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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Appellate Case No. 2020-001580

First Reliance Bank,..... Respondent,

v.

Charles E. Bishop, Brett D. Blanks, BCM of Lexington, LLC,
d/b/a Dam Bar & Grill, B&H of Lexington, LLC, and
Branch Banking and Trust Company of South Carolina, ... Defendants,

of Whom Brett D. Blanks, BCM of Lexington, LLC
d/b/a Dam Bar & Grill and B&H of Lexington, LLC are..... Appellants.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This case arises out of a deficiency judgment that was subsequent to a foreclosure action initiated by First Reliance Bank ("Bank") against Brett D. Blanks, BCM of Lexington, LLC, and B&H of Lexington, LLC ("Appellants").[1] On January 5, 2012, the Honorable James O. Spence issued a Judgment of Foreclosure and Sale on three parcels of land in Lexington County located at 1605 North Lake Drive, Lexington, SC. (J. of Foreclosure; R. _____). On February 6, 2012, the properties were sold at public auction and the bidding remained open for thirty days to promote competition and ensure a fair price. On March 7, 2012, the sale became final and the highest bid was $910,000.00. (Order of Deficiency J; R. _____). This left a deficiency of $632,121.09, and the court entered a Deficiency Judgment for that amount. (Order of Deficiency J.; R. _____). On

[1] Brett D. Blanks is/was the president of BCM of Lexington, LLC and B&H of Lexington, LLC. Mr. Blanks personally guaranteed loans that are the subject of this appeal. (*See,* Aff. Blanks; Dep. Blanks 5:1-12:25; R. _____)

April 3, 2012, Appellants submitted a petition for an Order of Appraisal pursuant to S.C. Code Ann. § 29-3-680 (2004) et. seq. (Petition for Order of Appraisal; R. ____). Appellants designated James Petty as their appraiser, the Bank designated Phillip Urso as its appraiser, and the Court designated Kevin McGee as its appraiser. (Order Appointing Appraisers; R. _____). On February 21, 2013, the appraisers returned their written appraisal finding the market value of the subject property to be $1,040,000.00. (Return of Appraisers to Equity Court; R. ____).

On March 15, 2013, the Defendants, including Appellants, appealed the appraisal. (Appeal of the Return of the Appraisers; R. ____). On December 31, 2013, George H. McMaster, Esq. appeared as the new attorney for the Defendants, including Appellants. (Consent Order to Be Relieved As Counsel; R.____). On April 10, 2014, Judge Spence heard the appeal of the appraisal. (Tr. Of R. April 10, 2014; R.____). Appellants called their appraiser Mr. Petty as their only witness. (Tr. of R. April 10, 2014; R.____). Mr. Petty testified he made a mistake in assessing the value of the land because he believed it had limited access when he made his appraisal, and he claimed he did not read the appraisal he signed. (Tr. of R. April 10, 2014; R. ____). Mr. Petty also testified that he believed the other two appraisers would agree with his assessment. However, Appellants and the other Defendants never called either the Court's appointed appraiser Kevin McGee or the Bank's appraiser Philip Urso. (Tr. of R. April 10, 2014; R._____). The Defendants, including Appellants, did not present any other testimony or argue any other issues.

On or about June 12, 2014, both parties submitted their respective Memoranda, which were requested by the Court. (Tr. of R. April 10, 2014 p. 62; R. _____). After the Court reviewed both Memoranda, the Court asked the Bank's counsel to provide a proposed order for the Court's consideration. (June 18, 2014 letter from Judge Spence; R. ____). On July 15, 2014, counsel for the Defendants Mr. McMaster notified the Bank's counsel Mr. Bradley that he had been placed on

