

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-CP-19-00168

Appellate Case No. 2019-001689

Bettis C. Rainsford,Appellant,

v.

Apex Bank, Jim Clayton, Matt Daniels, and Brad Hailey,Defendants,

Of whom, Matt Daniels and Brad Hailey are theRespondents.

PETITION FOR SUPERSEDEAS

Pursuant to Rules 205 and 241 of the South Carolina Rules of Appellate Procedure, Appellant Bettis C. Rainsford, by and through the undersigned counsel, respectfully petitions this Court for an Order imposing a supersedeas of matters currently pending before the Circuit Court which are affected by the above-referenced appeal.

FACTUAL BACKGROUND

Appellant initially contacted Jim Clayton, the founder of Apex Bank, in early 2015 in an effort to assist Apex Bank in realizing the highest value from its purchase of mortgage loans on the Mount Vintage Plantation golf course and town center. Rainsford was a founder of the Mount Vintage Plantation but sold his interest to his former partner Talmadge Knight. He believed the best results for Apex Bank and South Carolina could be achieved by uniting the ownership of the amenities it had under the mortgage with unsold real estate lots. Clayton referred him to

Respondent Matt Daniels, who had Respondent Brad Hailey contact Appellant. Respondent Hailey invited Appellant to travel to Knoxville to discuss the matter, and Appellant gave Respondent Hailey an enormous amount of information about Mount Vintage Plantation.

Sometime later, in the summer of 2015, Kevin Molony, an attorney representing Apex Bank, contacted Appellant to discover information about Knight because Apex Bank had a deficiency judgment with respect to the golf course and town center loans. Molony informed Appellant he had full authority to address all issues with respect to Apex Bank's loan portfolio in South Carolina.

Appellant continued to try to set up a meeting with Clayton, and, on September 15, 2015, Appellant emailed Clayton and Respondent Daniels requesting a meeting to discuss Mount Vintage Plantation. The next day, Clayton responded, "With litigation pending, it would be inappropriate and uncomfortable to communicate at this time." Rainsford responded by stating he was unaware of litigation pending "other than the bank's efforts to collect deficiency judgments against Talmadge Knight and Mike Hooker."¹

Two weeks later, Molony visited Appellant's office to discuss two lots which Knight's company conveyed to one of Appellant's companies as part of Appellant's settlement with Knight. Appellant acknowledged Apex Bank held a mortgage on the two lots and indicated he would be willing to provide Apex Bank with a deed-in-lieu-of-foreclosure in order to save the bank the trouble and expense of foreclosing on them. Molony also told Appellant he discovered Knight had a tract of land, which had been subject to the lien of SunTrust Bank, in Saluda which Knight conveyed away. Molony indicated that Apex Bank wanted to pursue this property by purchasing

¹ Hooker was Knight's business partner in Mount Vintage after Appellant and subject, along with Knight, to the judgments on the Golf Course and the Town Center, for which the Appellant was not liable.

the judgment of SunTrust Bank (“the SunTrust judgment”). Appellant pointed out that the SunTrust judgment was also against him and a company he owned, subjecting him and his company to being pursued by Apex Bank should it acquire the SunTrust judgment.

Molony, as Apex Bank’s attorney who had previously told Appellant that he had complete authority with respect to collecting judgments for Apex Bank in South Carolina, assured Appellant Apex Bank intended to pursue Knight’s property and did not intend to pursue Appellant on the judgment. He further stated that, if Appellant cooperated with the conveyance of the lots in-lieu-of-foreclosure, Apex Bank would not pursue Appellant, his companies, or his properties.

Pursuant to these assurances, and as described in detail in the Second Amended Complaint, Appellant and Molony, acting on behalf of Apex Bank, entered into a *written* Agreement which clearly set forth all elements of the agreement and which was agreed to in an email signed by Molony. In the weeks following, Rainsford had numerous telephone calls with Molony who repeatedly confirmed that Respondent Hailey, as Apex Bank’s officer, had also agreed to the terms of the agreement. Molony stated that he called Respondent Hailey several times to get the executed document back and was assured it would be sent to him soon.

In a later telephone conversation, Molony stated that he had been informed by Respondent Hailey that “the bank’s CEO has become involved and that he’s in charge now.” Subsequently, Apex Bank refused to abide by the terms of the contract.

