

THE STATE OF SOUTH CAROLINA
In the Supreme Court
Appeal from Horry County
Cynthia Graham Howe, Master-in-Equity
Ralph P. Stroman, Special Referee

RECEIVED
JUN 27 2022
S.C. SUPREME COURT

Leticia, LLC, Movant,

In Re:

M&T Bank, Plaintiff,

v.

**Tyrone Davis; Bobby J. Bellamy; BC Fund and
Management LLC d/b/a BC Fund, LLC, Defendants.**

And

M&T Bank, Respondent,

v.

**Tyrone Davis, Bobby J. Bellamy, BC Fund and
Management, LLC d/b/a BC Fund, LLC, Defendants,**

Of whom Bobby J. Bellamy is the Appellant,

And

Tyrone Davis is the Respondent.

And

Bobby J. Bellamy, Appellant,

v.

William O. Smith, Third Party Defendant.

Appellate Case No. 202-00065

**PETITIONER'S RETURN TO RESPONDENT FOR WRIT OF
CERTIORARI**

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1. The Petitioner identified questions for review that were not included in the Petition for Rehearing filed with the Court of Appeals.

Constitutional and Statutory provisions involved: Amendment XIV Section 1.

All persons born or naturalized in the United States and subject to the jurisdiction, thereof are citizens of the state wherein they reside. No state shall make or enforce any law which abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law. Rule 210 allows only relevant information in an existing case.

This case takes on imperative public importance because many citizens of Horry County have lost real property because the Master-in-Equity failed to abide by South Carolina foreclosure law. The petitioner has been deprived of a fundamental right of due process and equal protection of the law. The SC Appeals Court should have applied procedure due process by analyzing the case to ensure that the May 4, 2018, Master's Order and Judgement of Foreclosure Sale was that of fairness and that the petitioner was not deprived of fundamental rights of the Constitution. Secondly the Court of Appeals should have applied due process to see if any state laws legislation deprived the Appellant in any way of Constitutional fundamental rights by applying the strict scrutiny standard to ensure if the state had any compelling reason on interference of my privilege and benefits under rule 210. This case was affirmed and decided by Per Curiam, the per curiam opinion was used to signal that the case was uncontroversial, obvious, and did not require a substantial opinion. According to SC State law that was not the case in this action.

question 3. According to the respondent, Attorney Scott Umstead was a witness and not an attorney for a respondent in this case. The respondent is incorrect. Mr. Umstead wrote a letter to the SC Appeals declaring that he was only a witness in this case and was not a counsel for any respondent. The Court of Appeals dismissed William O. Smith and BC Fund and Management LLC for failure of the petitioner to serve the respondents, however both respondents were already served by the Petitioner and ruled in default by the lower court because they failed to answer the original complaint. They were not a part of any proceeding. Rule 264(a) SCACR Mr. Umstead should have remained as counsel of record until relieved by an order of the lower court and withdrawal had been approved. If he was relieved by court order then he should have filed a motion to relieve counsel, pursuant to rule 264(b) SCACR. Scott Umstead prepared a deed and arranged financing for Tyrone Davis. Scott Umstead was retained by M&T Bank as closing attorney to verify compliance with the S.C. Secretary of State for existence and standing of BC Fund LLC and to verify clear title by preparing a title search for approval of a mortgage loan, then he should have ensured that William O. Smith had authority to act as sole member of BC Fund LLC to sell property belonging to Petitioner. Attorney Umstead failed to contact petitioner, knowing that the property was transfer for \$5.00 to BC Fund LLC and not to BC Fund and management LLC or William O. Smith with no other consideration to build 96 units of low-income housing on the property with a right of reversion clause.

BC Fund LLC was never approved by SC Secretary of State as a legal entity. BC Fund LLC was to be organized for banking purpose only, to hold funding from a state grant and a construction loan. The construction of the project was to be monitored by the bank to pay contractors as work was completed on the project only. Attorney Scott Umstead and M&T Bank invented BC Fund and Management LLC D/B/A BC Fund LLC after the foreclosure without

William O. Smith approval. Tyrone Davis, member of BC Fund and Management LLC testified that he signed loan papers prepared by attorney Scott Umstead, but was told by William O. Smith that the loan would be paid off in a few months. Petitioner never agreed to sell property, was not a signor on the mortgage loan and received no proceeds from the mortgage as payment for his property. Tyrone Davis testified he was not prepared or financially able to make payments on a \$70,000 mortgage. Although only two payments were made on account, M&T Bank failed to start foreclosure until after the dissolution of BC Fund and management LLC. The mortgage was on the petitioner's primary resident, however, the petitioner was never contacted or notified by the bank or respondent Tyrone Davis until after foreclosure proceedings began. After dissolution of BC Fund and Management LLC, the property should have been transferred back into Respondent, Bobby Bellamy's name because no work was done on the project. Tommy Bellamy's deed to BC Fund LLC had a right of reversion clause as well and his property was transferred back into his name after dissolution. *Bacon v Robinson, 59 U.S. 480, 15l. "Mc Alhany v. Murray, 89 S.C. 440,445(S.C. 1911)* The effect of a dissolution of a corporation are usually described to be, the reversion of the lands to those who has granted them. **This issue is not resolved**

Question 6. The respondent is incorrect. The petitioner never said the decision of the court was wrong by reforming the deeds, the petitioner said the Master in Equity failed to abide by the statues of law to reform a deed. **This issue is not resolved.**

Question 7. The respondent is incorrect. The petitioner's attorney, Howell V. Bellamy signed an order not to dismiss the civil conspiracy but agreed to transfer the case to the Master in Equity. The Court did not agree to dismiss but allowed the case to be transferred and granted plaintiff's permission to amend their complaint. **This issue is not resolved.**