interim suspension and instructed Mr. Bradley to send further notices and correspondence to Peyre Lumpkin, who had been appointed receiver of Mr. McMaster's files. (July 15, 2014, Letter from George McMaster; R. _____). Mr. Bradley sent a copy of Mr. McMaster's July 15, 2014, letter with a proposed order to the Court, Mr. McMaster, Mr. Lumpkin, and to Mr. Blanks at his last known address. (July 31, 2014, Letter Regarding Proposed Order; R. ____). Mr. Lumpkin responded on July 31, 2014, by stating he had notified the clients of Mr. McMaster's suspension and asked them to retrieve their files, but they had not done so. (July 31, 2014 Email From Lumpkin; R. ____). Mr. Lumpkin indicated that he had not received a response from McMaster's clients. On October 27, 2014, the Court entered an order denying the appeal of the appraisal. (October 27, 2014, Order Affirming Appraisal Panel Return; R. ____). Mr. Bradley sent a copy of the signed order to Mr. Lumpkin, Mr. McMaster, Mr. Blanks, and the other Defendants. (Aff. of James Edward Bradley; Ex. A.; R. ____). On April 30, 2020, the Bank requested a transcript of judgment. (Tr. of J.; R. _____).

On July 9, 2020, nearly six years after the October 27, 2014, Order, Appellants filed a Motion to Alter or Amend pursuant to Rule 59(e) SCRCP, and/or Motion to Vacate pursuant to Rule 60(b), SCRCP. (Rule 59(e) and 60(b) Mot. R. ____). Appellants argued their procedural due process rights were violated because they were not given notice of Mr. McMaster's suspension from the practice of law, the Order Affirming the Appraisal Panel Return, and the Amended Deficiency Judgment.

On November 4, 2020, Judge Spence issued an order denying Appellants' Rule 59(e) motion and Rule 60(b) motion. (Nov. 4 Order; R. at _____). Appellants filed this appeal on December 1, 2020. (Notice of Appeal; R. at _____).

STANDARD OF REVIEW

The decision of whether to grant or deny a Rule 59(e) motion lies within the sound discretion of the trial court and will not be overturned absent an abuse of discretion. *Regions Bank v. Owens,* 402 S.C. 642, 647, 741 S.E.2d 51, 54 (Ct. App. 2013).

The decision of whether to grant or deny a motion to vacate an order pursuant to Rule 60(b) lies within the sound discretion of the judge and will not be overturned absent an abuse of discretion. *See BB&T v. Taylor,* 369 S.C. 548, 551, 633 S.E.2d 501, 502 (2006).

An abuse of discretion occurs when the judge issuing the order was controlled by an error of law or when the order is based on factual conclusions that are without evidentiary support. *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.,* 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).

"A mortgage foreclosure is an action in equity." *Wachovia Bank, Nat. Ass'n v. Blackburn,* 407 S.C. 321, 328, 755 S.E.2d 437, 440 (2014) (quoting *Hayne Fed. Credit Union v. Bailey,* 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). "In an appeal from an action in equity tried by a judge, appellate courts may find facts in accordance with their own views of the preponderance of the evidence." *Id. at* 328, 755 S.E.2d at 441.

ARGUMENTS

I. APPELLANTS ARE BARRED FROM BRINGING THIS APPEAL BECAUSE THEY WAITED OVER FIVE YEARS FROM THE DATE OF THE ORDER AFFIRMING THE APPRAISAL TO FILE THEIR 59(e) MOTION

A 59(e) motion must be filed within ten (10) days after receipt of written notice of the entry of an order. SCRCP 59(e). Rule 6(e) states that whenever a party has a right to act within a proscribed time after service of a notice, five days shall be added to proscribed time if the service is made by mail. Notice of an order is required to be sent by first-class mail to a party's last known address or to the party's attorney. SCRCP 5(b)(1). The Order Affirming the Appraisal was entered

on October 27, 2014. (Order Affirming Appraisal Panel Return; R. _____). Mr. Bradley sent a copy of the order to the receiver Mr. Lumpkin, the suspended attorney George McMaster, and the Defendant Mr. Blanks. The order was sent to Mr. Blanks at his last known address. Mr. Blanks testified in his deposition that he resided at 137 Bell Chase Drive, Lexington, SC 29072. (Excerpt from Dep. Blanks; R. ____). Mr. Bradley also asked the United States Postal Service if Mr. Blanks received mail at the Bell Chase Drive address. The Postal Service responded that he did. (Request for Change of Address Information Brett D. Blanks; R._____). Mr. Blanks provided no other addresses.

