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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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DEC 07 2021

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable??? Mikell Scarborough and
The Honorable? Maite Murphy

Case Nos.: 2017-CP-10-04031 and
2014-CP-10-05407 and
2018-CP-10-03315

Appellate Case No. 2021-00074

Alan G. Nix, Norma J. Nix and the Estate of Norma J. Nix,

Appellants,

v.

Churchill Park,
(not to be confused with the Real Party in
Interest, Churchill Park Homeowners'
Association, Inc.)

Respondent,

APPELLANTS' EMERGENCY MOTION REQUESTING AN ORDER GRANTING
PERMISSION TO FILE RULE 60(b) MOTION IN CHARLESTON COUNTY CIRCUIT
COURT AND CORRECT/AMEND PARTIES AS NECESSARY AND REQUIRED

Appellant Alan Nix files this emergency motion requesting the SC Court of Appeals to enter an Order no later than 22 December 2021 granting Appellant permission to file a Rule

60(b) motion in the Charleston County Circuit Court. Given the most restrictive aspects of Rule 60(b) requires such motion be filed within a year of the entry of an Order, an Order from the SC Court of Appeals entered no later than 22 December 2021 is required to allow sufficient time to file another Rule 60(b) motion with the Charleston County Clerk of Court prior to the end of calendar year 2021. In support of this motion, which should be construed to be in addition to the motion filed with the SC Court of Appeals on 5 October 2021 requesting the same permission to file a Rule 60(b) motion, Appellants' show unto the court the following.

ISSUES REQUIRING RESOLUTION IN LOWER COURT

1. "Churchill Park" and McCabe Trotter & Mucheff's compliance, or highly probable lack thereof, with Chief Justice Beatty's s 6 May 2020 Order entitled "*RE: Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act in Evictions and Foreclosures Forms*".

The Appellants' (Alan Nix specifically) became aware of the existence of this highly likely and very significant issue in August of 2021. Shortly thereafter, Appellant Alan Nix raised this issue with the court with copy of McCabe Trotter & Musheff and others. During the more than three months since such issue was raised, there continues to be no evidence whatsoever to suggest that "Churchill Park" and/or McCabe Trotter & Musheff has ever complied, or even attempted to comply, in any way whatsoever, with Chief Justice Beatty's 6 May 2020 Order. Given the ongoing and growing likelihood of "Churchill Park" and McCabe Trotter and Mucheff's lack of compliance with Chief Justice Beatty's 6 May 2020 Order, and assuming Chief Justice Beatty meant what he wrote on 6 May 2020, that "*If a party required to file a Certification of Compliance neglects to do so the eviction or foreclosure shall terminate without further action taken*", no compliance with Chief Justice Beatty's 6 May 2020 Order related to the CARES Act means that these cases terminated no later than the morning of 20 August 2020, thereby depriving Judge Scarborough and his employer of both jurisdiction of these cases as well as any legitimate claim of judicial immunity related to their knowing and willful improper conduct thereafter. As related to this issue, Appellant also raises the portion of Chief Justice Beatty's Order which Judge Scarborough obviously intentionally disregarded multiple times starting in August of 2020, which explicitly Orders that "*IT IS FURTHER ORDERED that Master-in-Equity courts statewide shall not hold a foreclosure sale, or issue a judgment of*

foreclosure, writ of assistance, or writ of ejectment until the party pursuing the foreclosure has complied with the provisions of this Order". Given there continues to be literally no evidence that "Churchill Park" nor McCabe Trotter & Musheff ever complied with Chief Justice Beatty's 6 May 2020 CARES Act Order, it seems almost certain at this point that all of Judge Scarborough's Orders from August 2020 to date are null and void as a matter of law, thereby also making them unenforceable. Obviously these issues can readily be resolved before an unbiased circuit court judge in Charleston County resulting in the high likelihood that the Court of Appeals time to resolve these simple issues will not be required and also saving the Appellants and proper Respondents significant time and expense in dealing with this unnecessary appeal.

