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Jun 23 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis, Master-in-Equity

Appellate Case No. 2019-001957
Civil Action No. 2019-CP-18-00302

Farmers & Merchants Bank of South Carolina,.....Respondent,

v.

Curtis R. Tucker; Ashley Tucker; SC Housing Corp.,
acting through South Carolina State Housing Finance
and Development Authority’s South Carolina Homeownership
and Employment Lending Program; and South Carolina
Federal Credit Union, Defendants,

Of whom Ashley Tucker is theAppellant.

RESPONDENT’S MOTION TO DISMISS APPEAL

Pursuant to Rule 240, SCACR, Respondent Farmers & Merchants Bank of South Carolina moves to dismiss this appeal as moot. The specific grounds supporting dismissal are stated in greater detail below.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant *pro se* Ashley Tucker (“Tucker”) initiated these proceedings with the filing of her Notice of Appeal in this Court on November 26, 2019. Tucker appeals the Judgment of Foreclosure and Sale entered by the Master in Equity for Dorchester County on or about October 29, 2019. At the same time, Tucker filed an Emergency Motion to Stay Pending Appeal, which

the Court denied via Order filed November 27, 2019. Tucker filed a second Emergency Motion to Stay Pending Appeal on or about December 6, 2019, which the Court denied via Order filed December 20, 2019. Thereafter, Tucker made several attempts to file her initial brief and designation of matter to be included in the record on appeal and to correct various deficiencies noted by the Court. To date, it appears Tucker has not successfully accomplished either task.

In the weeks and months following entry of the foreclosure order and Tucker's notice of appeal, Respondent extended various deadlines for the foreclosure sale in an attempt to resolve Tucker's delinquency and to accomplish a private sale of the property at issue. As a result of Respondent's forbearance, a private sale of the property closed May 28, 2021, with a net total due to Tucker in the amount of Twenty-Eight Thousand Four Hundred Thirty-Four Dollars and Fifty-Three Cents (\$28,434.53). *See* ALTA Settlement Statement – Combined, attached as Exhibit A. Subsequent to the closing, Respondent attempted to confer with Tucker to negotiate a voluntary dismissal of this appeal but did not receive a response. *See* June 9, 2021 correspondence, attached as Exhibit B. Thereafter, Respondent filed the Cancellation of *Lis Pendens* in the South Carolina Court of Common Pleas for Dorchester County on June 22, 2021, attached as Exhibit C.

ARGUMENT

Tucker's sole issue on appeal is whether entry of the Order of Foreclosure and Notice of Sale constituted reversible error. The appeal is rendered moot, however, as no foreclosure sale actually occurred. Instead, Tucker sold the property in a private transaction and no longer has any legally recognizable interest therein. Respondent's mortgage was satisfied, and Respondent cancelled the *lis pendens*. As such, the Court should dismiss this appeal with prejudice.

It is well-settled law that appellate courts in this State “will not pass judgment on moot and academic questions [and will] not adjudicate a matter when no actual controversy capable of specific relief exists. A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” *Sloan v. Greenville County*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (internal citations omitted); *see also JP Morgan Chase Bank v. Tucker*, 2013 S.C. App. Unpub. LEXIS 621 (Ct. App. 2013) (finding the issue of ejectment moot where defendants no longer had any interest in the property) (citing *Ex Parte Doe*, 393 S.C. 147, 151, 711 S.E.2d 892, 894 (2011) (“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.”)). While exceptions to the mootness doctrine apply, none of those exceptions apply in this case.

In negotiating and closing a private sale, Tucker effectively received the primary relief she sought – preventing a foreclosure sale. Tucker sold the property, netted cash proceeds, and satisfied the unpaid balance of the mortgage held by Respondent. In light of these facts, Respondent has cancelled the *lis pendens*, and there no longer exists any arrearage that would necessitate consummation of a foreclosure sale. Simply stated, there is nothing further to be gained by appellate review of the Master in Equity’s order, and Tucker’s appeal is moot.

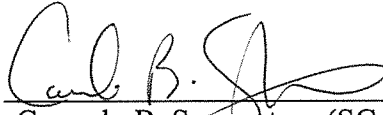
CONCLUSION

For all of the reasons addressed herein, Respondent respectfully moves this Court for an Order dismissing Appellant’s appeal with prejudice.