Mr. Bradley's office served Mr. Blanks with the order by placing the order in the mail with proper postage on October 29, 2014. Therefore, Appellants had until November 13, 2014, to file their 59(e) motion challenging Judge Spence's Order. Appellants did not file their 59(e) motion by November 13, 2014. Instead, Appellants filed a 59(e) motion on July 9, 2020, nearly six years after the order was served upon them. Therefore, the 59(e) motion was untimely filed, and this Court should not hear the appeal.

II. APPELLANTS ARE BARRED FROM BRINGING THIS APPEAL BECAUSE THEY WAITED OVER 5 YEARS TO FILE THEIR 60(b)(4) MOTION

A motion pursuant to Rule 60(b)(4) must be brought within a reasonable time. *See McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 870 (Ct. App. 1996). This Court has found that a 60(b)(4) motion filed nearly four years after an order was untimely. *Id.* Here, Judge Spence issued his order denying the Appellants' appeal of the appraisal on October 27, 2014. (October 27, 2014, Order Affirming Appraisal Panel Return; R.____). Appellants waited until July 9, 2020, nearly six years after the above-mentioned order was issued, to file their 60(b)(4) motion. This is essentially two years longer than the time period that this Court found unreasonable

in the *McDaniel* case. Therefore, this Court should find that Appellants are barred from bringing this appeal because they waited an unreasonable time to file their 60(b)(4) motion.

III. JUDGE SPENCE DID NOT ABUSE HIS DISCRETION BY UPHOLDING THE DEFICIENCY JUDGMENT WHEN THE APPELLANTS PARTICIPATED IN THE LAWSUIT AND JUDGE SPENCE HEARD THEIR 59(e) MOTION

The Court should affirm Judge Spence's decision to uphold the October 27, 2014, Order Affirming the Appraisal and the November 26, 2014, Amended Deficiency Judgment because Judge Spence's decision to deny Appellants' motions was not controlled by an error of law or any factual conclusion without evidentiary support.

Appellants argue the order affirming the appraisal and the judgment is void because they had no notice the Order was entered. However, Appellants were properly served with the Order and Judgment, they participated in the entire litigation process, they had a meaningful opportunity to be heard, and Judge Spence heard the Appellants' 59(e) motion nearly six years after the Order was issued.

Appellants argue they are entitled to have the Order Affirming the Appraisal declared void because they did not receive notice of it. Rule 5(b)(1) of the South Carolina Rules of Civil Procedure states that service of orders shall be effected by "delivering a copy to him or by mailing it to him at his last known address." The rule also allows and encourages attorneys to simply mail the order to the attorney instead of mailing it to the party. *Id.*

Mr. Bradley complied with Rule 5(b)(1) because he mailed copies of the Order Affirming the Appraisal to Mr. Blanks at his last known address, which was 137 Bell Chase Drive, Lexington, SC 29072. (Bradley Aff.; R. _____). Mr. Bradley has multiple reasons to believe 137 Bell Chase Drive was the correct address for Mr. Blanks. Mr. Blanks testified in a deposition that his address was 137 Bell Chase Drive. (Dep. Blanks 5:16-18; R. _____). Mr. Bradley also asked the United

States Postal Service if Mr. Blanks received mail at that address and was told that he did. (Request for Change of Address Information Brett D. Blanks; R._____). Mr. Bradley also mailed a copy of the order to the last known attorney and the current receiver for all Appellants. Therefore, Mr. Bradley correctly served the order upon Mr. Blanks by mailing it to him at his last known address.

