

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Hon. Mikell R. Scarborough
Master in Equity

Case No.: 2014-CP-10-07484
Appellate Case No.: 2018-002228

RECEIVED

JUN 03 2019

SC Court of Appeals

Bayview Loan Servicing, LLC, a Delaware Limited Liability Company, Respondent

v.

Isabelle Murray, William Murray, Bernard Murray, Roland Murray, County Of
Charleston and the South Carolina Department of Revenue, Defendants,

Of Whom Bernard Murray and Roland Murray are the Appellants.

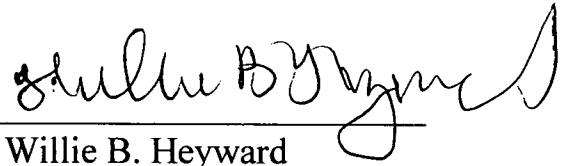
**APPELLANT'S WRIT OF SUPERSEDEAS
FOR A MOTION REQUESTING BOND**

Appellants, Bernard Murray and Roland Murray, are requesting this Court allow to Appellants the opportunity to procure a bond allowing the Master In Equity for Charleston County, the Honorable Mikell R. Scarborough, to set conditions for a bond to allow them to remain in the family home until this appeal is concluded. Respondents have procured a Writ of Execution for their removal from the residence that would render the decision of the Appellant Court moot.

This would create irreparable harm to Appellants if the Motion is not granted resulting in Appellants being evicted from the family residence.

Appellants relied on the assumption that their mother still has an interest in the property and the fact that a prior adjudication determined that they still had a vested interest in the house. Therefore Appellants ask this Court to set conditions on bond in the matter until a decision in this matter.

May 29, 2019

A handwritten signature in black ink, appearing to read "Willie B. Heyward". The signature is written in a cursive style with a horizontal line underneath it.

Willie B. Heyward
27 Gamecock Ave., Ste. 200
Charleston, SC 29407
(843) 225-8754
Attorney for Appellants
SC Bar No.11063

THE STATE OF SOUTH CAROLINA
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Hon. Mikell R. Scarborough
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Case No.: 2014-CP-10-07484
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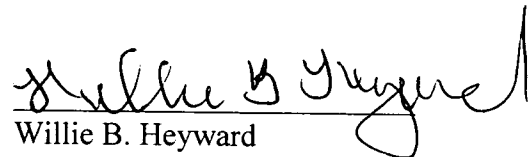
Isabell Murray, William Murray, Bernard Murray, Roland Murray, County of Charleston
and the South Carolina Department of Revenue, Defendants,

Of Whom Bernard Murray and Roland Murray are the Appellants

CERTIFICATE OF SERVICE

I certify that I have served the Appellant's Writ Of Supersedeas For A Motion Requesting Bond on Drew B. Walker, Esq., Barry I. Baker, Esq., Milton G. Kimpson, Esq., and Johanna S. Gardner, Esq., by depositing a copy of it in the United States Mail, postage prepaid, on May 29, 2019.

May 29, 2019



Willie B. Heyward
27 Gamecock Ave., Ste. 200
Charleston, SC 29407
(843) 225-8754
Attorney for Appellant
SC Bar No.11063

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bayview Loan Servicing, LLC, a
Delaware Limited Liability Company,

PLAINTIFF,

v.

Isabelle Murray, William Murray,
Bernard Murray, Roland Murray,
County of Charleston, and South
Carolina Department of Revenue,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-10-07484

ORDER GRANTING WRIT OF
ASSISTANCE AND WRIT OF ASSISTANCE

FILED
2019 APR 26 AM 9:58
JULIE J. ARSTRONG
CLERK OF COURT

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, and upon the stipulation and agreement of all parties hereto not in default, the above-entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the case. A Writ of Assistance to place the successful purchaser at foreclosure sale in possession of the foreclosed property is anticipated in Order Granting Plaintiff's Motion for Partial Summary Judgment and Order for Judicial Sale filed on August 27, 2018.

This matter is before the Court on the Motion of Plaintiff Bayview Loan Servicing, LLC, a Delaware Limited Liability Company ("Bayview"), seeking a Writ of Assistance to be issued by this Court to the Sheriff of Charleston County, South Carolina, ordering him to remove peaceably or by force any occupants claiming under defendants Isabelle Murray, William Murray, Bernard Murray, and Roland Murray (collectively, "Defendants"), together with any and all persons claiming under the said Defendants, and all of their personal property located within or on the subject premises described herein.

