

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2019-001689

RECEIVED
Apr 17 2020
SC Court of Appeals

Bettis C. Rainsford,

Appellant.

v.

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

Defendants.

Of whom, Matt Daniels and Brad Hailey are the Respondents.

APEX BANK'S RESPONSE IN OPPOSITION
TO APPELLANT'S PETITION FOR SUPERSEDEAS

COMES NOW, Apex Bank, pursuant to Rule 240(e) of the *South Carolina Appellate Court Rules* and files this return in opposition to the Petition for Supersedeas filed by Bettis Rainsford ("Rainsford"). For reasons stated below, the Court should deny the Petition for Supersedeas and allow all matters unrelated to the pending appeal proceed.

Procedural History

On November 19, 2019, Rainsford filed a motion for supersedeas requesting that all matters in the underlying complex and consolidated cases be stayed. The four consolidated cases arise out of or are related to a common judgment Apex Bank has against Rainsford and his companies. The cases pertain to Apex Bank's judgment, the date of that judgment, alleged fraudulent conveyances to circumvent that judgment, and whether Apex Bank and Rainsford entered into an enforceable contract relieving Rainsford and his companies of any responsibility for the future collection of

the judgment obligations. In particular, Rainsford argued that Apex Bank’s pending Motion for Appointment of a Receiver in Case No. 2010-CP-19-00238 and Motion to Dismiss or in the alternative for Summary Judgment in Case No. 2016-CP-19-00168 be stayed due to an appeal currently pending before the Court. The Order currently on appeal is the trial court’s September 9, 2019 dismissal of two (2) individual defendants (Matt Daniels and Brad Hailey) from one of the cases for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the *South Carolina Rules of Civil Procedure*.

After a hearing on January 9, 2020, the trial court denied Rainsford’s motion for supersedeas on February 26, 2020, holding that “[a]ll matters in the consolidated cases should continue, as they are unaffected by the appeal.” (Feb. 26, 2020 Order, at 4.)

Rainsford filed a motion to reconsider on March 6, 2020. The trial court denied the motion to reconsider on March 20, 2020. On April 8, 2020, Rainsford filed and served a Petition for Supersedeas in this Court pursuant to Rule 241(d)(2) of the *South Carolina Appellate Court Rules*.

All Remaining Matters are “Not Affected” by Appeal and Can Continue

Rule 205 of the *South Carolina Appellate Court Rules* states:

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 regarding stays following a notice of appeal 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.**

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) (emphasis added).

The only decision on appeal is the September 9, 2019 Order dismissing Defendants Matt Daniels and Brad Hailey for lack of personal jurisdiction under Rule 12(b)(2) of the *South Carolina Rules of Civil Procedure*. 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). However, in this Petition, Rainsford attempts to stay every issue in four separate but consolidated cases due to an appeal of a single ruling pertaining to two individual party-defendants. Staying the entire consolidated case is an extreme measure and one not contemplated by the appellate rules. The Court should allow the trial court to continue to hear all other matters in the consolidated cases.

First, Apex Bank's Motion to Dismiss/Motion for Summary Judgment can properly move forward while the appeal is pending. A decision on the substantive issue of an enforceable contract between Apex Bank and Rainsford in no manner involves the sole issue on appeal (whether individual defendants were properly dismissed for lack of personal jurisdiction). Rainsford argues that facts overlap and that Daniels and Haley are necessary parties for adjudicating whether there was a contract between Plaintiff and Apex Bank preventing Apex Bank from proceeding with the various collection actions. However, the critical issue of whether or not there was an enforceable

contract between Apex Bank and Rainsford is not affected at all by Daniel and Hailey's status as parties or the outcome of the appeal on their dismissal for lack of personal jurisdiction. The issue of the existence of a contract between Apex Bank and Rainsford can be resolved completely whether or not this Court affirms individual defendants' dismissal.