Appellants' argument that BCM of Lexington LLC and B&H of Lexington, LLC were not correctly served with the order is also without merit. BCM of Lexington LLC and B&H of Lexington, LLC are single-purpose business entities that were created simply for the operation and control of the restaurant that the loans financed, and they were controlled by Appellant Blanks. (Aff. Blanks; R. _____). Appellant Blanks and the above-mentioned entities were all represented by the same attorney and there was no separation between Appellant Blanks and those entities. Furthermore, Rule 5(b)(1) allows service of an order upon a party's attorney in place of service upon the individual party. Mr. Bradley served the receiver in place for the attorney. Therefore, service of the order on the receiver achieved service of the order upon those entities.

Appellants cite *McCall v. Ikon,* 363 S.C. 646, 611 S.E.2d 315, 319 (Ct. App. 2005) for the proposition that every party must be individually served with an order or judgment. The facts in *McCall* are distinct from the facts of this case. In *McCall*, two completely unrelated and separate companies, Ikon and CESC, were served with notice of a hearing to assess unliquidated damages following a default judgment. The notice was sent by first-class mail to only one of the entities. The Court held that service of the hearing notice was improper because the entities were entitled to individual notice.

Here, unlike in *McCall*, there was no hearing, the corporate entities were not separate and distinct from the individual who was served notice at his home, and the receiver for the individual and the corporate entities' lawyer was served with the order.

Therefore, the Court should find Appellants were properly served with the Order Affirming the Appraisal and the judgment.

IV. ANY FAILURE OF THE RECEIVER TO CONTACT APPELLANTS WAS CURED WHEN THE COURT ALLOWED THE APPELLANTS TO FILE A 59(E) MOTION.

Appellants argue the judgment is void because they believe the Receiver, Peyre T. Lumpkin, failed to follow the Rule 31 requirements for a receiver. Appellants argue the Receiver sent notice letters to an old address, failed to properly give notice of Mr. McMaster's suspension by publication, and did not intervene by filing an appeal or a 59(e) motion. Even if all of Appellants' arguments regarding the Receiver are true, this argument is a red herring. The Appellants participated in the entirety of the litigation from the time of the foreclosure through the appeal of the appraisal. Mr. McMaster was suspended from the practice of law approximately three months after the hearing on the appeal of the appraisal, but before Judge Spence filed his order. The Appellants were represented for the entirety of the matter. Finally, any prejudice the Appellants faced by the failure of the Receiver was cured when the Court agreed to hear the Appellants' 59(e) motion.

Due process requires that a party have notice, an opportunity to be heard in a meaningful way, and judicial review. *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 58 L.Ed. 1363 (1914). Here, the Appellants had notice, an opportunity to be heard in a meaningful way, and judicial review. In fact, the Appellants participated in all portions of the foreclosure and appraisal process. They hired an attorney who appeared in the foreclosure and appraisal action. They then fired that attorney and retained Mr. McMaster, who appeared in the appeal of the appraisal. At all times, Appellants were aware that they were a party to the action and that Judge Spence would make a decision that would affect their rights.

They appeared and contested the foreclosure. They demanded and received an appraisal. They contested the appraisal and received an evidentiary hearing. They received reconsideration of the appraisers' decision. And, they have now received an appeal.

The Appellants rely on *Insurance Company of North America v. Hyatt,* 290 S.C. 159, 162, 348 S.E.2d 532, 535 (Ct. App. 1986), to argue that the failure to receive the Order allows them to ignore the proceedings in which they participated, have the Order vacated, and appeal an Order that was entered more than five years ago. The facts in *Hyatt* are distinct from the facts in this case. In *Hyatt,* an employee's estate filed a workers compensation claim for death benefits. Hyatt was the employee's employer at the time of his death. The employee's estate served Hyatt with notice of a hearing before a single commissioner, at which Hyatt appeared. The matter was then heard by the full Commission and then by the Circuit Court. However, Hyatt never appeared or participated in either of these hearings. Hyatt alleged it never received notice of the single commissioner's award or any of the later proceedings.

