

STATE OF SOUTH CAROLINA
In The Supreme Court

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Apr 30 2021

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III Master in Equity
and Special Circuit Judge

CASE NO. 2019-CP-07-02178

JOSEPH CHAKYING SUN as Trustee
of The 2009 Suns Family Trust, and
JOSEPH CHAKYING SUN, Individually Appellants

v.

BLUFFTON PARK COMMUNITY
ASSOCIATION, INC. Respondent

I. FORMAL OBJECTION TO THE CIRCUIT COURT ON SUFFICIENCY OF
SURETIES; and
II. PARTIAL RETURN ON MOTION FOR CONSIDERATION ON ALREADY FILED
PETITION FOR WRIT OF MANDAMUS

COMES NOW, Respondent Bluffton Park Community Association, Inc. (hereinafter, "Plaintiff/Respondent") and files its 1) Formal Objection to the Circuit Court on Sufficiency of Sureties; and 2) Partial Return on Motion for Consideration on Already Filed Petition for Writ of Mandamus, and would respectfully show the following unto this Honorable Court.

I.

On April 18, 2021, Plaintiff/Respondent received First Notice of Appeal via e-mail. See e-mail and Notice of Appeal, and the corresponding Certificate of Service purporting to serve via e-mail on April 16, 2021 attached hereto as Exhibit "A". Thereafter, on April 27, 2021, nine days after receipt of the Notice of Appeal, Plaintiff/Respondent notified Mr. Sun and the Honorable Marvin H. Dukes, III, Master in Equity for Beaufort County, South Carolina via e-mail that it was objecting to the sufficiency Defendant/Appellants' sureties. A formal objection was not filed with the Court at that time because undersigned counsel had not received notice that Appellants had filed their appeal with the Court of Common Pleas, the result of which is that the Court of Common

Pleas did not have jurisdiction over the appeal or this matter, and because no sureties were actually named. A copy of the April 27, 2021 e-mail is attached hereto as Exhibit “B”. On the date hereof, Plaintiff/Respondent learned of the filing of said Notice of Appeal on April 20, 2021 thereby giving this Court jurisdiction over the matter.

Defendants/Appellants JOSEPH CHAKYING SUN as Trustee of The 2009 Suns Family Trust, and JOSEPH CHAKYING SUN, Individually (hereinafter, collectively “Defendants/Appellants”) in filing their appeal failed to comply with the provisions of S.C. Code Ann. § 18-9-10 et seq. Specifically, Defendants/Appellants have failed to comply with the following requirements:

1. Execution of a written undertaking, with two sureties, that during possession of such property by the appellants they will not commit or suffer to be committed any waste thereon and that they will pay rental value of the property if the appeal is unsuccessful. S.C. Code Ann. § 18-9-170;
2. Service of the written undertaking with the Notice of Appeal. S.C. Code Ann. § 18-9-200; and
3. Failure to provide affidavits of two sureties with a written undertaking that they are each worth double the amount specified therein. S.C. Code Ann. § 18-9-210.

For these reasons, Plaintiff/Respondent files its Formal Objection to the Circuit Court on Sufficiency of Sureties pursuant to S.C. Code Ann. § 18-9-210.

II.

On April 30, 2021 Plaintiff/Respondent received a copy of Defendants/Appellants’ Motion for Consideration on Already Filed Petition for Writ of Mandamus, a copy of which is attached hereto as Exhibit “C” along with the corresponding email transmitting it.¹ Among the relief requested in said motion is for a stay of execution of the Order granting foreclosure. Plaintiff/Respondent would respectfully show that Defendants/Appellants are not entitled to such relief and in fact should have the Appeal as to the foreclosure dismissed.

As grounds therefor Plaintiff/Respondent points to SCACR Rule 241. While stays are normally automatic under SCACR 241(a), in cases of foreclosure there are exceptions thereto listed in SCACR 241(b). One such exception as listed in SCACR 241(b)(4) which pertains to foreclosures and sales of land. Said section specifically cites S.C. Code Ann. § 18-9-170. Under SCACR 241(b) all exceptions and prerequisites must be strictly complied with.

Defendants/Appellants specifically failed to comply with S.C. Code Ann. § 18-9-170 by failing to make an undertaking and offer sureties, among other things. Furthermore, pursuant to S.C. Code Ann. § 18-9-200, any undertaking or surety offering under S.C. Code Ann. § 18-9-170 “must be served on the adverse party with the notice of appeal”.

¹ Note the Certificate of Service purporting to have e-mailed it to the undersigned on April 27, 2021.

Defendants/Appellants' Notice of Appeal did not contain any undertaking or promise, nor offer any surety as served upon the undersigned or filed with the Clerk of Court for Beaufort County, South Carolina. Accordingly, there can be no stay of the foreclosure sale.

LAW OFFICE OF SCOTT M. WILD, LLC

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This 30th day of April, 2021,

Hilton Head Island, Beaufort County, South Carolina.