

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-In-Equity

The Honorable Joseph M. Strickland, Master-In-Equity

Appellate Case 2018-01577

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OCT 02 2019

SC Court of Appeals

The Homestead Property Owners Association, Inc.Respondent,

v.

Wanda J. Miller & Orlando F. Miller Appellants.

**RESPONDENT THE HOMESTEAD PROPERTY OWNERS ASSOCIATION, INC.'S RETURN
TO APPELLANT'S RENEWED MOTION TO CERTIFY**

Respondent, by and through counsel, hereby file this return in opposition to Respondents' Renewed Motion to Certify the instant action to the South Carolina Supreme Court. Respondents previously moved to certify this matter and said motion was denied by the Supreme Court by Order dated January 11, 2019. Respondents allege certification is now appropriate because the issues under consideration in this matter were raised by the Supreme Court in oral argument of Winrose Homeowners' Ass'n, Inc. v. Hale, 2018-001238. Respondent respectfully asserts that Appellants are incorrect because they have incorrectly identified the issues on appeal in this matter as well as in the Winrose matter.

Specifically, the Appellants in this matter argue that foreclosure is an inappropriate remedy in this case and should not be allowed. However, that issue has not been ruled upon by the lower court in a manner that can be reviewed by the appellate courts. "As a general rule, only final judgments are appealable." Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005). "If there is some further act which must be done by the court prior to a determination of

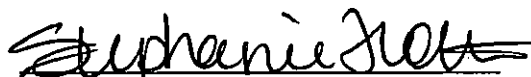
the rights of the parties, then the order is interlocutory.” Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). “An order denying a motion for summary judgment is not appealable.” Olson v. Faculty House of Carolina, Inc., 354 S.C. 161, 167, 580 S.E.2d 440, 443 (2003).

Appellant’s Notice of Appeal cites only one order from which they are appealing: the Order Granting Plaintiff’s Motion for Summary Judgment as to Defendants’ Counterclaims and Denying Plaintiff’s Claim for Foreclosure (ROA pp. 1-6). The trial court found that the Respondent was entitled to judgment as a matter of law on Appellant’s counterclaims but denied summary judgment as to Respondent’s foreclosure claim because there was a genuine issue of material fact as to the debt owed (ROA p. 5). Because the court dismissed Appellant’s counterclaims the trial court denied Appellant’s motion to return the matter to the circuit court as moot (ROA p. 5). Accordingly, the only issues reviewable in this appellate matter are whether the trial court appropriately granted summary judgment on Appellant’s counterclaims and whether the trial court appropriately denied Appellant’s motion to transfer the case. No lower court has issued any final order regarding Respondent’s request for foreclosure of its lien for homeowners’ association assessments.¹ Until the lower court issues a final order the issue is not ripe for review by any appellate court.

Additionally, the issue on appeal in Winrose was limited to the sufficiency of a third-party bid at a foreclosure sale where the property was being sold subject to senior encumbrances. Specifically, the questions presented in the Petition for Certiorari were whether the court should evaluate the bid using the Debt Method or the Equity Method and whether the sale should be set aside based on equitable principles. None of the parties disputed whether the homeowners’ association was entitled to the remedy of foreclosure.

For these reason Respondent respectfully asserts that Appellant’s Renewed Motion to Certify should be denied.

Respectfully Submitted,


Stephanie C. Trotter

¹ The trial court issued an order granting Respondent’s request for foreclosure on June 4, 2018 (ROA pp. 7-14). However the parties agreed this order was entered in error and the lower court agreed to vacate that order (ROA p. 122, l. 17-23; ROA p. 2).

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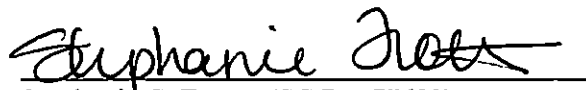
v.

Wanda J. Miller & Orlando F. Miller Appellants.

PROOF OF SERVICE

I certify that I served Respondent's Return to Appellant's Renewed Motion to Certify counsel for Appellants by depositing a copy of it in the United States Mail, postage prepaid, on October 2, 2019 as follows:

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