

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Master-in-Equity

Charles B. Simmons, Jr., Master in Equity

Case No. 2010-CP-23-3860
Appellate Case No. 2019-002047

Independence National Bank,

Respondent,

v.

Buncombe Professional Park,
LLC and David Decarlis s/a
David D. Decarlis,

Of who, David Decarlis is the Appellant.

RETURN TO MOTION TO DISMISS OR IN THE ALTERNATIVE FOR
EXPEDITED TREATMENT

Pursuant to Rule 240, SCACR, Appellant issues this RETURN to Respondent's Motion to Dismiss or in the Alternative for Expedited Treatment and asks that this court DENY the relief sought.

THE APPEAL SHOULD NOT BE DISMISSED

The matter should not be dismissed as moot. There is no precedent for an appeal to be dismissed as moot after the briefing has been completed. The Respondent, Independence National Bank (INB), is attempting to argue its position that should have been included in its

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brief by Motion to Dismiss after the briefing has ended. The Appellate Court should review the matter with the gravity it deserves and review the briefs and hear the arguments as they are presented. The lower court knew that this was a difficult issue and wanted this matter to be taken up on appeal. (R. 21).

First, the Appeals of the various orders were timely perfected. On December 5, 2019 a Notice of Appeal was filed for two different matters: the Order Appointing the Receiver and the Order Denying the Motion to Reconsider.

Second, the Order from February 13, 2020 replaced the Order from December 17, 2020. This order was timely appealed. Neither of these issues was raised prior to this Motion because they are without merit.

The Master in Equity realized that there are difficult and novel issues in this case. The Respondent's motion is another attempt to smear the image of the appellant before the court, yet the judge properly consider in his orders the evidence that Mr. Decarlis could not do what he was being ordered to do.

THERE ARE NO GROUNDS TO EXPEDITE THIS MATTER.

The Matter that gives rise to this Motion comes from Supplemental Proceedings to collect on a judgment that was obtained on May 13, 2011 against the Appellant. On May 12, 2011, the Greenville County Master in Equity issued a Decree of Foreclosure to sell property to pay a debt in the amount of \$1,875,008.73. The Judgment was reduced after the property was sold for \$1,420,000.00 at the foreclosure sale. As of August 2, 2011, the judgment was \$491,978.13. An appeal was filed by the Appellant in July, 2011 but no stay of the enforcement of the judgment was sought. The case was returned to the Circuit court in March of 2015. In April of 2015, INB obtained an execution against the property of Mr. Decarlis but proceeded no further in the matter for over 3 years.

INB waited and did not attempt to exercise its rights until September or October of 2018, more than 7 years after it obtained its judgment and 3 years after it first began to collect against the judgment. There was nothing prohibiting INB from exercising its rights to begin supplemental proceedings earlier. There was never a stay of enforcement on the judgment and

INB could have begun its supplemental proceedings at any time after the entry of the judgment. It sat on its rights for 7 years and is now scrambling to rush the court and justice.

What is at stake here is not money, but the Appellant's freedom in a civil matter for failure to pay a debt. He has testified and provided evidence that if he is held in contempt, he will be put in prison with no way to get out. He does not, "Hold the keys to his own cell." He does not have the power over the funds. Both counsel for the Respondent and the court have expressed doubts about whether he does have the ability to perform as he has been ordered by the court. (R. p 216 lines 15-16 and p. 228 lines 2-6). There is no evidence before the court showing that he does have this power other than the opinion of someone who has never met Mr. Decarlis and was never able to be examined by the Appellant.

October 19, 2020

/s/Shawn M. French, Sr.
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