(Signature page to follow.)

June 23, 2021

By:



Carmelo B. Sammataro (SC Bar No. 69746)
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Columbia, SC 29202
Phone: (803) 254-2200
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Elizabeth A. Blackwell (SC Bar No. 78756)
SMITH DEBNAM NARRON DRAKE
SAINTSING & MYERS, LLP
171 Church Street
Charleston, SC 29401
Phone: (843) 714-2533
EBlackwell@smithdebnamlaw.com

ATTORNEYS FOR RESPONDENT

EXHIBIT A

Weeks & Irvine, LLC
ALTA Universal ID:
8086-B Rivers Avenue
North Charleston, SC 29406

File No./Escrow No. : 21-03578TL
 Print Date & Time: May 28, 2021 5:59 pm
 Officer/Escrow Officer : Mark W. Weeks
 Settlement Location : 8086-B Rivers Avenue
 North Charleston, SC 29406

Property Address: 155 Shady Lane
 Summerville, SC 29485

Borrower: Ricardo Santiago and Adrian Santiago
 155 Shady Lane
 Summerville, SC 29485

Seller: Curtis R. Tucker aka Curtis Tucker and Ashley Tucker
 4700 North Palm View Circle
 North Charleston, SC 29418

Lender: South State Bank, N. A.
 Loan Type: Conventional Uninsured
 Loan Number: 90936712

Settlement Date: May 28, 2021
 Disbursement Date: May 28, 2021

Seller		Description	Borrower	
Debit	Credit		Debit	Credit
		Financial		
		Lender Credits from South State Bank, N. A.		953.88
	165,000.00	Sale Price of Property	165,000.00	
		Deposit		1,000.00
		Loan Amount		148,500.00
4,611.59		Seller Credit		4,611.59
		Prorations/Adjustments		
396.39		County Taxes 01/01/21 - 05/28/21		396.39
		Loan Charges to South State Bank, N. A.		
		Admin Fee	1,095.00	
		Credit Report to AVANTUS	60.00	

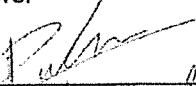
Seller		Description	Borrower	
Debit	Credit		Debit	Credit
		Loan Charges to South State Bank, N. A. (continued)		
		Prepaid Interest \$12.21 per day from 05/28/21 to 06/01/21 South State Bank, N. A.	48.84	
		Impounds		
		Homeowner's Insurance to South State Bank, N. A. 3.000 months at \$141.83/month	425.49	
		Property Taxes to South State Bank, N. A. 8.000 months at \$87.45/month	699.60	
		Aggregate Adjustment to South State Bank, N. A.		437.25
		Title Charges and Escrow/Settlement Charges		
		Courier/Overnight Delivery to Weeks & Irvine, LLC	35.00	
		Insured Closing/Closing Protection Letter to Stewart Title Guaranty Company	15.00	
		Lender's Title Insurance to Lowcountry Title of Charleston, LLC Coverage: 148,500.00 Premium: 432.90	432.90	
		Settlement Fee to Weeks & Irvine, LLC	450.00	
		Title Insurance Binder to Lowcountry Title of Charleston, LLC	150.00	
		Title Search to Weeks & Irvine, LLC	275.00	
60.00		Courier/Overnight/Wire to Weeks & Irvine, LLC		
30.00		Mortgage Research/Release Fee to Weeks & Irvine, LLC		
		Owner's Title Insurance to Lowcountry Title of Charleston, LLC Coverage: 165,000.00 Premium: 226.90	226.90	
500.00		Seller Document Preparation to Butler & College, LLC		
		Commissions		
6,600.00		Real Estate Commission - LA to Matt O'Neill Real Estate		
4,125.00		Real Estate Commission - SA to Matt O'Neill Real Estate		
		Government Recording and Transfer Charges		
15.00		Recording Fees to Dorchester County Register of Deeds	25.00	
610.50		City/County tax/stamps to Dorchester County Register of Deeds		
4.50		E-Recording Fee to Simplifile LC	4.50	
		Payoff(s)		

