

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY

Feb 25 2022

Court of Common Pleas

James O. Spence, Master-in-Equity

SC Court of Appeals

Case No. 2011-CP-32-01205

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.

APPENDIX TO RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

First Reliance Bank,)
)
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Plaintiff,)
)
vs.)
)
)
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.)
)
_____)

IN THE COURT OF COMMON PLEAS

C/A No. 2011-CP-32-01205

ORDER

INTRODUCTION

The Defendants Brett Blanks, BCM of Lexington, LLC d/b/a Dam Bar & Grill, and B&H of Lexington, LLC filed Rule 59(e) motion to alter or amend this Court’s November 4, 2020 Order. The dispositive issue is to determine the proper due process remedy for a party when it’s attorney has been suspended after trial order when Receiver did not provide adequate attorney suspension notice to allow the unknowing and now Pro Se party to protect appeal rights. After reviewing case materials and party arguments, the Court issues this Order to clarify its earlier Order of November 4, 2020.

Summary

The Court’s November 4, 2020 Order sets forth a detailed timeline as well as detailed findings of fact and conclusions of law in response to the Defendants’ Rule 59(e) and Rule 60(b) motions. The Defendants have now filed a Rule 59(e) motion requesting the Court to rule on certain issues which the Defendants believe were not adequately addressed in the November 4, 2020 Order.

Novel Issue Regarding Receiver Actions During Appeal Period

After the appraisal panel trial, the Defendants' attorney George McMaster was suspended from the practice of law. A Receiver was appointed to notify Mr. McMaster's clients in accordance with Rule 30 of the South Carolina Rules of Lawyer Disciplinary Enforcement. The Court later entered an Order affirming the appraisal panel's findings and entering an amended deficiency order against the Defendants consistent with the appraisal.

In 2020, the Plaintiff requested a transcript of the judgment and moved to enforce it against the Defendants. Subsequently, the Defendants moved to reconsider the Court's October 27, 2014 Order Affirming Appraisal Panel Return and November 26, 2014 Amended Deficiency Judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and to vacate the Court's orders pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. The Defendants maintained they had not received a copy of the Court's earlier orders and they were not properly notified of their attorney's suspension from the practice of law by the Receiver in accordance with the South Carolina Rules of Lawyer Disciplinary Enforcement.

Their attorney suspension effectively made Defendants un-knowing Pro Se parties who had no lawyer to protect their appeal interests.

Defendants Understandably Misconstrue Poorly Worded Trial Order

Defendants claim that the trial Order found they were responsible for the suspension of their attorney, etc. as set forth on Page 3 of their motion is inaccurate. This court acknowledges poor writing indicating court consideration of (1) the equitable analysis process and (2) weighing

competing due process rights in a traditional foreclosure case analysis versus (1) and (2) not being applicable in this fact specific novel case.

Plaintiff initially argued Defendants should be time barred from either Rule 59 or 60 Relief. This court disagreed. The trial Order described the normal review that would have occurred had the facts been limited to a traditional foreclosure case with a Pro Se by choice Defendant, as more fully described in footnote 3 Page 5 of Defendant's November 13, 2020 Motion.

The traditional pro se case analysis is not applicable because this case presents novel issues. These parties were not Pro Se Defendants by choice. Instead, once the state suspended their attorney and the Receiver did not properly/timely notify them, they became unknowing Pro Se Defendants who thought they had an attorney representing their interest.

Analysis

The Defendants indicate the Court's November 4, 2020 Order did not address the Defendants' receipt or failure to receive the Court's November 26, 2014 Order. To clarify the November 4, 2020 Order, the Court has assumed the Defendants did not receive notice of the Court's earlier orders after George McMaster was suspended from the practice of law. The Court's November 4, 2020 Order should be read to indicate that the Court found, based upon the submitted trial evidence, the Defendants did not receive copies of the Court's orders in 2014 after George McMaster was suspended from the practice of law.

Due Process

The Court also finds denying the Defendants the right to file Rule 59(e) and Rule 60(b) motions would violate their due process rights. Accordingly, the Court heard the Defendants' Rule 59(e) and Rule 60(b) motions so the Defendants would have had an opportunity to be heard on any exceptions to the Court's previous orders. The November 04, 2020 Page 1 language indicate the Court agrees a due process analysis is necessary to protect both Plaintiff and Defendant's due process rights in this very unusual set of facts was stated imprecisely. The court weighed and considered the due process issue of Defendants, not that of Plaintiff. All issues decided by this court are solely about the Defendants' due process rights.

