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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA**

**In the Court of Appeals**

**Appeal from Horry County**

**Judge Cynthia Graham Howe, Master-in-Equity**

**Ralph P. Stroman, Special Referee for Horry County**

**C/A no. 2011-CP-26-01809**

**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.**

**FINAL BRIEF OF APPELLANT**

**Bobby J. Bellamy  
P.O. Box 1674  
Little River, SC  
29566**

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## STATEMENT OF ISSUES ON APPEAL

1. Did the Master-in-Equity err in authorizing assignment of bid to Leticia LLC after one year of non-compliance of Coastal Resort Properties bid at auction?
2. Did the master-in-equity err by not following court order in the notice of sale by failure to collect the 5% of the bid on the day of the sale and failure to collect balance in 30 days?
3. Did the Master-in- Equity err in changing the names on the master's deed then changed a description on that same deed from east of North Point to west of North Point?
4. Did the Master -in-Equity err in issuance of report on sale, receipts and disbursements one year after auction, prevent Coastal Resort Properties, the person who brought the foreclosed property from paying the property taxes, that could have led to a tax sale?

## STATEMENT OF THE CASE

A foreclosure and conspiracy proceedings were transferred to the Master-in-Equity on March 18, 2015 thereafter Masters order and Judgement of foreclosure and Sale was issued on May 4, 2018. After the final judgement, the Master-in-Equity also conducted a foreclosure sale on that same property. Bobby Bellamy, the defendant failed to obtain an appeals bond on foreclosure of Bobby Bellamy's permanent residence. The Appellant appeals the authority and power of the Master in-Equity on grounds of **abuse of discretion** in the procedural matters on conducting the foreclosure sale and Master-in-Equity deed filed on September 3, 2019. Tyrone Davis defaulted after two payments on a fraudulent mortgage. William Smith, BC Fund and Management LLC d/b/a BC Fund LLC failed to answer original complaint therefore are in default.

The scam initiated by William O. Smith, owner of BC Fund and Management LLC and member, Tyrone Davis to assist Bobby Bellamy in applying for a SC Grant and a construction loan to develop low income housing on his property. M&T Bank was to provide finance and monitor construction and provide contractors payments upon completion of each project. Bobby Bellamy transferred his property to unregistered BC Fund LLC with right of reversion for banking purposes only. No work was done. Instead, William Smith used Tyrone Davis, member of BC Fund and Management LLC to get a mortgage loan on Bobby Bellamy's property without Bobby Bellamy's knowledge or approval. Scott Umstead, M&T Bank's closing attorney drew up a Warranty Deed by transferring property from Bobby Bellamy's unregistered BC Fund LLC that had similar name of William Smith's registered BC Fund and Management LLC to Tyrone Davis. William Smith promised Tyrone Davis that he would share the proceeds and pay this mortgage loan off immediately. M&T Bank's closing attorney, Scott Umstead failed to verify compliance of unregistered BC Fund LLC with Secretary of State in South Carolina or insist on name change to registered BC Fund and Management LLC, knowing that BC Fund and Management LLC was not on the deed. Instead, Scott Umstead and M&T Bank came up with an idea of BC Fund and Management LLC d/b/a BC Fund LLC. Scott Umstead failed to correct the discrepancy of the property description thereafter paid proceeds of the sale to William Smith as alleged sole owner of BC Fund LLC. Bobby Bellamy received no proceeds from the sale. Tyrone Davis made two payment and William Smith failed to pay off the loan. After a seven year court battle, the Master-in-Equity directed that the land be sold on September 4, 2018 after being duly advertised as required by law. The notice of sale further provided that the terms of sale was to be for cash, 5% payable on sale date and balance due in 30 days. Upon the failure of the purchaser to comply with the terms of the notice of sale, a resale was to be held at some subsequent sales day.

On sales day, September 4, 2018 the land was offered for sale at Horry County Courthouse, under the terms of the notice of sale, by Master-in-Equity Cynthia Howe, at

which time Bobby J. Bellamy had already filed on August 16, 2018, a notice of appeal, notice of Lis pendens and notice of action pending claiming interest in the land, thereafter the lands were sold to highest bidder, Coastal Resort Properties, for the sum of \$105,000. Coastal Resort Properties failed to comply with his bid and with the terms of the notice of sale. No order passed upon or ever became effective, so as to affect any alleged rights of Coastal. Coastal had ample notice and full opportunity to be heard. It was necessary for the Equity Court to enforce compliance with the terms of an order for the sale of land, and to protect the rights of parties whose interests in such real estate have been adjudicated. The Court of Equity unquestionably has jurisdiction of a successful bidder at a judicial sale as a party to the proceedings in which the sale was ordered. *Corbett v. Fogle*, 72 S. C., 321; 51 S. E., 884. The principle is also “well settled in this State that a purchaser of land, under a decree rendered by the Court in the exercise of its chancery jurisdiction, is entitled to a reasonable time, after bidding off the property, to ascertain whether the title is defective.” *Virginia-Carolina Chemical Company v. McLucas*, 87 S. C., 350; 69 S. E., 670

