUARANTORS' MOTION UNDER RULE 60(b)(5) AND THUS THE COURT OF APPEALS CORRECTLY AFFIRMED THE MASTER'S ORDER GRANTING THAT MOTION.

The Bank did not raise the issue of the timeliness of the Rule 60(b)(5) motion before the Master. It raised that issue for the first time on appeal. It is axiomatic that a party must preserve an issue by raising it at the trial level.

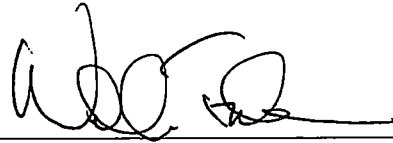
Moreover, the facts in the record demonstrate that the Bank did not enroll the judgment in Texas until over three years had elapsed, after the foreclosure sale in South Carolina. The Porrettos moved about a year later under Rule 60(b)(5) for a ruling to clarify that the Bank had waived its judgment, thus releasing the Porrettos. Even if the Bank had preserved the issue of timeliness, given that the Bank waited over three years to take action on its judgment, it should not be heard to contend that the Poretos' motion filed one year later was untimely.

CONCLUSION

For the reasons stated, Respondents respectfully request that the Petition for Writ of Certiorari be denied.

(Signature Block On Following Page.)

Respectfully submitted,



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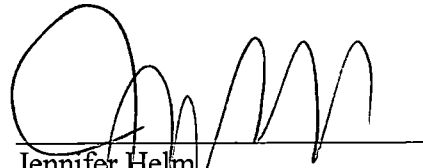
v.

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

PROOF OF SERVICE

I certify that I have served the Respondents' Return to Petition for Writ of
Certiorari on the above named Petitioner by depositing a copy of same in the United States
Mail, postage prepaid, on March 5, 2019, addressed to its attorney of record, Robert T.
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