

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Dec 21 2020

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
JENNIFER B. MCCOY, CIRCUIT COURT JUDGE

Appellate Case No.
2020-001335

GENEVIEVE STRATOS, RESPONDENT,

v.

**CHARLESTON COUNTY SHERIFF'S OFFICE AND
KARMATIC, LLC, DEFENDANTS.**

OF WHICH

KARMATIC, LLC, IS THE APPELLANT.

**RESPONDENT'S REPLY TO
APPELLANT'S RETURN TO
RESPONDENT'S MOTION TO DISMISS**

The appeal of the preliminary injunction issued by the lower court should be dismissed as moot. On appeal, Appellant cites *only one issue* – whether the trial court committed error in issuing a preliminary injunction after Respondent showed

she was likely to prevail on the merits that the judgment lien Appellant sought to enforce expired August 16, 2020.

Appellant states its issue on appeal as follows¹:

Did the lower court err in concluding that the judgment at issue was entered against Respondent in the August 16, 2010 Foreclosure Order, as opposed to the December 8, 2010, Order for Deficiency Judgment, and enjoining Appellant from enforcing it on the basis that it was stale?

As framed, Appellant requests this Court determine whether the judgment lien expired August 16, 2020 as Respondent claimed or December 8, 2020 as Appellant claimed.

In issuing a preliminary injunction, the lower court merely ruled the Respondent was *likely to prevail* on the final merits that the judgment lien expired August 16, 2020. A final decision on the merits as to the actual date the judgment lien expired was not made.

Now, with the passage of time, even if the trial court or this Court decided the date was December 8, 2020, Appellant could not enforce the judgment lien under any theory. There is no dispute that after 10 years a judgment lien cannot be

¹ After Respondent filed her motion to dismiss, Appellant filed its initial brief stating the only issue on appeal. Respondent has not filed her reply brief.

enforced. Thus, the only question Appellant seeks this Court answer - “which date applied?” will have no impact on the pending case and makes this appeal moot.

The need for injunctive relief and a decision as to whether the trial court erred in issuing a preliminary injunction concerning the date of expiration has ceased to be a justiciable issue and will have no practical effect.

“Where a decision by the appellate court will not have a practical legal effect on a temporary injunction, the case is nonjusticiable.” *See* Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, *Appellate Practice in South Carolina* 3rd Ed. p. 135 (2016). “Where only injunctive relief is sought and the need for that relief has ceased to be a justiciable issue, an appellate court should not review the merits, or consider granting of a new trial after it has become impossible to have a new trial in the case.” *Id.* “A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001).

Due to Appellant’s actions, inactions and the passage of time, no matter which date this Court may rule was correct, Appellant cannot enforce the judgment lien. *Gordon v. Lancaster*, 425 S.C. 386, 823 S.E.2d 173 (2018). Thus, the appeal should properly be dismissed.

By way of quick background, Respondent alleges that the judgment at issue was *bought by her former attorney* nearly 9 years after the judgment was entered. She alleges her former attorney formed Appellant Karmatic for the purpose of seeking revenge for the legal malpractice case she brought against him. *See e.g.* Complaint ¶ 32(d). Appellant bought the judgment at a deep discount knowing it had a very short time to enforce it. The lower court was familiar with these facts, as it previously vacated supplemental proceedings related to this very judgment. *See e.g.* Ex. C to Complaint.

In terms of Appellant's delay, at any time, it could have moved forward and had a hearing on the merits to determine the expiration date of the judgment lien prior to December 8, 2020. Appellant chose not to act. During a hearing before the lower court, Appellant stated its recognition that "We have a December 8th date deadline for this judgment expiring." **Ex. A** - September 4, 2020 Transcript p. 18, lines 7-8.

Following the lower court's rulings and with time marching on, Appellant chose not to file Rule 59 motions to reconsider. Appellant chose not to seek an expedited hearing on the merits. On September 30, 2020, instead of filing an Answer and attempting to move forward, Appellant requested 30 extra days to answer. **Ex. B** - September 30, 2020 Email. Respondent consented. Appellant did

not Answer until 20 days *after this appeal* was filed. In its Answer, Appellant finally “admits that, at the time Plaintiff’s Complaint was filed, more than 10 years had passed since the entry of the August 16, 2010, judgment.” Answer, ¶ 13.