But there is neither reason nor authority for the proposition that Coastal Resort Properties bid at a foreclosure sale on September 4, 2018 without knowledge of a cloud on the title. Coastal Resort Properties has an opportunity to investigate, and fail to comply with the cash terms of sale within eight days thereafter. Once the highest bidder has complied with his or her bid, the Equity Judge 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. The Court of Equity has jurisdiction of a successful bidder at a judicial sale to demand compliance or resell the property. Coastal Resort Properties had an obligation to comply with his bid, but is granted the privilege of extending compliance from sales day in September 2018 until September 2019, and farther require that

proceedings be stayed until after an appeals claim on the land can be disposed to his satisfaction, thereafter Coastal injected his bid into assignment of bid to third party, Leticia LLC. The master-in-equity approved Leticia to comply with the terms of Coastal Resort Properties bid a year later, free of delinquent taxes, then granted a corrective masters deed. The master issues a Report on Sale, Receipts and Disbursements and provides notice of the Report to all parties who have appeared in the action. Rule 53(e)(1). On the subject of taxation, upon which the mortgagor failed to pay the tax or upon which there may exist a lien for taxes, may at any time before the sale thereof for delinquent taxes, as provided in Title 12, pay the tax on all the property of the mortgagor, with any costs, penalties or assessments which may have accrued thereon, and thereupon he shall be entitled, as against the mortgagor, his representatives, privies or assigns, to include the amount so paid, and all interest thereafter accruing thereon, in the debt secured by the mortgage. And if a mortgagee pays such taxes he shall have a first lien on the property subject to such tax to the extent of the taxes so paid with interest from the date of payment. The master failed to include tax debts in the distribution report. Coastal Resort Properties was highest bidder on the foreclosed property at auction and was entitled to pay the property tax debts. M&T Bank never became the owner and didn't pay the tax bill. Part of the buyer's deal with the lender is paying any taxes, which is really part of buying the house "as-is." Bobby Bellamy had delinquent tax notice sign with tax sale date posted on his home. Bobby Bellamy paid the property taxes to prevent tax auction. If the home is in foreclosure but hasn't been sold at the auction, the lender might pay the taxes. All owed back taxes, current taxes and penalties become buyer's responsibility in a foreclosure sale. In no view of the case has Leticia LLC any legal or equitable rights to the property. The master's deed conveys whatever title is represented by the property interests properly before the court. If there

is a defect in the foreclosure action itself, the **master's deed may not even convey clear, marketable title**. The master-in-equity issued Leticia LLC, a corrective, master's deed, free of all errors and discrepancy and free of tax debt with no change to previously recorded deeds. The master ruled to change the name and description in Master's Order and Judgement of Foreclosure and sale on May 4, 2018 on the doctrine of scrivener's error. A scrivener's error permits a typographical error in a written contract to be corrected by parole evidence if the evidence is clear, convincing, and precise. The court never approved a name change in the deed from Bobby Bellamy to BC Fund LLC or as stated on fraudulent deed BC Fund LLC to Tyrone Davis. The original estate deed from Bellamy heirs to Bobby Bellamy states the correct description. The deed from Bobby Bellamy to BC Fund LLC and the deed from BC Fund LLC by *William Smith, owner of BC Fund and Management LLC* to Tyrone Davis were both erroneous. BC Fund LLC has **certificate of no record** in the state of South Carolina. The court never approved BC Fund and Management LLC d/b/a BC Fund LLC as stated in affidavit of Melanie Ward clerk of court. Both deed descriptions state the wrong compass direction, east of North Pointe. The correct description was to west of North Pointe, thus changes the boundaries of the property. This change cannot be rectified with an affidavit of correction as required with scrivener's error. The deed has to be replaced with a correction deed. A correction deed includes the information recorded on the previously recorded (erroneous) deeds. It notes the mistake and the accurate legal description. However, if such correction affects property rights then it must be approved by **those affected by it**. The **parties may not bring new names onto the deed, create any other new interests, or modify the substance of the deed**. A corrective deed is an instrument filed in the public record in addition to the incorrect deed. It's known as a confirmatory instrument since it perfects an existing title by removing any defects, but it doesn't

pass title on its own, for the above stated reasons, the master in equity's actions, there exists an abuse of discretion.