PROCEDURAL BACKGROUND

Appellant initiated the underlying action against Apex Bank on May 31, 2016. Thereafter, on July 14, 2016, Apex Bank removed the matter to the United States Bankruptcy Court for the District of South Carolina. On October 14, 2016, the bankruptcy court issued an order granting Apex Bank’s motion to dismiss, and Appellant appealed to the United States District Court for the

District of South Carolina. On August 3, 2017, district court reversed the bankruptcy court's order dismissing the case, finding it was "unable to hold, as a matter of law, the alleged agreement fails to satisfy the requirement in the Statute of Frauds of a writing containing the essential terms of the parties' agreement" or "Moloney lacked authority to bind Apex [Bank] to the alleged agreement." On November 1, 2017, the bankruptcy court remanded the case back to the circuit court.

Appellant amended the complaint, with leave of the circuit court, on April 30, 2018, adding Clayton and Respondents Daniels and Hailey as defendants in the action. Appellant alleges Apex Bank, Respondents, and Clayton breached a contract whereby Apex Bank agreed it would not pursue Rainsford or his companies under any judgments, including the SunTrust judgment, in exchange for Appellant deeding two lots in-lieu-of-foreclosure to Apex Bank and providing information regarding Knight. Appellant also brings causes of actions against the defendants for violation of the South Carolina Unfair Trade Practices Act (SCUTPA) and Interference with Prospective Advantage. Appellant contends Clayton and Respondent Daniels, both persons who own a significant interest in Apex Bank, and Respondent Hailey, the Senior Vice President and Chief Credit Officer of Apex Bank, acted jointly and conspired to breach the written agreement between Appellant and Apex Bank, resulting in damages to Appellant.

On June 14, 2018, the circuit court issued an order consolidating the underlying action with three other related actions for both discovery and trial purposes and designating the consolidated cases as complex. *See* civil action nos. 2017-CP-19-00173, 2010-CP-19-00298, and 2018-CP-19-00089. The three other consolidated cases all concern the litigation surrounding the SunTrust judgment and the entry of judgment against Appellant.

The circuit court dismissed Respondents from the action on September 9, 2019, pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure. Appellant filed a Notice of

Appeal of the Court's September 9, 2019 Order on October 8, 2019, and Appellant's initial brief is due on April 19, 2020.

The circuit court held a status conference in the underlying action and the consolidated cases on November 25, 2019. Prior to the status conference, Apex Bank requested the circuit court hear and consider their motion to dismiss, filed in the underlying action on May 23, 2018, and their motion for the appointment of a receiver for MV Development Company filed in Civil Action No. 2010-CP-19-00238 on August 15, 2019. Clayton also requested the circuit court hear and consider his motion to dismiss, filed in the underlying action on December 3, 2018. In his motion to dismiss, Clayton asks the circuit court to find it does not have personal jurisdiction over him or, in the alternative, to find the amended complaint fails to state any causes of action against Clayton for which relief can be granted.

Appellant filed a motion for supersedeas with the circuit court on November 19, 2019, arguing the matters contained in the three pending motions before the court were affected by the present appeal and should be automatically stayed. The circuit court held a hearing on Appellant's motion for supersedeas on January 9, 2020. On February 26, 2020, the circuit court issued an order denying Appellant's motion for supersedeas. Appellant filed a motion to reconsider on March 6, 2020, and the circuit court denied Appellant's motion on March 20, 2020.² Appellant files this petition for supersedeas pursuant to Rule 241(d)(2) of the South Carolina Rules of Appellate Procedure.

APPLICABLE LAW

Pursuant to Rule 205 of the South Carolina Appellate Court Rules, a notice of appeal gives

² Copies of the circuit court's February 26, 2020, and March 20, 2020 Orders are attached along with a copy of the Notice of Appeal pursuant to Rule 241(d)(3) of the South Carolina Appellate Court Rules.

the appellate court “exclusive jurisdiction over the appeal.” The circuit court retains jurisdiction to determine writs of supersedeas and “matters not effected by the appeal.” *Id.*; *see also* Rule 241(a), SCACR (“The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal . . .”). “Rule 205[, SCACR] divests the lower court or administrative tribunal of jurisdiction over ‘matters affected by the appeal[.]’” *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016).

“[T]he service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.” Rule 241(a), SCACR. The automatic stay continues throughout the duration of the appeal. *Id.* “[A]ny party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal.” Rule 241(c)(1). After a ruling by the circuit court, “any party may petition the appellate court where the appeal is pending or an individual judge or justice for review of this order.” Rule 241(d)(2). “The individual judge or justice may grant or deny the relief on a temporary basis, and refer the matter to the full appellate court or hear and determine the matter, or he or she may issue a final order.” *Id.*

In determining whether to issue an order pursuant to Rule 241, the Court “should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Rule 241(c)(2).