2. State Street Holdings (Co.) LLC lack of compliance with their bid of 6 October 2020.

State Street Holdings (Co.) LLC, by and through their real estate agent Marshall Overton of Adams Property Group, bid \$136,000 for the Nix Family Home located at 1401 Densmore Circle, Mt. Pleasant on 6 October 2020. Assuming some party choses to attempt at some point to prove that "Churchill Park" and/or McCabe, Trotter and Musheff complied with Chief Justice Beatty's 6 May 2020 Order requiring a signed original Certificate of Compliance be filed with the court prior to proceeding with a foreclosure or eviction, then the next fatal issue which does not require an appeal to resolve is that by clear and convincing evidence State Street Holdings (Co.) LLC clearly never complied with their bid of 6 October 2020. Even if one grants State Street Holdings (Co.) LLC the most liberal terms of compliance remotely plausible, which would constitute a 8.75% interest rate on \$129,200 for seventeen days, then State Street Holdings (Co.) LLC would have had to paid at least another \$129,726 to Charleston County to have complied with their bid. The record appears to be exceedingly clear that State Street Holdings (Co.) LLC never paid more than \$136,000 which was composed of their initial \$6800.00 down payment on 6 October 2020 and a subsequent \$129,200 payment on or about 2 November 2020, which is at least ten days after Scarborough "*executed and delivered a Master's deed to State Street Holdings, LLC*". (See Ex. B) Consequently, even if some party ever attempts to prove that "Churchill Park" and/or McCabe Trotter & Musheff ever complied with Chief Justice Beatty's 6 May 2020 Order related to filing a signed original Certification of Compliance with the CARES Act, which might potentially make Scarborough's 6 October 2020 sale of the Nix Family Home

legal, there is no plausible chance that State Street Holdings (Co.) LLC can overcome the issue of their obvious lack of compliance with the terms of their bid of 6 October 2020. Once again, an obviously simple issue with Scarborough's orders which can easily be resolved by an unbiased circuit court judge in Charleston County and avoids the unnecessary use of the Court of Appeals time as well as saves the Appellants and proper Respondents significant time and expense in dealing with this unnecessary appeal.

CORRECT PARTIES TO THE APPEAL IF NOT ALREADY COMPLETED

As clarified in the above arguments and background, the key issue which this appeal and the lower court case turns on is whether or not "Churchill Park" and/or McCabe Trotter and Musheff ever filed a signed original Certification of Compliance at any time, including but not limited to prior to proceeding with the eviction or foreclosure. Until this issue is fully resolved, "Churchill Park" and McCabe Trotter & Musheff are required parties to any case, including this appeal. While Appellant Alan Nix believes this court may have previously took the improper action of granting Ms. Trotter and "Churchill Park" their wishes without the use of a properly filed motion, if this situation remains the case, Appellant Alan Nix, by way of this motion, requires both "Churchill Park" and McCabe Trotter & Musheff be added back to this appeal so the proper parties which were required to file a Certificate of Compliance prior to proceeding with an eviction or foreclosure can address their conduct related to this key and determinative issue.

Likewise, MP and State Street Holdings (Co.) LLC are not proper parties to this appeal until such time as "Churchill Park" and McCabe Trotter and Musheff can prove they complied with Chief Justice Beatty's 6 May 2020 Certificate of Compliance Order. Even if such proof of compliance is ever made, MP and State Street Holdings (Co.) LLC would still be improper parties to this appeal because if they failed to comply with the terms of their bid, then they were not proper parties to the Charleston County cases and were improperly allowed to file their Motion for a Writ of Assistance on or about 21 December 2020. If this court can justify allowing State Street Holdings (Co.) LLC and MP continue as parties to this appeal, the Appellant Alan Nix suggest this court is likewise required to add additional parties to this appeal which have similar, if not more significant, reasons for involvement, including but not limited to, Allstate Insurance Company, Michael and Taryn Lazroff, Charleston County, and Butler and College LLC.

WHEREFORE, Appellants respectfully requests this Court:

1. Enter an Order no later than 22 December 2021 granting Appellants' request to file Rule 60(b) motions in Charleston County.
2. Place this appeal on hold until the Rule 60(b) motions in Charleston County are fully resolved.
3. As may be necessary, ensure "Churchill Park" and McCabe Trotter and Musheff are parties to this appeal.
4. As may be necessary, ensure MP and State Street Holdings (Co.) LLC are not parties to this appeal, or in the alternative, add Allstate Insurance Company, Michael and Taryn Lazroff, Charleston County and Butler and College LLC to this appeal.
5. Any other and further relief as the Court deems just, prudent and proper.

