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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2019-001572

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Master-In-Equity Court Judge

PETITION FOR WRIT OF SUPERSEDEAS OR OTHER EXTRAORDINARY RELIEF; S.C.
App. Ct. R. 221, MEMORANDUM OF POINTS AND AUTHORITIES

Alluette Jones, Appellant,

v.

Mikell R. Scarborough, NBSC/SYNOVOUS BANK,
Judge DANIEL MARTIN JR, CASDELL SINGELTON,
Representative Andrew Sullivan
SRP 2011-6 LLC and others

**IMMEDIATE STAY REQUESTED (of order prohibiting any further
Proceedings during the pendency of this case, which calls for compliance
starting on or before September 7, 2020)**

STATEMENT OF FACTS

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

I Alluette Jones, Appellant, respectfully move this Court to Inform me on the amount and to secure a Supersedeas Bond now files and PETITION FOR WRIT OF SUPERSEDEAS OR OTHER EXTRAORDINARY RELIEF; S.C. App. Ct. R. 221, for an Stay to enjoin and Stay Respondents Mikell R. Scarborough, NBSC/SYNOVOUS BANK, Judge DANIEL MARTIN JR, CASDELL SINGELTON, Representative Andrew Sullivan SRP 2011-6 LLC and others from any further Proceedings during the pendency of this case. This Motion for Stay is based on the following facts.

1. Master IN Equity abused his discretion upon errors of law; The Master in Equity did error in enforcing an order without determining if Jurisdiction was established and lawful consideration of the alleged contract. The Jurisdiction of the Court was not evoked because there was no Notice to Appellant or service of Process.

2. I have a right to my property and relief protected by our constitution, SC Con Article 1 Section3 and the United States Constitution 5th amendment due process of law, The CARES ACT, The State of South Carolina Judicial Foreclosure procedures, See; IN RE Mortgage Foreclosure Administrative Order (Order No. 2009-05-22-01); Executive orders 138192, Contracts, Trenchancy in Regulations and Guidance Documents.

3. The courts lack of jurisdiction The master has no power or authority except that which is given to him by the order of reference. See Rule 53(c), SCRCP ("[T]he order of reference to the master may specify or limit his powers and may direct him ... to do or perform a particular act...."); Bonney v. Granger, 292 S.C. 308, 356 S.E.2d 138 (Ct.App.1987) (a master has the same powers as a circuit judge unless the order of reference specifies or limits his powers); 76 C.J.S. References § 76 (1952) (a referee has no powers except those conferred by the order of reference).

Take Notice Citing: TRYON FED. SAVINGS LOAN VS. PHLEPS "A master may enter a final judgment without further order of the court if either the parties consent in writing, or the order of reference so provides. Rule 53(e)(1), S.C.R. Civ. P. Although the order may be appropriate, it is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are affected. *Insurance Co. of North America v. Hyatt*, 290 S.C. 159, 348 S.E.2d

532 (1986). If the judgment or order is taken without notice, the absent party may rightly ignore it and assume that no court will enforce it against his person. *Insurance Co. of North America v. Hyatt, supra* [citing *Koester v. Citizens' Publishing Co.*, 154 S.C. 154, 151 S.E. 452 (1930)].

RULE 62

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

II. PETITION FOR WRIT OF SUPERSEDEAS OR OTHER EXTRAORDINARY RELIEF; REQUEST FOR STAY

1. Petition for writ of Supersedeas is a matter of necessity do to irreparable harm that will incur from removing me from my home do to the following facts as stated above I was not properly Noticed or given service which caused Courts of ambush on and after February 12-26th hearing and order causing bias for attorneys and Bidder. 2. Appellant likelihood of success on appeal is high do to multiple areas of procedural and Substantive Due process violation, Misconduct and issue of law; pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate 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), SCACR. 3. Consent is needed by both parties and Maters powers are specified under order of reference and must be fulfilled in a timely manner according to law see above.

"Generally, 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." *Melton v. Walker*, 209 S.C. 330, 336, 40 S.E.2d 161, 164 (1946).

A supersedeas or order lifting the automatic stay may be issued ex parte only where exigent circumstances require that action be taken before there is time for a hearing. An ex parte order shall issue only if: (A) it clearly appears from specific facts shown by affidavits or included in the verified petition that immediate and irreparable injury, loss or damage will result before the opposing party can respond; and (B) the moving party's attorney certifies in writing, as an officer of the court, the efforts which have been made to give notice, or the reasons supporting the claim that notice should not be required. Rule 241(d)(6), SCACR.