The general rule is that the effect of a supersedeas or stay is to suspend proceedings and preserve the status quo pending the determination of the appeal or proceeding in error. It suspends all further proceedings on the judgment, order, or decree appealed from, or as to any matter embraced therein, and prevents the enforcement thereof in whole or in part pending the appeal.

Melton v. Walker, 209 S.C. 330, 336, 40 S.E.2d 161, 164 (1946) (quoting 4 C.J.S., Appeal and

Error, §§ 626, 662, pp. 1108, 1149, 1150).

DISCUSSION

Appellant requests the Court grant a supersedeas and stay the three pending motions in the underlying case and the consolidated case because the pending motions concern matters affected by the above-referenced appeal. Allowing the motions to move forward while the appeal is pending would disrupt the status quo and directly undermine judicial economy by unnecessarily allowing for piecemeal litigation in an already complex case.

The appeal challenges the circuit court's dismissal of two co-defendants in the action brought by Appellant to challenge the ability of Apex Bank to recover against him or his companies for the SunTrust judgment due to Apex Bank, Clayton, and Respondents Daniels and Hailey's breach of contract, violation of the SCUTPA, and interference with prospective advantage. Specifically, the ultimate issue in the underlying case before the circuit court is whether the co-defendants entered into and subsequently breached a written contract with Appellant whereby they agreed not to pursue Appellant or his companies under any judgments in exchange for Appellant deeding two lots in-lieu-of-foreclosure to Apex Bank and providing information to them regarding Knight. As the question of whether the circuit court properly dismissed Respondents from this action is currently being decided by this Court, the appeal necessarily affects all substantive matters in this case, including any pending motions to dismiss.

The underlying action arises out of joint liability among the co-defendants; thus, complete relief cannot be afforded without the inclusion of Respondents. A determination on the ultimate issue in these cases requires the circuit court to evaluate the specific actions of each defendant, including the improperly dismissed Respondents, leading up to the negotiation and execution of the contract and surrounding the conspiracy between the defendants to breach the agreement. If

the Court allows the case to proceed forward without adequate discovery against all the defendants, including Respondents, Appellant will be substantively disadvantaged. Throughout the amended complaint, Appellant describes the conspiracy that occurred between all defendants to breach the agreement they negotiated with him. Thus, the very nature of Appellant's claims requires Appellant and the Court to be able to discover and evaluate the joint actions among the defendants. *See Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601–02, 358 S.E.2d 150, 153 (Ct. App. 1987) (explaining “broad discretion and great latitude are permitted in the reception of evidence in conspiracy cases” due to conspiracy being “an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence”). The types of substantive determinations Apex Bank and Clayton seek to have the circuit court make in their motions to dismiss involves an evaluation of Appellant's interactions with all defendants as well as Appellant's and the defendants' interactions with Apex Bank's agent, Molony. The actions of, and allegations against, the co-defendants in this case are interconnected, and a decision on whether the co-defendants breached the contract requires an evaluation of the specific actions of each person and the interactions among the co-defendants.

Furthermore, Apex Bank also seeks to have the circuit court entertain its Motion for Appointment of Receiver, filed on August 15, 2019 in Civil Action No. 2010-CP-19-00238. This action was consolidated with the underlying case and two other cases pending before the circuit court because the circuit court agreed that all actions arise out of the same facts and require a joint determination of nearly identical issues. In the motion, Apex Bank asks the circuit court to appoint a receiver for MV Development Company (“MV”)³ to take possession of the company and dispose

³ MV is wholly owned by a company that is wholly owned by Appellant. The issues of whether Apex Bank may recover against Appellant and his companies for the SunTrust judgment is the

of property owned by MV in order to satisfy the SunTrust judgment. However, the validity of the SunTrust judgment and Apex Bank's ability to recover against Appellant and his companies under the SunTrust judgment is being directly challenged and litigated in the appeal. Because this is a matter that is affected by the appeal, the circuit court does not have jurisdiction to appoint a receiver at this time.

