

STATE OF SOUTH CAROLINA)
)
COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

RECEIVED

Bettis C. Rainsford,

Apr 08 2020

Civil Action No.: 2016-CP-19-00168

Plaintiff,

SC Court of Appeals

vs.

**ORDER DENYING BETTIS RAINSFORD'S
MOTION FOR SUPERSEDEAS**

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

Defendants.

Bettis C. Rainsford, Sr.

Civil Action No.: 2017-CP-19-00173

Plaintiff,

vs.

Charles L. Reel, Clerk of Court for
Edgefield County, Edgefield County,
South Carolina, and Apex Bank, as
Successor to SunTrust Bank,

Defendants.

Apex Bank, et al.,

Civil Action No.: 2010-CP-19-00238

Plaintiff,

vs.

Bettis C. Rainsford and MV
Development Company,

Defendants.

relieving Rainsford and his companies of any responsibility for the future collection of the judgment obligations. A Consent Order consolidated four cases and provided the Court authority “to establish appropriate organization and deadlines for the orderly prosecution and defense” of the four cases.

In case number 2016-CP-19-00168, the critical issue is whether Apex Bank and Rainsford entered into an enforceable contract relieving Rainsford and his companies of any responsibility for future collection of the judgment obligation. This Court granted a Motion to Dismiss filed by the individual Defendants, Matt Daniels and Brad Hailey, on personal jurisdiction grounds as they are residents of Tennessee and they have no contacts with the State of South Carolina. It is from that Order Rainsford appeals. Apex Bank requested that its Motion to Dismiss or in the alternative for Summary Judgment in Case No. 2016-CP-19-00168 and its Motion for Appointment of a Receiver in Case No. 2010-CP-19-00238 be heard as the issues related thereto were not affected by the pending Appeal. On November 19, 2019, Rainsford moved for Supersedeas, pursuant to Rule 205 of the South Carolina Appellate Court Rules, arguing that a notice of appeal gives the appellate court “exclusive jurisdiction over the appeal.”

Supersedeas is Not Appropriate for Matters not Affected by Appeal

Pursuant to Rule 205 of the South Carolina Appellate Court Rules:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. **Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.** (emphasis added).

The general rule is that:

The 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. 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.** (emphasis added).

C-Sculptures, LLC, No.3 v. Brown, 393 S.C. 27, 30, 709 S.E.2d 705, 706 (Ct. App. 2011) (citing Rule 241(a) of the South Carolina Appellate Court Rules).

The only decision on appeal is the Order dismissing individual Defendants Matt Daniels and Brad Hailey for lack of personal jurisdiction under Rule 12(b)(2) SCRP in case number 2016-CP-19-00168. However, Rainsford attempts to stay every issue in four separate but consolidated cases due to an appeal of one ruling pertaining to two non-essential parties.

Apex Bank is an independent party and its status is not affected by whether or not the other individual defendants are present in the case. The South Carolina Appellate Court rules specifically allow for matters not affected by the appeal to move forward and not be hindered. Staying the entire consolidated cases is an extreme measure and one not contemplated by the appellate rules. The purpose of granting a supersedeas is to “suspend or stay the matters decided in the order, judgment, decree or decision on appeal.” Rule 241(c)(1) SCACR. Only issues stemming from that dismissal should be stayed, and other matters not affected by the appeal should continue. *See Raby Cosnt., L.L.P. v. Orr*, 358 S.C. 10, 23, 594 S.E.2d 478, 485 (2004). All matters in the consolidated cases should continue, as they are unaffected by the appeal.

Specifically, Apex Bank's Motion to Dismiss/Motion for Summary Judgment can be heard by this Court while the appeal is pending. The critical issue of whether or not there was an enforceable oral contract between Apex Bank and Rainsford is not affected by Daniel and Hailey's status as parties and whether or not there is personal jurisdiction over them. The issue of the existence of an oral contract can be resolved with or without the two dismissed individual defendants being a party to this action. If Daniel and Hailey are fact witnesses to the alleged oral contract as alleged, their status as parties is inconsequential and the issue can be litigated despite the outcome of the appeal.

Further, Apex Bank's Motion to appoint a Receiver (2010-CP-19-0238) dated August 15, 2019 can continue. As stated in its Motion for appointment of a Receiver, the Court entered judgment against MV Development originally dated June 9, 2011, modified July 12, 2011, and subsequent Deficiency Judgment entered against MV Development, Talmadge Knight and Bettis C. Rainsford in the amount of \$1,186,216.08 on May 24, 2012 . The judgment entered against MV Development did not and does not involve either of the dismissed individual defendants. Neither Defendants Hailey nor Daniels are parties under the specific case involving MV Development. As noted above, the presence of Hailey and Daniels as parties in one of the cases has no bearing on the appointment of a Receiver in an entirely different case. Hailey and Daniels are not necessary to determine whether this judgment against MV Development is enforceable. The Court finds this matter is unaffected by the appeal and the Court has jurisdiction to appoint a Receiver. While the action in which Apex Bank is asking a Receiver to be appointed is consolidated with the other actions, it is not affected by the appeal and should not be stayed pending the decision of the appellate court.

Granting Rainsford's Motion for Supersedeas would serve to delay these proceedings and potentially last long enough to affect Apex Bank's ability to collect on its judgment. The linchpin as to all the consolidated cases is whether an alleged oral contract exists. Although the actual Deficiency Judgment which is the subject of this dispute was entered on May 24, 2012, the Order provided the effective date of the judgment was December 1, 2011. Appellate Rule 241(c)(2) provides that the Circuit Court should consider whether a supersedeas "is necessary to preserve the jurisdiction of the appeal or to prevent a contested matter from becoming moot." Until a final determination is made as to the issue of the enforceability of this judgment is resolved, none of these cases can be properly be decided. If supersedeas is granted, there is potential for issues to become moot.

For the reasons set forth above, the Court denies Rainsford's Motion for Supersedeas, and the four consolidated cases shall move forward as to all other issues, including the issue of the enforceability of the oral contract.

IT IS TO ORDERED.

G. Thomas Cooper, Jr.
Judge, Eleventh Judicial Circuit

January _____, 2020



Edgefield Common Pleas

Case Caption: Bettis C Rainsford VS Apex Bank et al , defendant, et al

Case Number: 2016CP1900168

Type: Order/Other

So Ordered

s/ Honorable G. Thomas Cooper, Jr. Circuit
Judge 2126