A. Parties

1. Alluette Karen Jones, Appellant
2. Mikell R. Scarborough, NBSC/SYNOVOUS BANK,
Judge DANIEL MARTIN JR, CASDELL SINGELTON,
Representative Andrew Sullivan
SRP 2011-6 LLC and others, Respondents

B. Factual background

On October 11 2019 Emergency Hearing before Mikell R. Scarborough was originally filed to be heard by a Circuit court judge but my filing was transferred and the hearing went forward even with my multiple objections and concerns one being my right to a jury trial. I Alluette K. Jones then produced Video Evidence with dates and times to contest the Affidavit Stating I was served at home at 7:12pm. Mikell R. Scarborough refused the evidence and made an Order to sell my Home I then filed a Notice of Appeal to further protect my interest in my home on October 15th 2019 Notice Mikell R. Scarborough was also already named in a Law suit filed in federal court at the time of the Rule 60 (b) (4) Hearing. Further on August 11th 2020 I petitioned for a Stay do to the respondent's motion to lift the Stay on Appeal.

C. Procedural background

1. October 11 2019 Emergency Hearing Rule 60 (b) (4) before a Circuit Court Judge
2. October 15th 2019 Filed Notice of Appeal
3. March 17th 2020 Filed Amended Initial brief Designation of Matter and Proof of Service
4. August 11th 2020
5. August 28th 2020 I Sent in \$250.00 to correct the deficiency of \$200

1. My appeal raises substantial issues, several of first impression

1. Contesting the affidavit for lack of service Supporting or opposing affidavits "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify to the matters stated." Fed. R. Civ. P. 56(e)(1). A party who submits evidence in the form of affidavits must do so in the proper, authenticated form. Even at a preliminary stage of trial, courts should not permit admission of documents that do not strictly comply with procedural rules. It is imperative that a party's sworn submission be sufficient in execution and substance, as well as consistent with prior assertions, to ensure the integrity of the process. Accordingly, practitioners should reexamine their affidavit forms and consider whether they are in compliance with the applicable rules and case law as to form. Practitioners also should examine opposing counsel's submissions and move to strike any that do not meet the clear standards set forth for admissible affidavits and sworn statements.
2. Plaintiffs have filed a number of witness statements that Plaintiffs' counsel characterize as "affidavits," but they are not sworn to nor are they statements made under penalty of perjury.
3. The plaintiffs' failure to present proper statements, made under penalty of perjury, warrant the court's disregard of the proposed "affidavits" and its granting of summary judgment in favor of the defendant/Appellant. Rule 60 (b) (4) is a matter of right and not in the discretion of the Judge.
4. Personal Jurisdiction cannot be had without first being served the Summons and complaint; no notice or consent for Master IN Equity to hear Case from order of reference USC 28 636.

The Court has jurisdiction, and this petition is timely.

S.C. App. Ct. R. 241, (C) (3) and (D) (2); Section 18-9-170, see Wachesaw Plantation East Community Services Association, Inc., Respondent, v. Todd C. Alexander, Petitioner.

Our jurisprudence establishes that, despite the master-in-equity's issuance of a deed, an appellate court may reach the merits of the appeal. See *Antrum v. Hartsville Prod. Credit Ass'n*, 228 S.C. 201, 89 S.E.2d

376 (1955) (deciding on petition to set aside foreclosure sale and declaring deed to purchaser void); Nichols v. Andrews, 157 S.C. 334, 154 S.E. 305 (1930) (deciding appeal from foreclosure and sale of property where deed was issued and no bond posted) ; Ex Parte Andrews, 152 S.C. 325, 150 S.E. 313 (1929) (explaining that purchaser of property was entitled to possession of property pending appeal because no bond was posted; remanding the case to be heard on the merits); Muckenfuss v. Fishburne, 68 S.C. 41, 46 S.E. 537 (1903) (deciding defendant's appeal from order to set aside judgment of foreclosure where deed was executed to the purchaser); Scott v. Scott, 29 S.C. 414, 7 S.E. 811 (1888) (deciding an action to enjoin the foreclosure of a mortgage for the sale of a mortgaged property after a deed was issued to plaintiff); Heritage Fed. Sav. & Loan v. Eagle Lake & Golf Condominiums, 318 S.C. 535, 458 S.E.2d 561 (Ct. App. 1995) (deciding homeowners' association appeal from foreclosure and sale where a master deed was issued). Based on the above-cited cases, it is clear that the issuance of a deed does not moot the appeal of a foreclosure sale and an appellate court may reach the merits. Accordingly, we find the Court of Appeals erred in declaring the case moot because a deed was issued after the sale of the property.

