

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

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Oct 23 2020

SC Court of Appeals

Appellate Case No.: 2020-001202

Wilmington Savings Fund Society, FSB, as Trustee of
Upload Mortgage Loan Trust A,..... Respondent,

v.

The Personal Representatives, if any, whose names are unknown,
of the Estates of Frank Lucas aka Frank M. Lucas; Carole S. Lucas
aka Carole Sunny Goodson-Lucas. Appellants.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT PROPERLY DISMISSED THE MOTION WITHOUT THE NECESSITY OF A HEARING.
 - A. Rule 6(d), SCRPC, does not control.
 - B. Appellants were not denied their right to due process.
- II. THE TRIAL COURT HAD JURISDICTION TO ISSUE THE JUDGMENT FOR FORECLOSURE

STATEMENT OF THE CASE

The underlying action is for the foreclosure of a mortgage of a real estate mortgage in Richland County, South Carolina. On October 2, 2012, a Lis Pendens, Summons, and Complaint were filed on behalf of Household Finance Corp. II, against Frank Lucas, Carole Lucas, and Associates First Capital Corporation. Frank Lucas and Carole Lucas were served on October 2, 2012. An Answer and Counterclaims was filed and timely served on behalf of Carole Lucas only. A Reply was filed and timely served. No response was filed on behalf of Frank Lucas.

Frank Lucas died intestate on December 16, 2012, leaving the subject property to his heirs at law or devisees, namely, Carole S. Lucas.

During the pendency of the litigation, Carole S. Lucas died intestate on April 4, 2017, leaving the subject property to her heirs at law.

On October 24, 2018, a Motion to Dismiss the Counterclaims was filed arguing that pursuant to Rule 25, SCRCF, no successors in interest to Carolina Lucas sought to be substituted as a party in interest, and, therefore, the counterclaims should be dismissed.

By Order filed February 26, 2019, Judge L. Casey Manning issued an Order dismissing the counterclaims.

On April 11, 2019, an Amended Lis Pendens, Amended Summons, and Amended Complaint were filed. The amended documents named the personal representatives, if any, of the estates of Frank and Carol Lucas, as well as the known heir at law and representatives for the unknown heirs and heirs in the military or under disability.

On May 16, 2019, an Order was filed appointing Kelley Y. Woody, Esq., as Guardian ad Litem (“GAL”) for the unknown heirs who were in the military, minor, or those under a disability.

On May 17, 2019, an Order for Publication was filed allowing the known heirs at law James C. Crawford III, and Marc C. Goodson to be served by publication.

On June 4, 2019, the GAL filed and served an Answer and Consent to Reference on behalf of the unknown heirs in the military, minors, or incapacity persons.

On October 21, 2019, a Notice of Default as to the remaining defendants was filed.

On June 16, 2020, a merits hearing was held before the Richland County Master in Equity. Following the hearing, an Order for Foreclosure and Sale was filed.

On August 24, 2020, a Motion to Set Aside Default Judgment was filed on behalf of the Estate of Frank Lucas and the Estate of Carole Lucas. On September 1, 2020, the Master in Equity filed an Order denying said motion. This appeal follows.

STANDARD OF REVIEW

Rule 60(b), SCRCF, provides:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

“Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the trial court. Therefore, our standard of review is limited to determining whether there was an abuse of discretion [which] arises when the order was controlled by an error of law....” *Se. Hous. Found. v. Smith*, 380 S.C. 621, 636, 670 S.E.2d 680, 688 (Ct. App. 2008).

STATEMENT OF FACTS

On or about December 7, 1998, Frank Lucas and Carole S. Lucas a/k/a Carole Sunny Lucas made, executed and delivered unto Fieldstone Mortgage Company a certain Note ("Note").

In order to secure the payment of the Note, Frank Lucas and Carole S. Lucas made, executed and delivered unto Fieldstone Mortgage Company a certain real estate mortgage ("Mortgage") covering the following property located at 1748 Romain Drive, Columbia, SC 29210.

Thereafter, Frank Lucas died intestate on December 16, 2012, leaving the subject property to his heirs at law or devisees, namely, Carole S. Lucas. Thereafter, Carole S. Lucas aka Carole Sunny Lucas aka Carole Sunny Goodson-Lucas died intestate on April 4, 2017, leaving the subject property to her heirs at law or devisees, namely, James C. Crawford III and Marc C. Goodson.

On February 26, 2019, a hearing was held on the Plaintiff's Motion to Dismiss Counterclaims filed by the Lucas Defendants prior to their death. The Court concluded that more than eighteen (18) months had elapsed since the death of Ms. Lucas, and no motion to substitute another party in interest by her counsel had been made. Accordingly, the Court dismissed the counterclaims.

As the mortgagers were deceased, no estates had been opened, and the remaining parties had not appeared to defend, the pleadings were amended to name the known and unknown heirs at law and any other possible lienholders. At the time the pleadings were amended in 2019, no estates had been opened.

The heirs at law were served and no appearances were made. As such, they were placed in default. Guardian ad litem was appointed for the unknown heirs who might be

in the military or under a disability. To date, there is no information that any unknown heir at law was in the military or under a disability when the judgment was entered.

On June 18, 2020, an Order for Judgment for Foreclosure and Sale was filed after a hearing. The Order found that the known heirs at law in this action were properly served and were in default.

On August 24, 2020, a Motion to Set Aside Default Judgment was filed purportedly on behalf of the estates of Frank Lucas and Carol Lucas ONLY. The Motion alleges in part that Frank Lucas died in 2012 intestate, and his intestate estate was not opened until 2020. There is no allegation that any estate for Carol Lucas has been opened.

