

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable William P. Keesley
Dorchester County
Appellate Case Number 2022-000952

Trial Court Case No.: 2009-CP-18-2200

Rene McMasters, now known as Rene McMasters Ronaghan,.....Respondent,
V.

H. Wayne Charpia and Jody E. Charpia,Defendants,

Of Whom H. Wayne Charpia is the.....Appellant.

FINAL BRIEF OF RESPONDENT

This 2nd day of November, 2022

Appellant of record:
H. Wayne Charpia
106 Axtell Drive
Summerville , SC 28485

Frank M. Cisa
SC Bar No. 1237
Cisa & Dodds, LLP
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
(843) 442-3353
fax:(843) 881-5433
E-mail: frank@cisadodds.com
Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. THE TRIAL COURT DID NOT ERR IN DISMISSING THE MOTION TO SET ASIDE SALE/VOID AND SET ASIDE JUDGMENT AS APPELLANT FILED THE MOTION ALLEGING FRAUD UPON THE COURT MORE THAN ONE YEAR AFTER THE ORDER OF FORECLOSURE AND SALE AND JUDGMENT WERE ISSUED.

2. THE TRIAL COURT DID NOT ERR IN DISMISSING THE MOTION TO SET ASIDE SALE/VOID AND SET ASIDE JUDGMENT AS THE APPELLANT'S INDEPENDENT ACTION ALLEGING FRAUD UPON THE COURT WAS DISMISSED ON SUMMARY JUDGMENT WITH PREJUDICE AND THE ORDER WAS NOT APPEALED.

STATEMENT OF THE CASE

The Respondent filed this action in the Court of Common Pleas for Dorchester County on August 10, 2009, wherein the Respondent sought the foreclosure of a judgment lien that the Respondent obtained against the Appellant, Howard W. Charpia (Amended R.p. 50, filed copy of Complaint).

The judgment lien was obtained by the Respondent against the Appellant on August 5, 2004 in case number 2002-CP-18-932 in the amount of \$191,000.00. (Amended R.p.39, filed copy of judgment filed August 5, 2004).

On July 30, 2012, the case came before Judge Dickson for trial. By Order dated October 29, 2012, Judge Dickson issued an Order of Foreclosure and Sale. (Amended R.p.33, filed copy of Order of Foreclosure and Sale).

The Appellant then appealed the denial of Appellant's motion to reconsider the granting of

Judge Dickson's Order of Foreclosure and Sale to the Court of Appeals. The Court of Appeals affirmed Judge Dickson's Order of Foreclosure and sale in an Unpublished Opinion filed on October 5, 2016, 2011. (Amended R.p.40, Unpublished Opinion number 2016-UP-423).

The Appellant then Petitioned for a writ of certiorari to the Supreme Court of South Carolina. The petition for a writ of certiorari was denied by Order dated February 8, 2017. (Amended R.p.43, Order from the Supreme Court dated February 8, 2017)

Pursuant to the order of Judge Dickson, the property was sold at public sale on August 1, 2017. The Respondent was the high bidder at the sale. (Appellant failed to include the Assignment of Bid filed August 1, 2017 in the Amended R.)

On August 4, 2021 Appellant filed a Complaint under case number 2021-CP-18-1390 wherein he sued the Respondent alleging causes of action for Fraud Upon The Court, Conspiracy, Slander of Title, Malicious Use of Process, and Extortion. (Amended R.p.55, filed copy of Complaint filed August 4, 2021). Respondent filed a Motion for Summary Judgment on September 17, 2021. (Amended R.p.60, filed copy of Motion for Summary Judgment filed September 17, 2021). Respondent was granted summary judgment by order of Judge Edgar W. Dickson filed November 23, 2021 and Appellants Complaint was dismissed against Respondent with prejudice. (Amended R.p.45, filed copy of Order Granting Summary Judgment On Plaintiff's Claims Against Defendant Rene McMasters filed November 23, 2021). Appellant did not appeal this order.

Appellant filed his Motion To Set Aside Sale/Void and Set Aside Judgment on October 21, 2021 alleging fraud upon the Court. (Amended R.p.62, filed copy of Motion To Set Aside/Void and Set Aside Judgment).

By Administrative Order filed May 31, 2022 Judge William P. Keesley dismissed Appellant's Motion To set Aside/Void and Set Aside Judgment. (Amended R.p.27, filed copy of Administrative Order of Dismissal On Motion By Howard W. Charpia To Set Aside A Void Sale filed May 31, 2022. This is the order that is subject to Appellant's appeal.