Question 8. The respondent is correct, the Master in Equity used a much lower standard than required for a decision on the reformation of property deed request. **This issue is not resolved.**

Question 9. The respondent is incorrect the lower court transferred the case to Master in Equity, and allowed M&T Bank to amend their complaint. There was no mention that allowed BC Fund and Management LLC D/B/A BC Fund LLC. The Master in Equity ruled on that decision without approval of William O. Smith. **This issue is not resolved**

2. There are special or important reasons to review the decision of the Court of Appeals.

The special or important reasons to review the decision of the Court of Appeals are as follows: The terms and conditions of the sale of the mortgaged property are controlled by the court order, Rule 71, SCRPC, and the practice and custom of the county in which the property is being sold. See Federal National Mortgage Assoc. v. Brooks, 304 S.C. 506, 405 S.E.2d 604 (1991). Sales are also generally governed by § 15-3-610 through -900.

(a) Leticia is not a respondent in this appeal

Foreclosure sale law requires the highest bidder 30 days to fully comply with the terms of the sale. Failure to comply results in forfeiture of deposit, loss of possession of property and the right to bid in future sales. There is no record that Coastal was required to pay 5% of the highest bid amount by certified check or cashiers check on the day of sale on September 4, 2018 by 4:00 pm the day of sale. Once the highest bidder, complies with his or her bid, the Equity Judge or other court officer making the sale executes a deed to the purchaser. Rule 71(b). This is not a general warranty deed but is a Master's Deed. In other words, the Master's Deed conveys whatever title is represented by the property interests properly before the court. Coastal had 30 days to pay the balance of the bid or forfeit the deposit and the property. The property would be

reauctioned after 30 days. Interest was supposed to be charged each day up to 30 days. Coastal was allowed one year to comply to terms of the sale. Coastal decided that they were no longer interested in the property and was allowed to assign the bid to a third-party. Leticia LLC complied with the terms of the sale on September 3, 2019 a year later, free of penalties and taxes. SC Code 12-51-90 (2012) The defaulting tax payer, any grantee from the owner, or any mortgage or judgement creditor may within 12 months from the date of the delinquent tax sale redeem real estate by paying to the person officially charged with the collection of delinquent taxes, assessments, penalties and costs together with interest as provided in subsection (b). If prior to the expiration of the tax redemption period, the purchaser of these costs assigns his interest in any real property purchased at a delinquent tax sale, the person officially charged with the collection of delinquent taxes shall replace the successful bidder at tax sale name and address with the grantees name and address in the delinquent tax sale book. If the defaulting tax payer, grantee from the owner or mortgage or judgement creditor fails to redeem property, and after passing an additional twelve months, the tax deed issued is incontestable on procedural or other ground. Coastal Resort LLC was the highest bidder, responsible for complying with the terms of the sale. For this reason, Leticia LLC is not a respondent, but a third-party movant in this case.

(b) The Order denying M&T Bank's Motion to Dismiss

Section 15-39-870. Judicial sales shall be res judicata as to innocent purchasers, even without confirmation. Upon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction the proceeding under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court.

(c) The question concerning the foreclosure process was not addressed by Court of Appeals and are applicable to this matter

Respondent claims petitioner invoked statutes relating to judicial sales pursuant to execution on judgement and tax executions and that this matter did not involve a judicial sale of real property on execution. The petitioner disagrees. The respondent claims a different set of statutes should have been used: SC Code Ann. 29-3-610 states, it shall not be necessary to make the personal representative of a deceased mortgagor a party to any foreclosure proceeding. That statute is not relevant in this case, there was no deceased mortgager. According to the respondent Coastal delayed compliance with the foreclosure bid pending a resolution of Appeal. The respondents seem to make up laws as they go. After the foreclosure sale occurs, you cannot assign a bid as the bidding already happened. There is no credit bid to assign once the auction ends. So, all you can assign is the judgment post-sale. The facts in your questions are confusing and cannot be accurate. An assignment of bid must occur before the issuance of title to Coastal.

(3) The Petition for Writ of Certiorari should not be dismissed.

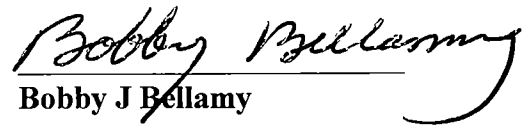
The Respondent failed to comply with the requirements of Assignment of Bid. According to the respondent there is no time limit for Assignment of Bid or in this case, after a year Coastal had no title deed in their name and for that reason, Coastal was not required to pay taxes. The prior property owner will be taxed on delinquent tax and the property will be subject to a tax sale. If the prior owner or mortgage creditor fails to pay the taxes, that same property can be sold at tax auction. This unfair practice of no time limit for Assignment of Bid can cause property owners to pay more of a deficiency. The highest bidder may forfeit the 5% foreclosure deposit but can now bid in a tax sale and get property for a cheaper delinquent tax price.

The proper procedure is to obtain an appeal bond to set aside a judgement or execution from which a party may be made whole, if the action is unsuccessful in appeal. It is not technically a requirement for appeal, but it allows the court to stay the execution of the judgement while the matter is on appeal. The unlawful act of holding property sold at auction without master's deed, waiting for a decision from the Court of Appeal could cause the property to be sold at a tax sale during the appeal. The petitioner, Bobby Bellamy paid two years of delinquent taxes on the property to avoid a tax sale.

CONCLUSION

The Petitioner has offered special and important reason for review. The Petition for Writ of Certiorari should be approved.

Respectfully submitted,



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