December 5, 2021

Respectfully submitted,



Alan G. Nix
1401 Densmore Circle
Mount Pleasant, SC 29466
(843) 991-4170

The Supreme Court of South Carolina

RE: Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act in Evictions and Foreclosures Forms

ORDER

The federal Coronavirus Aid, Relief, and Economic Security Act was adopted into law March 27, 2020. The Act includes provisions for a nationwide moratorium on some, but not all, eviction and foreclosure actions.

I FIND it is appropriate to ensure that evictions and foreclosures filed in the trial courts of this State comply with the protections provided in the Coronavirus Aid, Relief, and Economic Security Act for certain tenants and homeowners.

Therefore, pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution,

IT IS ORDERED that any party pursuing an eviction or foreclosure in a trial court of this State must submit to the court a signed, original Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act. For evictions and foreclosures filed on or after the date of this Order, the Certification of Compliance must be submitted along with the initial filing. For evictions and foreclosures filed before the date of this Order, the Certification of Compliance must be filed with the court prior to proceeding with the eviction or foreclosure. If a party required to file a Certification of Compliance neglects to do so the eviction or foreclosure shall terminate without further action taken.

IT IS FURTHER ORDERED that magistrate courts statewide shall not issue a writ or warrant of ejection in an eviction action until the party pursuing the eviction has complied with the provisions of this Order.

IT IS FURTHER ORDERED that Master-in-Equity courts statewide shall not hold a foreclosure sale, or issue a judgment of foreclosure, writ of assistance, or writ of ejection in a foreclosure action until the party pursuing the foreclosure has complied with the provisions of this Order.

IT IS FURTHER ORDERED that the Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act in Evictions (SCCA256B) form, and the Certification of Compliance with the Coronavirus Aid, Relief, and

Economic Security Act in Foreclosures (SCCA256A) form are approved for use in the trial courts of this State effective as of the date of this Order.

This Order is effective immediately.

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
May 6, 2020

Ex. B

ELECTRONICALLY FILED - 2020 Nov 02 4:38 PM - CHARLESTON - COMMON PLEAS - CASE#2017CP1004031

STATE OF SOUTH CAROLINA
COUNTY OF Charleston

IN THE COURT OF COMMON
PLEAS

Churchill Park,

Case Number: 2017-CP-10-04031

Plaintiff,

**MASTER'S ORDER OF SALE
AND
DISBURSEMENT**

-v.-

Alan G. Nix, et al.,

Defendant.

UNDER AUTHORITY of a Decree herein dated November 9, 2017, I offered for sale to the highest bidder for cash, at public auction on October 6, 2020, the premises subject to this suit, and I received a high bid of \$136,000.00 from State Street Holdings, LLC; and I executed and delivered a Master's deed to **State Street Holdings, LLC** and I have disbursed the funds as follows:

CONSIDERATION **\$136,000.00**

Deposit (Order of Reference) \$125.00

Total Received by Master \$136,125.00

DISBURSEMENTS

Master's Fees \$100.00

County Commission \$1,360.00

Master's Deed \$25.00

Total of Master's Costs **\$1,485.00**

Check #31118 – Issued to McCabe Trotter & Beverly, Atty for Churchill Park \$127,796.83

*****SURPLUS FUNDS - \$6,843.17 – remains on case pending hearing*****

All of the remaining funds having been noticed for disbursement, pursuant to Rule 71(d), SCRPC.

_____, 2020
Charleston, SC

Mikell R. Scarborough
Master-in-Equity, Charleston County



Charleston Common Pleas

Case Caption: Churchill Park VS Alan G Nix , defendant, et al

Case Number: 2017CP1004031

Type: Master/Master's Report of Sale

So Ordered

s/Mikell R. Scarborough 3062

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable?? Mikell R. Scarborough, Master in Equity

Case No. 2014-CP-10-05407
2017-CP-10-04031
2018-CP-10-03315

Appellate Case No. 2021-00074

Alan G. Nix, Norma J. Nix and the Estate of Norma J. Nix,

Appellants,

v.