I have filed my petition in the time allowed by the Rules 241, Section 18-9-170.

G. Authenticity of exhibits

Most of the Exhibits are from Public Service providers Such as the Police Department , Fire Department ,Video with dates and time, Hospital and Affidavits.

III. PRAYER FOR RELIEF

1. The fraud was an affront to the administration of justice and the proper function of the judicial system because the fraud was perpetrated on the court through the corruption of multiple officers, Private attorney(s) and Judge(s).

Therefore I the Appellant Pray that this court Grant the Stay and other relief requested S.C. App. Ct. R. 221

C. A corrective writ of supersedeas is necessary to clarify the abuse of discretion of the judgment, though prohibitory in form, is mandatory in effect.

The rights and Duties of South Carolina Constitution Mandatory and Prohibitory S.C. Contitiuon Article 1 Section 23; writ of supersedeas is necessary to clarify the abuse of discretion an error of Common law and Procedural Law; See, Ex parte Young 209 U.S. 123 (1908) the 11th amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. Ex Parte Young teaches that when a state officer acts under a state law in a manner violate of the federal constitution, he or She comes into conflict with the superior authority of the constitution, and he or she is in that case stripped of his or her official or repetitive character and is subjected in his or her

person to the consequences of his or her individual conduct. The state has no power to impart to him or her any immunity from responsibility to the supreme authority of the United States.

E. In the alternative, the Court should exercise its discretion to issue the writ to prevent irreparable harm to the Appellant and the public.

c. The Court observed the "settled doctrine" that a party may obtain relief from a judgment where fraud prevents a fact from being a part of the original litigation when the fact "clearly proves it to be against conscience to execute a judgment.

d. "Where enforcement of the judgment is 'manifestly unconscionable,'" a court has the equitable power to grant relief-even after the term has expired.

Using false or fraudulent evidence involves a corruption United States v. Agurs , see also Miller v. Pate, Darden v. Wainwright Improper Argument and Manipulation or misstatement of evidence violates due process). Cf. Mesarosh v. United States.

MEMORANDUM OF POINTS AND AUTHORITIES See Attachment A

3. Respondents' interests would not be harmed by a stay.

FURTHER, sayeth naught.

CONCLUSION

Therefore I Alluette Jones, Appellant, files this motion, and makes all other motions and objections in this case whether or not specifically noted at the time of making of the motion or objection, on the following grounds and authorities: The Due process clause, the right to a fair trial by an impartial jury, the right to counsel, Equal protection, Confrontation and compulsory process, The right to remain silent and Appeal, and the right to be free from cruel and unusual Punishment, pursuant to the federal and south Carolina constitution generally, and specifically, The right to Stay of Judgment Rules 65(a), 62 (b), and ." Fed. R. Civ. P. 56(e)(1)., the first,

fourth, Fifth, Sixth, Eighth, Ninth, tenth, Eleventh and Fourteenth amendment of the United states constitution, and Article 1, Section 3, 13, 19 and 23 of the state of south Carolina constitution and will not waive any of my Rights. I Motion to stay any further action in the case until a Judgement is made on appeal, and demand the court adhere to the rules of law according to the Supreme Court. Any Further action on the part of the parties will result in the further abuse and loss of my civil liberties, Due Process and deprivation of my constitutional protections in which I will/Am seek/seeking relief as stated above for offenders private or in their official capacity. For the reasons stated.

Respectfully submitted,

September 1 , 2020

Alluette Jones, Appellant,
142 Coming Street, Charleston SC, 29403
(843) 813-1910

The use of notary below is for identification only, and such use does NOT grant any jurisdiction to anyone.

Subscribed and sworn, without prejudice, and with all rights reserved.

Principal, by Special Appearance, in Propria Persona, proceeding Sui Juris.

Alluette Jones
Signature of Affiant

ACKNOWLEDGMENT

state of SOUTH CAROLINA

county of Charleston

On this 2nd day of September, 2020, before me

personally appeared Alluette K Jones, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed, for the purposes therein set forth.

Raven Putman
(Notary Public)

My Commission Expires June 15, 2026, 20

ucc 1-207 1-308 1-103, 3-305, 3-306