Here, unlike in *Hyatt*, the Appellants participated in all portions of the foreclosure and appraisal process. They hired an attorney who appeared in the foreclosure and appraisal action; they then fired that attorney and retained Mr. McMaster, who appeared in the appeal of the appraisal. Additionally, Mr. Bradley sent notice of the Order to the Appellants at the same address where they were originally served, to Mr. McMaster, and to the judicially appointed receiver. At all times, the Appellants were aware they were a party to an action and that Judge Spence would make a decision that would impact their rights. But, the Appellants took no affirmative steps to stay abreast of Judge Spence's decision and now wish to have the Order vacated because they are unhappy with the result.

Judge Spence determined the careful and fair course of action was to put the Appellants in the same position they would have been in had they originally responded to the Order and Judgment. That position was to hear a Rule 59(e) motion. Judge Spence heard the motion and denied it.

The Appellants have argued Judge Spence's decision to hear the 59(e) motion did not place them in the same position they would have been in because once their new attorneys became aware of the issue, they had limited time to file the 59(e) motion and become familiar with the file, whereas if the Appellants had immediate notice they would have been able to request an extension while the Appellants looked for new counsel. The Appellants have now hired counsel and filed an 59(e) motion which adequately protected their right to judicial review. Thus, they have suffered no prejudice.

Judge Spence did not abuse his discretion by denying Appellants' 59(e) and 60(b)(4) motions. The correct remedy was to restore Appellants to the position they would have been in had they received immediate notice of the Order Affirming the Appraisal. This was to allow them to file a 59(e) motion five years after the entry of the Order Affirming the Appraisal. They received the remedy to which they were entitled.

IV. JUDGE SPENCE DID NOT ABUSE HIS DISCRETION IN DENYING APPELLANTS' RULE 59(E) MOTION.

a. The Board of Appraisers Considered All The Factors Required by S.C. Code Ann. § 29-3-720.

South Carolina Code Section § 29-3-720 sets forth the appraisal process. This section requires the appraisal board to consider: (1) sale value; (2) cost and replacement value of improvements; and (3) income production. *Id.; See Peoples Federal Sav. and Loan As'n v. Myrtle Beach Retirement Group, Inc.*, 302 S.C. 223, 394 S.E.2d 849 (Ct. App. 1990). The appraisers acted

in accordance with the statute because they identified and examined each of the considerations required under the statute.

The appraiser's report specifically sets forth the property's market value and states that it was performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). (Appraisal. R. _____). In addition, Mr. Petty, the appraiser for the Appellants, testified the board of appraisers considered sales value when determining the valuation of the property. (Tr. of R. April 10, 2014, p. 19. R. _____). Mr. Petty agreed to the value and signed the report.

Next, the appraisal report sets forth the cost and replacement value of improvements, as required by S.C. Code Ann. § 29-3-720. The report states the value as follows:

Front Land (2.357):	$200,000.00
Improvements:	$715,000.00
FF&E:	$100,000.00
Excess Back Land (1.753 Acres)	$ 25,000.00

The above appraisal for the cost and replacement value of improvements has not been challenged. Mr. Petty testified that the board of appraisers considered the value of improvements in determining the property's true value. (Tr. of April 10, 2014, Hearing 7:3-19, R. _____).

Finally, the board of appraisers considered the property's potential income production. Mr. Petty's notes show that the panel considered income production. (Ex. 3 Tr. of R. April 10, 2014 R._____**).** Exhibit 3 reads:

Income- $1,200,000.00

@ 8% occupancy = $ 96,000.00

Cap Rate 9% = $1,066,000.00

Mr. Petty testified these notes documented "the conclusion we came up with in our meeting." (Tr. of R. April 10, 2014 13:13-15; R._____**).** Mr. Petty also testified the notes show what "I considered when I came up with my value." (Tr. of R. April 10, 2014 18:3-6, R. _____).

Therefore, the board of appraisers considered sale value, cost and replacement value of improvements, and income production, as required by S.C. Code Ann. § 29-3-720.

b. An Alleged Mistake by a Single Member of the Appraisal Panel Was Not Enough to Overturn the Opinion of the Majority of the Panel.

A mistake is grounds to reform a legal document only if it is a mutual mistake, and the complaining party shows this by clear and convincing evidence.