Seller		Description	Borrower	
Debit	Credit		Debit	Credit
		Payoff(s) (continued)		
109,760.44		Payoff of First Mortgage Loan to Farmers & Merchants Bank of SC Loan Payoff 109,760.44 Total Payoff <u>109,760.44</u>		
7,152.05		Payoff of Second Mortgage Loan to SC State Housing Finance and Development Authority Loan Payoff 7,052.05 Total Payoff <u>7,152.05</u>		
		Miscellaneous		
		Appraisal Fee \$575.00 paid outside closing by Borrower		100.00
		Homeowner's Insurance Premium to American Modern Insurance Group 12 months	1,702.00	
2,700.00		HVAC Invoice to Smith & Son's		
		Principal Reduction to South State Bank, N. A.	853.88	
Seller			Borrower	
Debit	Credit		Debit	Credit
136,565.47	165,000.00	Subtotals	171,499.11	155,999.11
		Due from Borrower		15,500.00
28,434.53		Due to Seller		
165,000.00	165,000.00	Totals	171,499.11	171,499.11

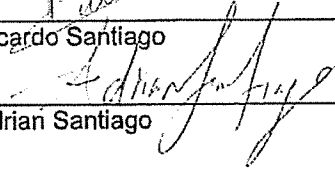
Acknowledgement

We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize Weeks & Irvine, LLC to cause the funds to be disbursed in accordance with this statement.

Borrower



Ricardo Santiago



Adrian Santiago

Seller

Curtis R. Tucker aka Curtis Tucker, By His
AIF, Ashley Tucker

Ashley Tucker

Mark W. Weeks
Escrow Officer

Acknowledgement

We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize Weeks & Irvine, LLC to cause the funds to be disbursed in accordance with this statement.

Borrower

Ricardo Santiago

Adrian Santiago

Seller

Curtis Tucker by his AIF Ashley Tucker

Curtis R. Tucker aka Curtis Tucker, By His
AIF, Ashley Tucker
Ashley Tucker

Ashley Tucker

Mark W. Weeks
Escrow Officer

Closing Disclosure

Closing Information

Date Issued 05/28/2021
Closing Date 05/28/2021
Disbursement Date 05/28/2021
Settlement Agent Weeks & Irvine, LLC
File # 21-03578TL
Property 155 Shady Lane
 Summerville, SC 29485

Transaction Information

Borrower Ricardo Santiago and Adrian Santiago
 1990 Hawthorne Drive Lot 226
 North Charleston, SC 29406

Seller Curtis R. Tucker, aka Curtis Tucker and Ashley Tucker
 4700 North Palm View Circle
 North Charleston, SC 29418

Sale Price \$165,000

Summaries of Transactions

SELLER'S TRANSACTION

M. Due to Seller at Closing		\$165,000.00
01 Sale Price of Property		\$165,000.00
02 Sale Price of Any Personal Property Included in Sale		
03		
04		
05		
06		
07		
08		
Adjustments for Items Paid by Seller in Advance		
09 City/Town Taxes		
10 County Taxes		
11 Assessments		
12		
13		
14		
15		
16		
N. Due from Seller at Closing		\$136,565.47
01 Excess Deposit		
02 Closing Costs Paid at Closing (J)		\$14,645.00
03 Existing Loan(s) Assumed or Taken Subject to		
04 Payoff of First Mortgage Farmers & Merchants B		\$109,760.44
05 Payoff of Second Mortgage Loan to SC Sta SCSHA		\$7,152.05
06		
07		
08 Seller Credit		\$4,611.59
09		
10		
11		
12		
13		
Adjustments for Items Unpaid by Seller		
14 City/Town Taxes		
15 County Taxes	01/01/21 to 05/28/21	\$396.39
16 Assessments		
17		
18		
19		
CALCULATION		
Total Due to Seller at Closing (M)		\$165,000.00
Total Due from Seller at Closing (N)		-\$136,565.47
Cash <input type="checkbox"/> From <input checked="" type="checkbox"/> To Seller		\$28,434.53

Contact Information

REAL ESTATE BROKER (B)

Name	Matt O'Neill Real Estate
Address	1349 Old Georgetown Rd. Mount Pleasant, SC 29464
SC License ID	
Contact	Iris Mancilla
Contact SC License ID	19271
Email	iris@mattoneillteam.com
Phone	(843)459-7995

REAL ESTATE BROKER (S)

Name	Matt O'Neill Real Estate
Address	1349 Old Georgetown Rd. Mount Pleasant, SC 29464
SC License ID	
Contact	Paris Barr
Contact SC License ID	92053
Email	parisfbarr@gmail.com
Phone	843-709-2030