Plaintiff filed a Motion for Writ of Assistance on February 25, 2019. A hearing on the Motion for Writ of Assistance was held before me on March 26, 2019. Each Defendant was notified of the time, date, and place of the hearing in this matter. W. Cliff Moore, III and Andrew B. Walker were present for the hearing representing the Plaintiff. Willie Bruce Heyward was present also representing the Defendants Bernard Murray and Roland Murray.

Mr. Heyward reasserted several arguments previously made by ^{him} to the Court in prior hearings and asserted new claims concerning the applicability of S.C. Code Ann §62-3-910 (Supp. 2018) to the Plaintiff as assignee of the original mortgagee. However, the Defendants Bernard Murray and Roland Murray have filed a Notice of Appeal in this matter, giving the appellate court exclusive jurisdiction over these issues. Rule 205, SCACR. Pursuant to Rule 241, SCACR, the Notice of Appeal automatically stays matters decide in the order, with certain exceptions. One of those exceptions is “ Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. §18-9-170.” Rule 241(b)(4), SCACR.

S.C. Code §18-9-170 (2012) provides that “[i]f 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 ...” The Defendants Bernard Murray and Roland Murray have not presented the written undertaking anticipated by S.C. Code §18-9-170 (2012) and, as such, the Plaintiff’s request for a Writ of Assistance to place it in possession of the real property that it purchased at the foreclosure sale conducted in this matter is not stayed.

It appears from the records of the foreclosure proceedings enrolled in the Office of the Clerk of Court in Civil Action No. 2014-CP-10-07484, and upon evidence presented by Plaintiff, that the relief which Plaintiff seeks is appropriate and should be granted.

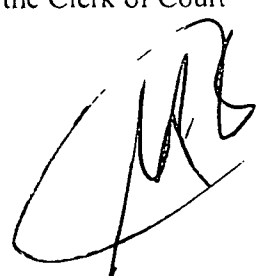
NOW, THEREFORE, IT IS ORDERED that the Defendants, together with any and all occupant(s) shall vacate the premises on or before **May 31, 2019 at 5:00 p.m.** and that the Bayview is entitled to recover possession of the premises on said date.

IT IS FURTHER ORDERED that this Order shall constitute a final judgment and Writ of Assistance pursuant to Rule 53 of the South Carolina Rules of Civil Procedure.

TO: THE SHERIFF OF CHARLESTON COUNTY, SOUTH CAROLINA:

GREETING: WHEREAS, the Plaintiff commenced an action in foreclosure of a first mortgage lien on real property and premises commonly known 833 5th Avenue, in or near the City of Charleston, in the County of Charleston, State of South Carolina, against Defendants; and

WHEREAS, by Order Granting Plaintiff’s Motion for Partial Summary Judgment and Order for Judicial Sale, filed on August 27, 2018 (the “Judgment”), issued by the Court of Common Pleas for Charleston County, South Carolina, recorded in the Office of the Clerk of Court



for Charleston County as Civil Action No. 2014-CP-10-07484, said premises were ordered sold at public auction by the Master in Equity for Charleston County; and

WHEREAS, by virtue of said Judgment, said premises was sold at public auction by said Master in Equity on October 2, 2018, to Bayview as the highest bidder; and

WHEREAS, on October 23, 2018 this Court entered an Order confirming, despite challenges from counsel for the Defendants Bernard Murray and Roland Murray, that all interests in the premises were sold at the October 2, 2018 foreclosure sale; and

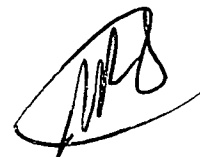
WHEREAS, in accordance with said Judgment, a deed was executed and delivered unto the Bayview conveying said premises dated October 30, 2018, which deed was recorded on December 4, 2018, in the Office of the RMC for Charleston County in Book 0763 at Page 901; and

WHEREAS, by virtue of the aforesaid, Bayview is the record and legal owner of said premises and entitled to possession of said premises; and,

WHEREAS, Bayview has demanded possession of said premises and the said Defendants or some persons claiming under them are in possession thereof, and have refused and still refuse to relinquish possession of said premises, although the said Judgment has been duly produced and exhibited to them.