#### STANDARD OF REVIEW

The Appellant appeals the authority and power of the Master in-Equity on grounds of **abuse of discretion** in the procedural matters on conducting the foreclosure sale and Master-in-Equity deed filed on September 3, 2019. Sale of the Property. 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. Prior to the property being sold at public sale, the Notice of Sale must be advertised once a week for three weeks prior to the sale date. § 15-39-650. **The advertisement must specify the property to be sold, the time and place of sale, the property owner's name and the plaintiff's name.** If the deficiency is waived, the Notice of Sale must state that the bidding will not remain open for 30 days. § 15-39-760.

Confirmation of Sale If the case has been referred with finality, the Equity Judge may issue an order, an Order of Sale, Receipts and Disbursements and an Order of Confirmation all as a single document. Rule 71(b). If, however, the case was not referred for final judgment, the Equity Judge issues a Report on Sale, Receipts and Disbursements and provides notice of the Report to all parties who have appeared in the action. Rule 53(e)(1). The Plaintiff may take exception to this Report within 10 days. Rule 53 (e)(2). If no exceptions are served within 10 days, an order confirming the sale is issued by the circuit court. Once the high bidder has complied 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. Writ of Assistance. If, after the **high bidder** has complied with the bid and received a deed, the debtor or other occupants refuse to vacate the property, the successful purchaser has the right to return to the court to seek a Writ of Assistance that directs the sheriff to eject the person remaining on the property. See *Griggs v. Griggs*, 205 S.C. 276, 31 S.E.2d 505 (1944). Because of non-compliance to the above stated rules there exists an **abuse of discretion** in the procedural matters on conducting the foreclosure sale.

#### FACTS

1. A corrective deed is an instrument filed in the public record in addition to the incorrect deed. It's known as a confirmatory instrument since it perfects an existing title by removing any defects, but it doesn't pass title on its own.
2. Doctrine of Scrivener's error is a legal principle which permits a typographical error in a written contract to be corrected by parole evidence if the evidence is clear, convincing, and precise. However, if such correction affects property rights then it **must be approved by those affected by it.**
3. An assignment of bid **occurs during the ten-day period after the property sale and before the issuance of title.** When this happens, the winning bidder "assigns their bid" to a third party, who will receive the title.
4. **Scrivener's error is an error due to a minor mistake** or inadvertence and not one that occurs from judicial reasoning or determination. It's minor, and everyone knows what the

description meant to say. A clarification would help, and would not **materially change the deed**. It would simply tighten up ambiguous language in the legal description

#### ARGUMENTS

1. Because the master-in-equity err in authorizing assignment of bid after 1 year of non-compliance, *Hudson v. Inman*, 179 S.C. 399, 404, 184 S.E. 102, 104 (1936) (“[A] bidder not complying with the terms of the decree and the advertisement will not be heard to complain that he was lulled into security in not being required publicly to comply with the terms of the decree and advertisement of the sale of the property.”) *Seymour*, 17 S.C. Eq. at 485 (emphasis added), cited in 50A C.J.S. *Judicial Sales* § 38 (1997) (“In the absence of a statute otherwise providing, when the sale is for cash, payment in cash should be made on the day of sale in order to entitle the purchaser to have the sale confirmed.”) (Rp Order p 28)
2. Because the master-in-equity err by not following court order in the Notice of sale by failure to collect the 5% of the bid on the day of the sale and failure to collect balance in 30 days. This statutory limitation has been in effect in South Carolina for more than a century. The rule that a purchaser at a foreclosure sale has until 5 o’clock p.m. on the sales date *unless* the order of the court and the notice of sale *specifically* provide for a different payment time for the deposit. Every sheriff’s sale made by virtue of the directions of an execution shall be for cash. If the purchaser shall fail to comply with the terms aforesaid the sheriff’s shall proceed to resell at the risk of the defaulting purchaser either on the same or some subsequent sale day, as the plaintiff may direct, and, in the absence of any direction by the plaintiff, the sheriff shall resell on the same day, if (Rp Order pp 26-27)