SETTLEMENT AGENT

Name	Weeks & Irvine, LLC
Address	8086-B Rivers Avenue North Charleston, SC 29406
SC License ID	2-18-187089
Contact	Mark W. Weeks
Contact SC License ID	LIC-2-14-110-133
Email	mweeks@weekslawfirm.net
Phone	843-553-9800

Closing Cost Details

Loan Costs	Seller-Paid	
	At Closing	Before Closing
A. Origination Charges		
01 % of Loan Amount (Points)		
02 Admin Fee to South State Bank, N. A.		
03		
04		
05		
06		
07		
08		
B. Services Borrower Did Not Shop For		
01 Appraisal Fee to Appraisal Group of Charleston		
02 Credit Report to AVANTUS		
03		
04		
05		
06		
07		
08		
09		
10		
C. Services Borrower Did Shop For		
01 Title - Courier/Overnight Delivery to Weeks & Irvine, LLC		
02 Title - Insured Closing/Closing Protection Letter to Stewart Title Guaranty Company		
03 Title - Lender's Title Insurance to Lowcountry Title of Charleston, LLC		
04 Title - Settlement Fee to Weeks & Irvine, LLC		
05 Title - Title Insurance Binder to Lowcountry Title of Charleston, LLC		
06 Title - Title Search to Weeks & Irvine, LLC		
07		
08		
09		
10		
11		
12		
13		
14		

Closing Cost Details

Other Costs	Seller-Paid	
	At Closing	Before Closing
E. Taxes and Other Government Fees		
01 Recording Fees	Deed: Mortgage:	\$15.00
02 City/County tax/stamps to Dorchester County Register of Deeds		\$610.50
03 E-Recording Fee to Simplifile LC		\$4.50
04		
F. Prepays		
01 Homeowner's Insurance Premium (mo.)		
02 Mortgage Insurance Premium (mo.)		
03 Prepaid Interest (per day from to)		
04 Property Taxes (mo.)		
05		
G. Initial Escrow Payment at Closing		
01 Homeowner's Insurance		
02 Mortgage Insurance		
03 Property Taxes		
04		
05		
06		
07		
08 Aggregate Adjustment		
H. Other		
01 HVAC Invoice to Smith & Son's		\$2,700.00
02 Real Estate Commission - LA to Matt O'Neill Real Estate		\$6,600.00
03 Real Estate Commission - SA to Matt O'Neill Real Estate		\$4,125.00
04 Title - Courier/Overnight/Wire to Weeks & Irvine, LLC		\$60.00
05 Title - Mortgage Research/Release Fee to Weeks & Irvine, LLC		\$30.00
06 Title - Owner's Title Insurance (optional) to Lowcountry Title of Charleston, LLC		
07 Title - Seller Document Preparation to Butler & College, LLC		\$500.00
08		
09		
10		
11		
12		
13		
14		
J. TOTAL CLOSING COSTS		\$14,645.00

Closing Disclosure - Attachment

Borrower: Ricardo Santiago
 Adrian Santiago
 1990 Hawthorne Drive Lot 226
 North Charleston, SC 29406

Seller: Curtis R. Tucker, aka Curtis Tucker
 Ashley Tucker
 4700 North Palm View Circle
 North Charleston, SC 29418

Settlement Agent: Weeks & Irvine, LLC
 8086-B Rivers Avenue
 North Charleston, SC 29406
 (843)553-9800

Closing Date: May 28, 2021
Disbursement Date: May 28, 2021
Property Location: 155 Shady Lane
 Summerville, SC 29485

Payoffs Payee/Description	Seller Paid at Closing	Seller Paid Before Closing
Seller's Transactions-Due from Seller at Closing		
N.04 Farmers & Merchants Bank of SC	\$109,760.44	
Payoff of First Mortgage Loan		
Note/Ref. No.: Farmers & Merchants Bank		
Loan Payoff	<u>\$109,760.44</u>	
Total Payoff	<u><u>\$109,760.44</u></u>	
N.05 SC State Housing Finance and Development Authority	\$7,152.05	
Payoff of Second Mortgage Loan		
Note/Ref. No.: SCSHA		
Loan Payoff	<u>\$7,052.05</u>	
Total Payoff	<u><u>\$7,152.05</u></u>	

