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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable 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.

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS

Respondent has moved to dismiss this appeal, arguing it is moot. At issue in this appeal is whether or not the lower court erred in determining that a deficiency judgment, arising out of a foreclosure action, was stale and enjoining Appellant from seeking to enforce it. The lower court found that the judgment at issue was entered on August 16, 2010, as part of the Foreclosure Order and therefore, because more than ten years had elapsed, the judgment was stale. Appellant argues that no personal judgment against Respondent for a sum certain was entered until the Order for Deficiency Judgment, entered December 8, 2010, following the foreclosure sale. Essentially, Appellant argues that the Master-in-Equity presiding over the foreclosure proceeding utilized the procedure set forth in S.C. Code Ann. § 29-3-660, which allows the court to order the foreclosure

sale and delay entering a deficiency judgment against the debtor until after the sale takes place. Respondent's argument appears to be based on the assumption that the court utilized the procedure set forth in S.C. Code Ann. § 29-3-650, which allows the court to enter judgment against the debtor for the total debt found to be due at the same time the foreclosure sale is ordered, with the judgment against the debtor later being credited with the proceeds of the sale.¹

Upon receiving notice from the Sheriff that a public auction of real property owned by Respondent was scheduled for October 5, 2020, Respondent filed her Verified Complaint on August 28, 2020, seeking a declaratory judgment that the judgment at issue was stale because it was entered on August 16, 2010, and not on December 8, 2010, and also seeking a preliminary and permanent injunction prohibiting Appellant from seeking to enforce the judgment. On August 31, 2020, Respondent filed a Motion for Preliminary Restraining Order and Injunction.

Respondent's Motion was heard on September 4, 2020, with the lower court ordering the following:

Plaintiff's Motion for Temporary Injunction is Granted in part. Advertising and sale postponed. Another hearing will be held the week of September 14 to determine the issue of the date of judgment.

The second hearing was held on September 15, 2020. The lower court entered an Order on September 16, 2020, as follows:

Based on the memoranda submitted and the arguments of counsel at the hearing dated 9/15/2020, Plaintiff's Motion for Injunctive Relief is hereby GRANTED. Plaintiff is instructed to post a civil bond in the amount of \$75,000 with the Clerk of Court within 10 days of the date of this Order. All other claims contained within the pleadings are still pending.

¹ In her Motion to Dismiss, Respondent references an affidavit from the Charleston County Clerk of Court which was submitted to the lower court and which purports to state that the judgment was entered on August 16, 2010. Notably, the Charleston County Clerk of Court also endorsed the Execution of Judgment filed by Appellant on November 22, 2019, ordering the Charleston County Sheriff's Office to execute the December 8, 2010, Order for Deficiency Judgment.

Appellant's Notice of Appeal was served on October 5, 2020.

ARGUMENT

Respondent argues that even if the judgment was entered on December 8, 2010, as argued by Appellant, the judgment is now stale and thus this appeal moot. What Respondent overlooks is the fact that a decision by this Court will have a very real practical legal effect upon this controversy. See Mathis v. S.C. State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court."). Specifically, Appellant's entitlement to enforce and collect the bond posted by Respondent should this Court determine that the lower court's issuance of the injunction was in error.

At a minimum, a decision as to whether the lower court's issuance of the injunction was in error will have collateral consequences as to Appellant's right to enforce that bond. See Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 314 (1999) (holding that appeal regarding propriety of preliminary injunction was not rendered moot by conversion of temporary relief into permanent injunction because determination of whether preliminary injunction relief was proper had collateral consequences as to defendants' right to make claim on bond posted as security for injunction); Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001) (if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case).

Additionally, the issue raised is capable of repetition but generally will evade review. See Byrd v. Irmo High Sch., 321 S.C. 426, 468 S.E.2d 861 (1996) (an appellate court can take

jurisdiction if the issue raised is capable of repetition but generally will evade review). The issue is whether the deficiency judgment against Respondent became stale prior to Respondent's lawsuit as a result of the ten-year limitation to execute judgments. This issue turns on a determination of whether the judgment was entered at the time the foreclosure sale was ordered (in this case, August 2010) or at the time the deficiency judgment was entered following the sale (in this case, December 2010). Necessarily, a judgment debtor arguing that the earlier date applies will not be able to file an action claiming that the judgment is stale until ten years after that earlier date. Where, as here, a preliminary injunction is issued prohibiting a judgment creditor from seeking to enforce the judgment, the judgment creditor will be tasked with either obtaining a decision on the merits or obtaining appellate review before the expiration of the ten-year period running from the date of the deficiency judgment in order to be granted effectual legal relief (i.e., a determination that the judgment is not stale). Given that the time between when a foreclosure sale is ordered and a deficiency judgment entered is typically short, that task is nearly impossible. As such, this issue is capable of repetition but will typically evade review.

In conclusion, because this appeal is not moot and, alternatively, even if moot, capable of repetition but likely to evade review, Respondent's Motion to Dismiss should be denied.

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