ARGUMENTS

I. THE TRIAL COURT PROPERLY DISMISSED THE MOTION WITHOUT THE NECESSITY OF A HEARING.

A. Rule 6(d), SCRCP, does not control.

Appellants argue Rule 6(d), SCRCP, “presupposes a mandated hearing on a written motion.” [App. Br. p. 4]. However, Rule 6, SCRCP, simply deals with time. While Rule 6(d), SCRCP, addresses deadlines with regard to when hearings on motions are scheduled, there is nothing in the rule that requires a hearing to be held in all circumstances. For example, Rule 59(f), SCRCP, specifically provides that a court may issue a ruling on the briefs, without oral argument.

B. Appellants were not denied their right to due process.

Appellants contend the trial court’s decision to rule on the Rule 60, SCRCP motion without a hearing deprived them of their due process rights in a civil context. [App. Br. p. 5].

“Due process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property.” *LaSalle Bank Nat’l Ass’n v. Davidson*, 386 S.C. 276, 279, 688 S.E.2d 121, 122–23 (2009) *citing State v. Brown*, 178 S.C. 294, 300, 182 S.E. 838, 841 (1935).

First, Appellants’ Rule 60 motion fully briefed all the issues for the trial court. While the trial court elected not to have an oral argument, Appellants do not contend that their arguments were not presented in full through the motion. Moreover, Appellants have failed to cite any case that requires oral arguments for a post-trial motion *after* a final judgment has been entered. *See* Rule 60(b), SCRCF (stating “[a] motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation”).

Second, Appellants have suffered no substantive due process violation. Frank Lucas died intestate in December 2012. Title to real property vests in the heir or heirs immediately on the death of the intestate. *Carter v. Wroten*, 187 S.C. 432, 198 S.E. 13, 15 (1938). Therefore, once Frank Lucas died, neither he nor his probate estate, if any, had any legal interest in the real property subject to this foreclosure. In fact, an estate was not opened for Frank Lucas until 2020. [Motion, p. 2, ¶ 2].

Once Carole Lucas died intestate, neither she nor her probate estate, if any, had any legal interest in the real property subject to this foreclosure. Moreover, no estate has been opened on behalf of Carole Lucas. [Motion, p. 2, ¶ 3].

As both Frank and Carole Lucas died intestate prior to the final judgment for foreclosure and sale being entered, or the Rule 60 Motion to Set Aside Default Judgment was ruled upon, neither they nor their estates had any right in the subject property and, therefore, no substantive due process violation could have occurred.

II. THE TRIAL COURT HAD JURISDICTION TO ISSUE THE JUDGMENT FOR FORECLOSURE

Appellants argue the Judgment for Foreclosure is void as the trial court lacked personal jurisdiction over the estates of Frank and Carole Lucas. Specifically, Appellants argue that Respondent had an affirmative obligation to have a personal representative or special administrator appointed for the estates, and then have the estates served with a copy of the Amended Summons and Complaint. [App. Br. p. 6].

As discussed above, both Frank and Carole Lucas died intestate during the pendency of the foreclosure action. Their legal title to the subject real property vested in their heirs immediately on their death. *Carter*, 187 S.C. at 432, 198 S.E. at 15. Therefore, there was no need to create an estate on their behalf as neither estate had any legal interest in the subject property once the respective individual died.

Additionally, “[i]t shall not be necessary to make the personal representative of a deceased mortgagor a party to any foreclosure proceeding and no sale heretofore made under foreclosure proceedings to which the personal representative of a deceased mortgagor was not a party shall be invalid by reason of the absence of such personal representative.” S.C. Code. § 29-3-610. Therefore, Appellants’ arguments are without merit based upon the law of South Carolina.

CONCLUSION

For the reasons set forth herein, Respondent respectfully requests the Order denying the Rule 60, SCRPC, motion be denied, that the Judgment for Foreclosure be affirmed, and the case be remanded for a sale of the subject property.

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v.

The Personal Representatives, if any, whose names are unknown,
of the Estates of Frank Lucas aka Frank M. Lucas; Carole S. Lucas
aka Carole Sunny Goodson-Lucas. Appellants.

CERTIFICATE OF SERVICE

As allowed by Supreme Court Amended Order 2020-05-29-02, this is to certify that

I have this day caused to be served upon the person named below a copy of the

Respondent’s Initial Brief and Designation of Matter to be Included in the Record on

Appeal via electronic mail to counsel’s AIS E-mail address as follows:

Glenn Walters, Sr., Esq.
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glennwalterspa@gmail.com

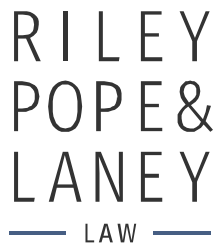
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Columbia, South Carolina
October 23, 2020

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October 23, 2020



(Via E-mail only: ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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Re: Wilmington Savings Fund Society, FSB, as Trustee of Upload Mortgage Loan Trust A, Respondent, v. The Personal Representatives, if any, whose names are unknown, of the Estates of Frank Lucas aka Frank M. Lucas; Carole S. Lucas aka Carole Sunny Goodson-Lucas, Appellants.

Appellate Case No.: 2020-001202

Our File No.: 4043.27117

Dear Clerk:

As allowed by Supreme Court Administrative Order 2020-05-29-02, please find attached for filing Respondent's Initial Brief, Designation of Matter to be Included in the Record on Appeal, and proof of service.

Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

s/Damon C. Wlodarczyk
S.C. Bar No. 70460

DCW/

cc: Glenn Walters, Sr., Esquire (via e-mail only)