STANDARD OF REVIEW

In Bloody Point Prop. Owners Ass'n, Inc. V. Ashton, 410 S.C. 62, 63, 762 S.E.2d 729, 730(Ct.App. 2014) the Court stated ' The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court. Wells Fargo Bank, NA v. Turner, 378 S.C, 147, 150, 662S.E.2d 424, 425 (Ct.App.2008). " An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." Carson v. CSX Transp., Inc., 400 S.C.221, 229, 734 S.E.2d 148, 152 (2012)."

STATEMENT OF THE FACTS

Appellant appeals the order issued by Judge Keesley. The basis for Judge Keesley's dismissal of Appellant's motion was that the "motion is not an independent action under Rule 60 SCRPC, but a motion filed in a thirteen-year-old, closed attachment case trying to set aside a sale that took place in 2017 pursuant to a judgment lien, and seeking to vacate the underlying judgment rendered in 2004 in Case Number 2002CP1800932" and "that Appellant has filed an

independent action seeking the same relief on the same applicable grounds in Case Number 2021CP1801390.” (Amended R.p. 27,Administrative Oder of Dismissal filed May 31, 2022).

The Appellant’s claims in the independent action asserting fraud upon the court against the Respondent had been dismissed with prejudice by order of Judge Edgar W. Dickson.(Amended

R.p.45, filed copy of Judge Dickson’s Order Granting Summary Judgment on Plaintiff’s Claims Against Defendant Rene McMasters filed November 23,2021). Appellant did not appeal Judge Dickson’s order.

ARGUMENT

I. The Trial Court did not err in dismissing the Motion To Set Aside Sale/Void and Set Aside Judgment as the motion alleging fraud upon the court was filed more than one year after the Order of Foreclosure and Sale and judgment were issued.

Rule 60 SCRCF provides that “ the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:.. (3) fraud, misrepresentation, or other misconduct of an adverse party; ...The motion shall be made within a reasonable time , and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken....This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.”

In this case the Order of Foreclosure and Sale was issued by Judge Dickson on October 29, 2012 or approximately nine years before this motion was filed. The judgment lien that was foreclosed was filed on August 5, 2004 or approximately seventeen years before this motion was filed. Filing a motion to set aside a sale or judgment is not not allowed by Rule 60 SCRPC if it is more than one year after the order or judgment is issued.

II. The Trial Court did not err in dismissing the Motion To Set Aside Sale/Void and Set Aside Judgment as the Appellant's independent action alleging fraud upon the court was dismissed on summary judgment and the order was not appealed.

The Respondent filed a Motion for Summary Judgment in the Appellant's independent action on September 17, 2021. (Amended R.p.60, Filed copy of Motion for Summary Judgment in case no. 2021-CP-18-1390 filed September 17, 2021).

Judge Dickson conducted a hearing on the motion on November 3, 2021 and filed his Order Granting Summary Judgment to Respondent on all of The Appellants claims including his cause of action for Fraud Upon the Court. (Amended R.p.45, filed copy of Order Granting Summary Judgment in case no. 2021-CP-18-1390 on Plaintiff's Claims Against Defendant Rene McMasters filed November 23, 2021). The Appellant did not appeal Judge Dickson's order. The order is now the law of the case.

In Judy v. Martin, 381 S.C, 455, 458, 674 S. E. 2d 152, 153 (2009) the South Carolina Supreme Court stated " Appellant may not seek relief from the prior unappealed order of the circuit court because the order has become the law of the case." Hudson v. Lancaster Convalescent Ctr., 393

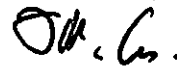
S.C.1,7, 709 S.E. 2d 65,68 holds that a circuit court ruling that is appealed , but subsequently withdrawn is the law of the case.

CONCLUSION

For the reasons stated above, this Court should affirm the order of the Circuit Court.

Respectfully submitted,

CISA & DODDS, LLP



Frank M. Cisa
S. C.Bar No.1237
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
(843) 442-3353
Fax:(843) 881-5433
frank@cisadodds.com
Attorney for Respondent

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V.

H. Wayne Charpia a/k/a Howard W. Charpia and Jody E. Charpia, Defendants,

of whom H. Wayne Charpia is the.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b) SCACR.


Frank M. Cisa

November 2nd, 2022
Mt. Pleasant, SC