Appellant could have sought an expedited decision on appeal.² It chose not to act knowing even under its own theory the judgment lien would soon expire. Appellant continued to wait. On October 6, 2020, more than 30 days after the September 4, 2020 hearing, Appellant ordered transcripts from that and the September 16, 2020 hearing. More time passed, as did the December 8, 2020 deadline to enforce the judgment lien.

With the rapidly approaching deadline to enforce the judgment lien under its own December 8th, 2020 theory, Appellant decided delay and inaction instead of vigilance. Its choices have resulted in the expiration of the judgment lien and effectively ends this matter. This Court should not reward that conduct and dismiss the appeal.

The need for the bond to protect any right the Appellant may have had prior to December 8, 2020 effectively ended when Appellant’s right to enforce the judgment under its theory expired. Under circumstances where Appellant

² See Jean Hoefler Toal, Shahin Vafai & Robert A. Muckenfuss, *Appellate Practice in South Carolina* 3rd Ed. pp. 375-376(2016).

repeatedly sat on its hands and chose not to expedite a hearing, a trial or an appeal prior to the date it contends the judgment lien would expire, it is proper to dismiss this appeal as moot.

WHEREFORE, it is respectfully requested that this Court grant the motion to dismiss the appeal, order that the bond Stratos posted for appeal be released and grant such other and further relief as is deemed just and proper.

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S/JUSTIN S. KAHN

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ATTORNEYS FOR RESPONDENT STRATOS

DECEMBER 21, 2020

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

IN THE COMMON PLEAS COURT
9th JUDICIAL CIRCUIT

3 GENEVIEVE STRATOS,
4
5 Plaintiff,

6 vs.

CASE NO. 2020-CP-10-3825

7 CHARLESTON COUNTY SHERIFF'S OFFICE, and KARMATIC, LLC,
8 Defendants.

9
10 WEBEX
11 HEARING BEFORE: HONORABLE JENNIFER McCOY

12 DATE: September 4, 2020

13 LOCATION: Charleston County Judicial Center
14 100 Broad Street
Charleston, SC

15 TRANSCRIBED BY: KYMBERLEE WILLIAMS,
16 Registered Professional Reporter

17
18 APPEARANCES:

19 ATTORNEYS FOR THE PLAINTIFF
20 JUSTIN S. KAHN, ESQ.
and ELLIS KAHN, ESQ.

21 ATTORNEYS FOR THE DEFENDANT
22 ELIZABETH J. PALMER, ESQ.
and EDWARD L. KNISLEY, ESQ.

23

24

25

EXH A

1 don't mean to sort of punt this. I want to get it right. An
2 interesting legal issue, I think, deserves a little bit more
3 follow-up attention.

4 MS. PALMER: Your Honor, is there anyway -- is
5 there an earlier date that we can do it? Because the Sheriff's
6 Office, obviously, has to get the three advertisements in the
7 paper. It's not just postponing. Didn't get it done. We have
8 a December 8th date deadline for this judgement expiring.

9 THE COURT: I mean, week after next isn't soon
10 enough? Next week is Labor Day. Short court week. I don't
11 have any kind of access to a court reporter. I think it's
12 going to require a court reporter. I don't typically win those
13 battles with court administration. The soonest I can offer
14 you, the week of the 14th. If you want to come up with a day
15 and time together and get back to my law clerk, that will be
16 fine. Obviously we'll try to accommodate you best we can that
17 week. I don't mind. Whatever day you pick that week is fine
18 with me.

19 MR. JUSTIN KAHN: It seems to me, as long as we
20 have a month, which is I think the time; three weeks to
21 advertise, a week to sale is my recollection.

22 THE COURT: We'll certainly make it a priority. I
23 think week after next should give you time.

24 Mr. JUSTIN KAHN, if you don't mind submitting some
25 sort of proposed order, if I need to change it, I will. If you

From: Elizabeth Palmer epalmer@rosenhagood.com
Subject: Spiros v. Karmatic
Date: September 30, 2020 at 10:47 AM
To: Justin Kahn jskahn@kahnlawfirm.com
Cc: Taylor Davis tdavis@rosenhagood.com

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SC Court of Appeals

Justin,

I hope you are doing well. Touching base with you to see if you've had a chance to talk with your client after our last phone call?

Also, would you be willing to give me a 30 day extension to answer the complaint in the DJ action? It's currently due tomorrow.

Thanks,
Beth

Elizabeth Palmer

|Attorney at Law|

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EXH B