WHEREAS, personal property belonging to the Defendants that is left in the premises by the Defendants will be treated as abandoned by Bayview. Personal property left in the premises after entry of the order of ejectment that is removed from the premises as a result of the eviction proceeding, which is placed on a public street or highway, shall be removed by the appropriate municipal or county officials after a period of forty-eight hours, excluding Saturdays, Sundays, and holidays, and may also be removed by these officials in the normal course of debris or trash collection before or after a period of forty-eight hours. If the premises is located in a municipality or county that does not collect trash or debris from the public highways, then after a period of forty-eight hours, Bayview may remove the personal property from the premises and dispose of it in the manner that trash or debris is normally disposed of in such municipalities or counties.

THEREFORE, the Sheriff of Charleston County is commanded to serve a copy of this Writ on Defendants or occupants of the subject premises or post a copy near an entrance in the absence of service if the said Defendants or any persons claiming under them are still in possession

A handwritten signature in black ink, appearing to be the initials 'MS' or similar, enclosed within a large, loopy, handwritten flourish.

that you forthwith enter upon the following described premises, which are the premises to which Bayview is entitled by virtue of the Judgment, proceedings and deed aforesaid, to-wit:

ALL those lots, pieces, or parcels of land, situate, lying and being in Maryville, Section, St. Andrews Parish, County of Charleston, State of South Carolina, and known and designated as Lots no. 7 and 8 on a plat of G.M. Howe, Surveyor, dated April 4, 1953, and recorded in the RMC Office for Charleston County in Plat Book "J", Page 129, and having such distances, metes, dimensions, and buttings and boundings as are shown by reference to the aforesaid plat on record, which plat is incorporated herein as part and parcel of this deed of conveyance.

Being that parcel of land conveyed to Isabelle Murray from Estate of James Murray by that Deed of Distribution dated January 6, 2004 and recorded January 15, 2004 in Deed Book M481, at Page 433 of the Charleston County, SC Public Registry.

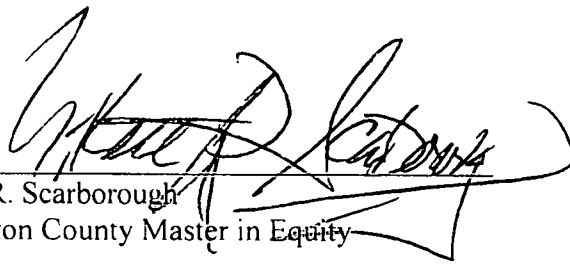
TMS No. 418-11-00-158

Property Address: 833 5th Avenue, Charleston, South Carolina 29407

AND FURTHER, we command that you eject and remove therefrom the said Defendants or any persons claiming under him, along with all personal property belonging to them, and that you put Bayview or its successors and/or assigns, in full, quiet, and peaceable possession of said premises, without delay, and that you maintain, keep and defend Bayview, its successors and/or assigns in such possession thereof, from time to time, according to the tenor and intent of said Judgment of Foreclosure and Sale.

[signature on following page]

4/23, 2019
Charleston, South Carolina.


Mikell R. Scarborough
Charleston County Master in Equity

Heirs' Property Law Firm, LLC

27 Gamecock Avenue Suite 200 Charleston, SC 29407
Phone 843.225.8754/843.568.4679 Fax 843.225.8765

May 29, 2019

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JUN 03 2019

SC Court of Appeals

South Carolina Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

Re: Bayview Loan Servicing, LLC, a Delaware LLC vs. Isabelle Murray, et. al.
Case No: 2014-CP-10-07484
Appellate Case No.: 2018-002228

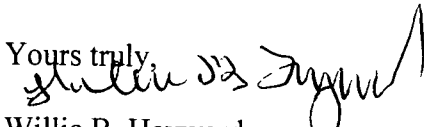
Dear Sir/Madam:

Enclosed please find the Appellant's Writ of Supersedeas For A Motion Requesting Bond in the above-referenced action. I have included a copy of the Judge Scarborough's Order Granting Writ of Assistance and Writ of Assistance. I have also enclosed a check in the amount of Fifty Dollars (\$50.00) for the motion fee.

By copy of this correspondence I am providing Counsels of record copies of the same.

Thank you for your attention to this matter.

Yours truly,


Willie B. Heyward

Attorney for Appellants Roland Murray and Bernard Murray

Enclosures as stated

cc: Drew B. Walker, Esq.
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SC Court of Appeals

South Carolina Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

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