practicable, and if not on the next succeeding sale day, making in every such case proclamation that he is reselling at the risk of such defaulting former purchaser. *Henry v. Blakely*, 216 S.C. 13, 56 S.E.2d 581 [1949]; *Appeal of Paslay*, 230 S.C. 55, 94 S.E.2d 57 [1956]. In this appeal, we must analyze the special referee's actions in conjunction with his order of sale. Although the referee acted as his own selling officer, he was still bound by the limits of his written decree of sale. When the public has been informed through the order and the advertisements, the rules of the foreclosure sale are set.<sup>a</sup> See *Ex parte Keller*, 185 S.C. 283, 194 S.E. 15 (1937) (recognizing the legal principle that an order of sale is a public document, and all bidders, as well as other persons, are charged with notice of its terms by the law and usage regulating sheriffs, and other official sales, a purchaser at a sale for cash, must pay the money *on the day of sale*. It frequently happens that the officer making the sales takes upon himself to allow the purchaser a short time to pay the money, and there is no impropriety in it, when it is done with the assent of the creditor and the debtor, but if the purchaser has neglected to pay the purchase money for one year, he has forfeited his right under the contract of sale, certainly he is not entitled to favor of Assignment of bid to a third party.

- (Rp Order pp 26-27)
- (Rp Order pp 26-27)
- (Rp Order 28)
- (Rp Exh. pp 47-49)
3. Because the Master-in- Equity changed the compass direction on masters foreclosure deed and thus changed the boundaries of the property. The description error from east of North Point to west of North Point, as stated on the deeds cannot be rectified. It should be executed from the original grantor to the original grantee, and it needs to be recorded in order to be legally valid. The correction deed must reference the original conveyance it is correcting by type of error, date of execution and recording, as well as by

**recording number and location.** The correction deed is stronger than a scrivener's affidavit. <sup>(Rp Exh. pp 47-49)</sup> Material changes to the description of the property cannot be corrected by appending an affidavit and cover sheet. It may be necessary to enforce compliance with <sup>(Rp Order pp 26-27)</sup> the terms of an order for the sale of land and to protect the rights of parties whose interests in such real estate have been adjudicated. The court of equity unquestionably has jurisdiction of a successful bidder at a judicial sale as a party to the proceedings in which <sup>(Rp Order pp 1-25)</sup> the sale was ordered *Corbett v Fogle*, 72 S.C., 321; 51 S. E. 884 The principle that a purchaser of land, under a decree rendered by the court in the exercise of its chancery <sup>(Rp Order pp 1-25)</sup> jurisdiction, is entitled to a reasonable time, after bidding off the property, to ascertain whether the title is defective. *Virginia-Carolina Chemical Company v. McLucas*, 87 S.C., 350; 69 S.E., 670 But there is neither reason nor authority for the proposition that one who bids at a foreclosure sale, with knowledge of an alleged cloud on the title, who has <sup>(Rp Order pp 1-25)</sup> further opportunity to investigate, and fails to comply with the cash terms of sale within <sup>Rp Order 26-27</sup> eight days thereafter, who by order of the court is discharged from any obligation to comply with his bid, but has nevertheless granted Coastal Resort Properties the privilege <sup>Rp Order p 28)</sup> to assign his bid after one year to Leticia LLC, a third party.

4. Because the Master-in-Equity err in issue of <sup>(Rp Order pp 29-30)</sup> Report on Sale, Receipts and Disbursements 1 year after auction the property was held without Masters deed. The Master-in-Equity <sup>Rp Order pp 26-27)</sup> failed to add all owed back taxes, current taxes and penalties. This error prevented Coastal, the person who brought the foreclosed home at auction and Leticia LLC <sup>(Rp Order p 28)</sup> granted assignment of bid from paying the property taxes that could have led to a tax sale. If the home is in foreclosure but hasn't been sold at the auction yet, the lender might pay the taxes. The lender wants to sell the home to get money back, but if Horry

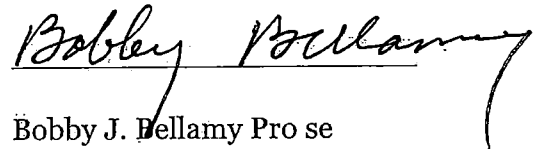
County tax office takes the home for back property taxes first, the lender will not profit. The person who buys the foreclosed home pays the property taxes if he bought it at auction. If the home sells at auction, the lender never becomes the owner and won't pay the tax bill. Part of the buyer's deal with the lender is paying any taxes, which is really part of buying the house "as-is." If the buyer gets the home from the lender because it didn't sell at auction, the taxes might be paid, since the lender was the owner for a while. Property taxes stick to the house and not the owner. The taxes don't disappear just because the home's got a new owner. (Rp Order pp 29-30) All owed back taxes, current taxes and penalties became Coastal Resort Properties problem when they brought the foreclosed house. If Bobby Bellamy hadn't paid the taxes and penalties, the home would have been loss in a Horry County tax sale.

#### CONCLUSION

For the reasons stated, this court should reverse the judgement of the circuit court.

November 4, 2022

Respectfully submitted,



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