Appropriate Due Process Remedy is to allow motions and appeal rights

The Court believes the appropriate remedy for any failure to receive notice is to entertain the Rule 59(e) and Rule 60(b) motions filed by the Defendants as if they were filed within appropriate times in 2014. After doing so, the Court set forth findings in its November 4, 2020 Order setting forth the analysis and reasons that the appraisal panel should be affirmed. Basically, these reasons are that the Defendants have the burden of proof to overturn the appraisal and that the Defendants did not meet their burden of proof. In particular, the Court examined the one witness presented by the Defendants and rendered a judgment regarding the persuasiveness of his testimony. After hearing the testimony, considering the witness credibility, the Court found the appraisal panel properly appraised the property. In particular, the appraisal panel did adjust the value of the property upwards, and there was no testimony that either the Court's appraiser or the appraiser appointed by the Plaintiff made any mistakes regarding the appraisal or took any inappropriate actions. In addition, the testimony presented at the hearing established that the appraisal panel considered all three required methods of

appraisal. As all appraisers were qualified and agreed upon by all parties, the Court found that the appraisal was properly conducted and properly entered.

Defendants' Argument to Void Trial Order Fails Scrutiny

This matter arises from a foreclosure of commercial property in 2011. After the foreclosure, the Plaintiff sought a deficiency judgment against the Defendants. The Defendants requested an appraisal panel. The Court granted the Defendants' request, and an appraisal was conducted. Pursuant to the Appraisal Statute, the Defendants appointed one appraiser, the Plaintiff appointed a second appraiser, and the Court appointed a third appraiser. The appraisal panel met and returned an appraisal.

The Defendants appealed the appraisal panel's findings. Pursuant to the appeal, the Court held an evidentiary trial where Defendants' appraiser testified. The Defendants and Plaintiff were represented at the hearing and had an opportunity to call all three appraisers as witnesses and cross examine witnesses.

The Defendants have put forth the argument that the appropriate remedy for lack of service of the previous orders is to vacate the orders. The Court disagrees. The Defendants were represented by counsel throughout the lawsuit, at trial, and at trial Order drafting phase. The Defendants have already had an appraisal by a panel of three appraisers pursuant to statute. Also pursuant to statute, the Defendants appealed that appraisal to the Court. The Court held a hearing at which the Defendants were represented by counsel and had an opportunity to present evidence and cross examine witnesses as required by due process.

The Court then considered both Plaintiff and Defendants argument before drafting the trial order. After learning of attorney suspension, court declined to file trial Order until clarification from Receiver that Defendants had picked up their files. The court did not delay filing the Order so that a new attorney could be obtained and re-try the case or, re-argue the finalized but not filed Order.

This trial judge delayed filing solely to allow the now Pro Se defendant to have sufficient time to on their own file or hire a new attorney to review file and decide whether to file Rule 59 Motion to reconsider or to file a straight appeal.

While there is generalized legal argument that the defendants' due process rights could have been protected by some other action, there is no persuasive facts nor specific argument that persuades this court that the proper remedy is to allow the Defendants to void Order and re-try the entire matter, rather than being allowed to utilize the appeal process.

CONCLUSION

The Defendants have filed a Rule 59(e) motion asking that the Court address additional issues that the Defendants argue were not considered in the November 4, 2020 Order.

The Court has considered all of the grounds raised in the Defendants' November 13, 2020 Rule 59(e) Motion and files this Order to clarify the following issues:

- A. In a traditional Pro Se case where the Pro Se failed to file a Rule 59 or Rule 60 Motion in a comparable timeline, the court would have, as argued by Plaintiff, utilized the traditional case law precedent including legal, equitable and due process

consideration of all parties' rights.

- B. The Parties rights were not analyzed in this fashion because this case presents novel issues of fact and law.
- C. The novel issues of fact and law regard the lack of notice to the Defendants after their attorney was suspended and the Receiver failed to perfect notice to the Defendants.
- D. The Defendants argue the lack of notice in this matter affected their due process rights.
- E. The Court agrees with Defendants, after consideration of the totality of facts, the presented evidence, and legal review, that their due process rights were affected.
- F. The Court disagrees with Defendants that the proper due process remedy would be to void the two described Orders.
- G. The Court finds the appropriate remedy for any lack of notice of any of its previous orders to the Defendants is an opportunity for the Defendants to argue the merits of these respective Rule 59 and Rule 60 motions, just as they would have done, had they been timely notified by the Receiver of their attorney's suspension.

IT IS THEREFORE ORDERED that this Court clarifies its November 4, 2020 Order as indicated above.

AND IT IS SO ORDERED.

Judge's Signature Page to Follow

Additional Order Information:

Date of Hearing: September 20, 2021

Presiding Judge: James O. Spence

Plaintiff's Attorneys: Luke Hoopes, Brendan Green,
James Edward Bradley

Defendants' Attorneys: Frank McMaster
Murrell Smith
Mike Wells

Other Counsel Present for
Defendant Charles Bishop: Paul Ferrara, III
Court Reporter: Amy R. Cope



Lexington Common Pleas

Case Caption: First Reliance Bank VS Charles E Bishop

Case Number: 2011CP3201205

Type: Master/Order/Other

AND IT IS SO ORDERED.

S/JUDGE JAMES O. SPENCE-3068

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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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Appendix to the Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.

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Counsel for Appellants

January 26, 2022.

APPX 010

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