Churchill Park,

Respondent,

PROOF OF SERVICE

The undersigned certifies that a copy of Appellant Alan Nix's second motion requesting permission to file 60(b) motion in Charleston County, correct parties, etc has been served upon the individuals listed below by mailing or hand delivering a copy of the same, postage prepaid, in the United States Mail, addressed as shown, this 7th day of December 2021 to:

McCabe & Trotter
McCabe, Trotter & Beverly, P.C.

Todd M. Musheff, Esq.
Law Offices of Todd M. Musheff

4500 Fort Jackson Blvd.
Columbia, SC 29209

1121 Park West Blvd., Ste. B148 (Pak Mail)
Mount Pleasant, SC 29466

M.P. Morris
M.P. Morris Law Firm
336 Old Chapin Rd.
Lexington, SC 29072

Julie Armstrong
Clerk of Court, Charleston County
100 Broad St.
Charleston, SC 29401

Sarah Schreiber
Charleston Legal Access
3775 Spruill Ave., Ste. B
North Charleston, SC 29405

Alan Wilson
SC Attorney General
1000 Assembly St.
Columbia, SC 29201
(also Scarborough's attorney?)

Ryan Butler & Andrew College
Butler & College LLC
501 Belle Hall Parkway, Ste. 101
Mt. Pleasant, SC 29464

Rep. Ryan McCabe
SC House of Representatives
320A Blatt Bldg.
Columbia, SC 29201

Anne Smith
SC Insurance Reserve Fund
1201 Main St., Ste. 500.
Columbia, SC 29201

Natalie Ham
Charleston County Attorney
4045 Bridge View Dr.
Charleston, SC 29405

Chief Keel, Esq.
SC Law Enforcement Division
4400 Broad River Rd.
Columbia, SC 29210

Scarlett Wilson
Charleston County Solicitor
O.T. Wallace Bldg.
101 Meeting St.
Charleston, SC 29401

John Nichols
Office of Disciplinary Counsel
1220 Senate St.
Columbia SC 29201

Michael and Taryn Lazroff
1401 Densmore Circle
Mt. Pleasant, SC 29466

Allstate Insurance
c/o Rhonda Ferguson, General Counsel
2775 Sanders Road
Northbrook, IL 60062

B. Hewitt
S. McDonald
A. Konduros
H.B. Williams
T. Huff

D.G. Hill
J. Geathers
P. Thomas
J. Lockemy

Dated: December 6, 2021

Respectfully submitted,

By:



Alan G. Nix
1401 Densmore Circle
Mount Pleasant, SC 29466
(843) 991.4170

5 December 2021

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SC Court of Appeals

Alan Nix
1401 Densmore Circle
Mount Pleasant, SC 29466

Ms. Jennie Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

RE: Churchill Park v. Alan G. Nix, Norma J. Nix and the Estate of Norma J. Nix
Case Numbers: 2017-CP-10-04031, 2014-CP-10-05407 and 2018-CP-10-03315
Appellate Case Number: 2021-00074

Ms. Abbott Kitchings,

Please find enclosed:

1. Emergency motion (2nd) requesting permission to file Rule 60(b) motion in Charleston County, correct parties, etc.
2. Proof of Service.
3. Check number 1910 in the amount of \$50.00 drawn on Navy Federal Credit Union.
4. Copies of the motion and Proof of Service to be returned with your clock stamp
5. Self-addressed and postage prepaid envelope to return the enclosed copies of the Motion and Proof of Service (Exhibits not included for return)

Nine copies of the motion are also being left, each addressed to one of the nine members of the court of appeals.

Please provide an update as soon as possible on the status of a very similar motion filed on 5 Oct 2021, more than 60 days ago at the time this motion is being filed. In the event that this court continues delaying action on these motions past 21 December 2021, please be advised action will be taken shortly thereafter in other courts to mitigate this court's ongoing delays.

Thank you for your assistance.

Best regards,

A handwritten signature in black ink, appearing to read "Alan Nix". The signature is fluid and cursive, with the first name "Alan" and last name "Nix" clearly distinguishable.

Alan Nix