> Before equity will reform an instrument, it must be shown by evidence which is most clear and convincing not simply that it was a mistake on the part of one of the parties but that it was a mutual mistake. *Belin v. Strikeleather*, 232 S.C. 116, 101 S.E.2d 185 (1957). A mutual mistake is one where both parties intended a certain thing and by mistake in the drafting did not get what both parties intended.

Sims v. Tyler, 276 S.C. 640, 642, 281 S.E.2d 229, 230 (1981). Appellants' appraiser, Mr. Petty, testified he made a mistake regarding the acreage being appraised; therefore, Appellants believe Judge Spence should have ordered a new appraisal. (Tr. of R. April 10, 2014, 32:3-33:19; R._____). This is despite the fact the appraisal report that Mr. Petty signed included the actual acreage as 4.11 acres, which is the correct acreage. Mr. Petty testified that he did not pay attention to the report he signed; therefore, the Court should have ordered a new appraisal. (Tr. of R. April 10, 2014, 32:3-33:19; R.____). The exact testimony follows:

Q. Mr. Petty, you met with the panel, right?
A. I met with the panel. Yes, sir.
Q. And you reviewed the appraisal that you signed under oath, correct?
A. Yes, sir.
Q. And that was based on 4.12 acres, right?

A. I thought it was three-point-six. I didn't pay any attention to the total acreage. When Kevin came back with the letter, he had 4.1. And that's what we signed.
Q. You knew at the time that it was based off 4.1 acres.
A. No, I didn't - -
Q. Well, didn't you just - -
A. - - pay any attention.
Q. - - say Kevin said that?
A. I didn't pay any attention to the 4.1 in the letter. If I had realized that the 4.1 acres included the half acre, that I didn't think was under the ownership, I would have said, "No, wait a minute. Hold on, that's not correct."
Q. Okay. At the time, did you know it was 4.1 acres?
A. No.
Q. Did Kevin tell you it was 4.1 acres?
A. No, sir. We didn't discuss that.
Q. Well, why did you raise the thing about the 4.1 acres?
A. Why did I what?
Q. Why did you raise it - - at the time Kevin said, "It was 4.1 acres, but I wasn't paying attention"?
A. Well, he came back with the letter. And that's what was in the letter. And I didn't - -
Q. It's in the letter - -
A. You can say I didn't read it.
Q. So you didn't read the letter that said 4.1 - -
A. No, I didn't - -
Q. - - acres.
A. - - pay attention that it was 4.1 acres.
Q. You just didn't pay attention to what you signed.
A. Right.
Q. Okay. All right.
A. Which is a mistake.

(Tr. of R. April 10, 2014, 32:13-33:19; R.___). In addition to a mistake on acreage, Mr. Petty also testified he made a mistake on valuation:

A. No. Well, I might have - - no, I haven't discussed any values with the other appraisers.
Q. Well, when did the value the first time, the front land was valued at $100,000 an acre.
A. Right.
Q. Well, how come it was valued $100,000 an acre, under oath, in February, but now it's worth $200,000 an acre?

A. Because I felt that was worth 300,000. We can't - - collectively, we came up with 200,000.
Q. You signed under oath, that you agreed it was worth $200,000 in February, didn't you?
A. Yeah. But my - -
Q. For 2.37 acres. Right?
A. My opinion is, that this acreage right here is all that's needed for the restaurant.
Q. And it's worth about $100,000 an acre.
A. No, I think - - I thought it was worth 300,000 - -
Q. Well, why did you sign the piece of paper that said you agreed it was worth - -
A. Because I - -
Q. - - $100,000 an acre?
A. - - made a mistake.
Q. Why is it worth $200,000 an acre now, and it was only worth $100,000 an acre a year ago?
A. Because it wasn't a full - - it wasn't a full 2.357 acres. It's less than that.
Q. Aren't you the one who wanted to add the allocation to the - -
A. Yes, sir.
Q. - - return? Does your allocation say 2.357 is equal to $200,000?
A. Because I wasn't paying attention to - -
Q. No, no, that's not my question. My question is: Does the allocation say 2.357 acres is worth $200,000?
A. Yes.
Q. And today you're saying that number should be almost $500,000?
A. Based on the fact I made a mistake. Yes, sir.