Appellant will not be able to resolve his claims completely unless the Court allows him to proceed against all named defendants. In order for Appellant to develop the facts to effectively prove his case, he needs to have the issue of the dismissal of Respondents finally resolved. The actions of Respondents are integral to Appellant's claims, as they acted in conjunction with Apex Bank and Clayton to negotiate an agreement with Appellant through Apex Bank's agent Moloney and, after Appellant partially performed and provided them with beneficial information, refused to fulfill their obligations under the agreement. Accordingly, in order for Appellant to develop the facts necessary to pursue his case, he needs to be able to obtain complete discovery from all defendants, including Respondents, and needs to be able to present a complete picture of all of the defendants' joint actions. Requiring Appellant to move forward with his case against Apex Bank and Clayton while this Court is determining whether Respondents are proper defendants would greatly hinder his ability to present an accurate portrayal of how these defendants participated in a conspiracy and a joint and concerted effort to breach the agreement, damaging Appellant, his companies, and his economic opportunities. A supersedeas clarifying the automatic stay of the pending substantive motions in the underlying case and consolidated case allows the circuit court

ultimate issue of fact for trial and must be determined prior to any attempt by Apex Bank to liquidate assets owned by Appellant or his companies, including MV.

to eventually decide the issues by considering the joint actions of all co-defendants while also allowing the parties the benefit of fair, whole, and efficient relief at the appropriate time.

An order issuing a supersedeas would also ensure this already complicated case does not move forward in piecemeal fashion. Staying the pending motions in this case would ensure that this matter can be resolved in a whole and efficient manner after this Court makes a determination of whether Respondents are proper parties to this action. Requiring Appellant to move forward against Apex Bank and Clayton not only hinders his ability to pursue and present his case but also creates unnecessary confusion for the remaining parties and the courts. If the Court denies the petition for supersedeas, the parties will be faced with nearly identical litigation in the future if the appellate courts find Respondents are proper parties to this action, burdening the judicial system and parties due to the duplication of time and efforts and creating the potential for inconsistent results.

Appellant submits the circuit court went beyond the narrow issue of whether the pending motions concerned matters that are affected by the appeal and instead ruled based on Apex Bank's concern that their judgment may expire under South Carolina law. However, when the South Carolina legislature enacted section 15-39-30 of the South Carolina Code,⁴ they intended to protect judgment debtors from unscrupulous creditors like Apex Bank. The South Carolina Supreme Court has held

A judgment lien is purely statutory, its duration as fixed by the legislature may not be prolonged by the courts and the bringing of an action to enforce the lien will not preserve it beyond the time fixed by the statute, if such time expires before the action is tried.

⁴ According to section 15-39-30, "Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions."

Garrison v. Owens, 258 S.C. 442, 446–47, 189 S.E.2d 31, 33 (1972); *see also Gordon v. Lancaster*, 425 S.C. 386, 391–93, 823 S.E.2d 173, 175–76 (2018) (overruling *Linda Mc Co., Inc v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010) and returning to “the traditional bright-line rule” that all judgments expire after ten years from their enrollment regardless of whether a creditor has initiated supplemental proceedings within the ten years). As courts in South Carolina are unable to renew or prolong the life of a judgment, it follows that the circuit court should not have considered the possibility of the expiration of the judgment in this case when deciding the narrow issue of whether the matters contained in the pending motions are affected by the appeal. The circuit court should not interfere in the proper process of the judicial system in order to avoid a possibility that may never occur and protect creditors like Apex Bank. Regardless of whether the judgment may expire, the issue before the Court is whether the claims before it require the involvement of all named defendants in order for justice to be afforded to Appellant and whether forcing him to continue his case with two defendants will severely hinder his ability to obtain complete relief against the defendants. As discussed above, requiring Appellant to pursue his case against only half of the necessary defendants, and necessarily with half of the required facts, would amount to making him litigate his case with one arm tied behind his back.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests the Court issue a supersedeas clarifying that the three motions pending before the circuit court are automatically stayed until a determination of this appeal as they concern matters affected by the appeal.

(Signature page follows)

RESPECTFULLY SUBMITTED,

s/ Shanon N. Peake

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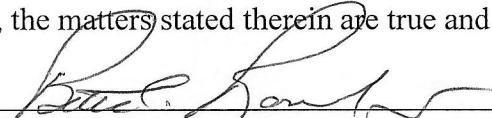
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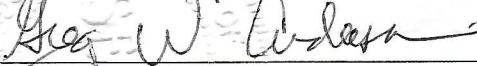
March 30, 2020.

VERIFICATION

I, Bettis C. Rainsford, Sr., the Appellant in the above-referenced appeal, verify under penalty of perjury that I have read the Petition for Supersedeas and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated therein are true and correct.


Bettis C. Rainsford, Sr.

Sworn to and subscribed before me this
3rd Day of April, 2020


Notary Public of South Carolina
My Commission Expires: 2/1/29



Greg W. Anderson
NOTARY PUBLIC
State of South Carolina
My Commission Expires
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