Confirm Receipt

Curtis Tucker AIF ^{by} Ashley Tucker
 Curtis R. Tucker, aka Curtis Tucker
May 28-2021
 Date

Ashley Tucker
 Ashley Tucker
May 28-2021
 Date

EXHIBIT B

Turner Padget

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

June 9, 2021

VIA REGULAR MAIL AND E-MAIL

Ashley Tucker
155 Shady Lane
Summerville, SC 29485
(nevaehnzamir@gmail.com)

Re: Farmers & Merchants Bank of South Carolina v. Curtis R. Tucker, et al.
Appellate Case No.: 2019-001957
File No.: 17661.101

Dear Ms. Tucker,

Congratulations on the recent sale of the Shady Lane property. Now that the sale of the property has closed without the necessity of a foreclosure, it appears the lower court order on appeal has been rendered moot. As such, I am writing to request that you immediately contact the South Carolina Court of Appeals to voluntarily dismiss your appeal of the foreclosure order. Your cooperation and assistance in this regard are greatly appreciated. In the event you decline to voluntarily dismiss your appeal or fail to notify the Court prior to the close of business on **Friday, June 18, 2021**, we will file a motion to dismiss the appeal and such other relief as the Court may deem appropriate.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Farmers & Merchants Bank of South Carolina,

Plaintiff,

vs.

Curtis R. Tucker; Ashley Tucker; SC
Housing Corp., acting through South
Carolina State Housing Finance and
Development Authority's South Carolina
Homeownership and Employment Lending
Program; and South Carolina Federal Credit
Union,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2019-LP-18-00080

**CANCELLATION OF
LIS PENDENS**

This matter having been resolved and the Lis Pendens filed in this action is hereby canceled.

s/Elizabeth Blackwell Ross
Elizabeth Blackwell Ross (S.C. Bar No. 78756)
Attorney for Plaintiff
Smith Debnam Narron Drake
Saintsing & Myers, LLP
171 Church Street, Suite 120C (29401)
PO Box 22795
Charleston, SC 29413
Phone: 843-714-2533
Email: eross@smithdebnamlaw.com

Charleston, South Carolina
June 22, 2021

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Jun 23 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis, Master-in-Equity

Appellate Case No. 2019-001957
Civil Action No. 2019-CP-18-00302

Farmers & Merchants Bank of South Carolina,.....Respondent,

v.

Curtis R. Tucker; Ashley Tucker; SC Housing Corp.,
acting through South Carolina State Housing Finance
and Development Authority’s South Carolina Homeownership
and Employment Lending Program; and South Carolina
Federal Credit Union, Defendants,

Of whom Ashley Tucker is theAppellant.

PROOF OF SERVICE

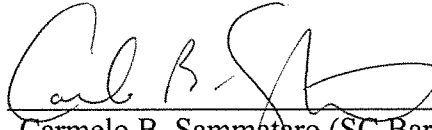
I certify this 23rd day of June 2021 that I have served a copy of RESPONDENT’S
MOTION TO DISMISS APPEAL upon Appellant *pro se*, by electronic mail, addressed to the
following:

Ashley Tucker
155 Shady Lane
Summerville, SC 29485
(nevaehnzamir@gmail.com)
APPELLANT, *PRO SE*

(Signature page to follow.)

June 23, 2021

By:



Carmelo B. Sammataro (SC Bar No. 69746)
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Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
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Phone: (843) 714-2533
EBlackwell@smithdebnamlaw.com

ATTORNEYS FOR RESPONDENT

Turner | Padget

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

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SC Court of Appeals

VIA ELECTRONIC MAIL
(ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Farmers & Merchants Bank of South Carolina v. Curtis R. Tucker, et al.
Appellate Case No.: 2019-001957
File No.: 17661.101

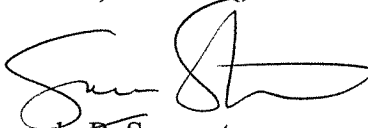
Dear Ms. Kitchings:

Attached please find Respondent's Motion to Dismiss Appeal and the Proof of Service regarding the above-referenced matter. My firm's check for the filing fee will follow via regular mail. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

Enclosures

cc: Ashley Tucker, Appellant *pro se* (w/enc., via e-mail)