(Tr. of R. April 10, 2014 36:12-37:15; R. _____).

The Appellants did not call the other appraisers to testify. In addition, Mr. Petty did not testify that any fraud took place to deceive him. He simply testified that he did not review the report he signed and that he made a mistake in signing it.

While there are no reported cases in which a member of the board of appraisers disavows an appraisal he signed, South Carolina courts have held the differing opinion of a minority appraiser is not enough to invalidate the opinion of the majority of the appraisers. *See, South*

Carolina National Bank. V. S&L Investment Partnership, 308 S.C. 511, 419 S.E.2d 243 (1992); *First Citizens Bank and Trust Co. v. Overlook, Inc.,* 286 S.C. 473, 334 S.E.2d 146 (1985).

In *South Carolina National Bank,* the debtors attempted to invalidate the appraisal which had been agreed to by the majority of the appraisers by arguing the Court's appraiser did not consider all the statutory factors. The debtors submitted a statement from their chosen appraiser in which the debtors' appraiser claimed the Court's appraiser believed the only relevant factor was the income production potential of the property. *Id.* The South Carolina Court of Appeals affirmed the trial court's order to not require another appraisal and noted that the other appraisers did not testify or submit affidavits.

In *First Citizens,* the Court of Appeals affirmed a majority appraisal against the challenge of the debtor. The minority appraiser testified he relied on the value of mineral deposits when he determined the value of the appraised property was $187,500.00. The majority of the appraisers returned a true value of $18,000.00. Both the trial court and the Court of Appeals affirmed the appraisal agreed to by two of the three appraisers.

Here, Appellants have only presented the testimony of a single appraiser, Mr. Petty. Mr. Petty testified that he no longer agrees with the appraisal report that he signed. There has been no testimony from the other two appraisers that they agree with Mr. Petty. Furthermore, Appellants had the opportunity to call the other two appraisers and chose not to. Assuming all of Mr. Petty's testimony is accurate, he is still a minority appraiser and has put forth no reason to invalidate a report that was agreed to by a majority of the appraisers.

Additionally, Appellants argue that Mr. Petty testified as to the other appraisers' beliefs about the property and that should substitute for the need for the other appraisers to actually testify as to their beliefs. First, any testimony by Mr. Petty regarding the beliefs of the other appraisers is

pure speculation and Judge Spence's determination as to the credibility of Mr. Petty should be given due deference. Second, Mr. Petty did not testify that the other appraisers believed the same things that Mr. Petty believed. Mr. Petty testified "and **I think** we all three considered that the back land did not have access, and that's why we came up with 25,000." (Emphasis added) (Tr. of R. April 10, 2014 at 25:6-8; R. _____). Mr. Petty did not testify that he knew what the other two appraisers thought about his theory, but rather that he simply thought they may agree with him. Therefore, the mere speculation of a minority appraiser is not enough to find that Judge Spence abused his discretion in denying Appellants' 59(e) motion.

Therefore, Judge Spence was correct to deny Appellants' appeal of the appraisal because the appraisal panel complied with S.C. Code Ann. § 29-3-720, and Appellants only provided the testimony of a single appraiser who merely speculated as to what he thought the other appraisers may have thought.

CONCLUSION

This Court should find that Appellants filed their 59(e) and 60(b)(4) motions in an untimely fashion; therefore, this Court does not have proper jurisdiction to hear the appeal from those motions. If this Court finds the 59(e) or the 60(b)(4) motion was filed in a timely fashion this Court should find that Judge Spence did not abuse his discretion when he denied Appellants' 60(b)(4) and 59(e) motions because he made no error of law, and the evidence presented shows that the Appellants were given adequate due process rights, the appraisers followed the statutory requirements, and the only testimony regarding any alleged mistake by an appraiser came from a single minority appraiser.

[Signature block to follow]

Respectfully Submitted,

May 4, 2021

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