Even if Daniel and Hailey are fact witnesses to the alleged contract as alleged, their status as parties is inconsequential and all remaining issues can be completely litigated and resolved despite the outcome of the appeal. Rainsford fails to support his contention that he cannot "obtain complete discovery" or would have to "litigate his case with one arm tied behind his back" in the consolidated cases without appellate review from the Court on the dismissal of Daniel and Hailey. Last, Rainsford's petition speaks in terms of a "conspiracy" in order to bolster the individual defendants' connection with the remainder of the case. However, Rainsford does not assert a civil conspiracy cause of action against any defendants.

Apex Bank also filed a motion for appointment of a receiver that asserted a judgment against MV Development originally dated June 9, 2011 and modified July 12, 2011 and a subsequent deficiency judgment against MV Development, Talmadge Knight, and Rainsford in the amount of \$1,186,216.08. The judgment entered against MV Development did not and does not involve either of the dismissed individual defendants. Neither Hailey nor Daniels are parties under the specific civil action involving MV Development. 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. The presence or absence 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.

In his Petition, Rainsford argues that Apex Bank's judgment is being directly challenged and litigated in the appeal. In fact, the appeal only addresses personal jurisdiction and has no bearing on the Apex Bank's judgment. Hailey and Daniels are not necessary to determine whether this judgment between MV Development and Apex Bank is enforceable. All remaining issues are unaffected by the appeal and the trial court should maintain jurisdiction to appoint a receiver.

Conclusion

None of the other issues in the consolidated cases are affected by whether or not the individual defendants are parties in one of the cases. It is not uncommon for one party to be dismissed and others to remain in a case, as is the issue here. As noted above, the *South Carolina Appellate Court Rules* specifically allow for matters not affected by the appeal to move forward and not be hindered. The Court should deny Rainsford's Petition for Supersedeas and allow the remainder of the complex and consolidated cases to proceed without further delay (including Apex Bank's Motion to Dismiss or in the alternative Motion for Summary Judgment and Motion to Appoint a Receiver) pursuant to Rules 205 and 241(a) of the *South Carolina Rules of Appellate Procedure*. Therefore, Apex Bank respectfully requests the Court deny Rainsford's Petition for Supersedeas.

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Respectfully submitted,
ROE CASSIDY COATES & PRICE PA

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Greenville, South Carolina
April 17, 2020

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PROOF OF SERVICE

I, the undersigned attorney with Roe Cassidy Coates & Price, hereby certify that Apex Bank's Response in Opposition to Appellant's Petition for Supersedeas was served on all counsel of record via electronic mail to the addresses indicated below:

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Greenville, South Carolina
April 17, 2020

From: [Reid Merline Eaddy](#)
To: shanonp@smithrobnsonlaw.com; [Vincent Sheheen](#); freeman@belsarpa.com; tlydon@mgclaw.com
Cc: [Ross B. Plyler](#); [Jim Cassidy](#); [Stacie Bryant](#)
Subject: Bettis Rainsford v. Apex Bank, Jim Clayton, Matt Daniels and Brad Hailey, Case No. 2019-001689
Date: Friday, April 17, 2020 11:49:36 AM
Attachments: [Apex Bank Memo in Opp to Bettis Petition for Supersedeas \(Ct of Appeals\).pdf](#)
[Proof of Service - Court of Appeals \(168\).pdf](#)

Sent on Behalf of Ross B. Plyler

In accordance the recent order from the SC Supreme Court, enclosed and served upon you is Apex Bank's Response in Opposition to Appellant's Petition for Supersedeas regarding the Bettis Rainsford v. Apex Bank, Jim Clayton, Matt Daniels and Brad Hailey case, Case No. 2019-001689.

Reid Merline Eaddy
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From: [Reid Merline Eaddy](#)
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Subject: FW: Bettis Rainsford v. Apex Bank, Jim Clayton, Matt Daniels and Brad Hailey, Case No. 2019-001689
Date: Friday, April 17, 2020 11:52:17 AM
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Ms. Peake,
I apologize for the typo in your email address.
Thank you.
Reid

From: Reid Merline Eaddy
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To: shanonp@smithrobinsonlaw.com; Vincent Sheheen <VSheheen@thesavagefirm.com>; freeman@belsarpa.com; tlydon@mgclaw.com
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