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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in Equity

Joseph M. Strickland, Master in Equity

Appellate Case No. 2021-001219

First Citizens Bank and Trust
Company, Inc.,

Respondent,

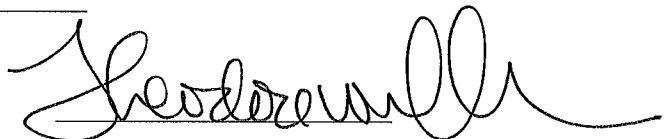
v.

Justin K. Spires, Timothy J.
Spires, Sr., South Carolina
Department of Probation,
Parole and Pardon Services
and Warren B. Giese as
Solicitor,

Of who, Justin K. Spires and
Timothy J. Spires, Sr. are the

Appellants.

FINAL BRIEF OF RESPONDENT



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STATEMENT OF ISSUES ON APPEAL

1. IS RESPONDENT ENTITLED TO PROTECTION UNDER SOUTH CAROLINA CODE §15-39-870 AS A BONAFIDE PURCHASER?
2. DID THE COURT ABUSE ITS DISCRETION IN CONCLUDING THAT THE COURT HAD PERSONAL JURISDICTION OVER JUSTIN SPIRES AND TIMOTHY SPIRES?
3. DID THE COURT ABUSE ITS DISCRETION BY DENYING RELIEF UNDER RULE 60(b) WHERE APPELLANTS RECEIVED AT LEAST ELEVEN NOTICES OF THE FORECLOSURE, FAILED TO ACT PROMPTLY, DID NOT HAVE SUFFICIENT REASON FOR FAILING TO ACT PROMPTLY, DID NOT HAVE A MERITORIOUS DEFENSE, AND GRANING RELIEF WOULD PREJUDICE RESPONDENT?

STATEMENT OF THE CASE

On October 9, 2019, First Citizens Bank and Trust, Inc. brought this action seeking mortgage foreclosure against Justin K. Spires and Timothy J. Spires. (R. pp. 40-46). The Mortgage was originated in 2006 between First Citizens, Justin Spires and Timothy Spires. (R. p. 43, lines 1-4). At the time of the October 9, 2019 filing, Justin Spires and Timothy Spires owed \$57, 255.96. (R. p. 43, line 27). Justin Spires and Timothy Spires failed to Answer the Complaint and First Citizens entered an Entry of Default.

On November 21, 2019, pursuant to SCRCP Rule 53(b), the Court referred the case to the Richland County Master in Equity, Joseph M. Strickland. (R. p. 3-4). On February 12, 2020, a hearing was held regarding foreclosure on the mortgaged property. (R. p. 89). At the February 12, 2020 hearing, the Master in Equity entered a judgment against Justin Spires and Timothy Spires in the amount of \$66,710.96. (R. p. 89). On February 17, 2020, the Master in Equity ordered a foreclosure sale of the mortgaged property, 30 Cardington Court, Columbia, SC 29209. (R. p 11, line 18-p. 12, line 4).

The foreclosure sale was completed on January 6, 2021, and First Citizens was the successful bidder with a bid of \$69,407.20. (R. p 21, lines 1-3). Subsequently a deficiency judgment was entered against Justin Spires and Timothy Spires in the amount of \$2,693.96. (R. p. 23, lines 9-13).

Following the foreclosure sale, an eviction hearing was scheduled and the Notice for the Rule to Show Cause was posted at the property. (R. p. 139; R. p. 28-29). At the Rule to Show

Cause, Justin Spires attended the hearing, and, on March 19, 2021, the Master in Equity ordered a Writ of Assistance to remove Justin Spires from the property. (R. p. 31)

On May 17, 2021, Justin Spires and Timothy Spires each filed a motion seeking to void the foreclosure sale and vacate the judgment alleging that they were not served with the Summons and Complaint. (R. p. 95-100). Their motions and subsequent Motion to Reconsider were denied. See Order Denying Motions to Vacate Sale, Motion for Relief from Default, and Motion to Dismiss (“Order I”) (R. p 32-36) and Order Denying Motions to Reconsider (Order II) (R. p. 37-39). On November 3, 2021, Justin Spires and Timothy Spires filed the Notice of Appeal. (R. p. 108).

STANDARD OF REVIEW

“Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge.” *Coleman v. Dunlap*, 306 S.C. 491, 494 413 S.E.2d 15, 17 (1992). Therefore, the standard of review is limited to whether there was an abuse of discretion. *BB & T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006). “An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support.” *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242 399 S.E.2d 779, 782 (1990). “[T]he inartful use of an abuse of discretion deferential standard of review merely represents the appellate courts' effort to incorporate the two sound principles underlying the proper review of an equity case. [T]hose two principles are superior position of the [master] to determine credibility and the imposition of a burden on an appellant to satisfy the appellate court that the preponderance of the evidence is against the finding of the [master].” *Crossland v. Crossland*, 408 S.C. 443, 452, 759 S.E.2d 419, 423-24 (2014) (quoting *Lewis v. Lewis*, 392 S.C. 381, 391, 709 S.E.2d 650, 655 (2011)).

FACTS

On August 31, 2006, Justin K. Spires and Timothy J. Spires, Sr. executed and delivered to First Citizens Bank and Trust Company a promissory note by which they promised to pay to First Citizens Bank and Trust Company the sum of \$99,998.00, together with interest at the rate of 6.875% per annum. (R. p. 42, ¶ 6). To secure payment of the debt, Justin K. Spires executed and delivered a mortgage of land more simply identified as 30 Cardington Court Columbia, SC 29209. (R. p. 43, ¶ 7).

In 2019, First Citizens declared Justin Spires in default and declared the entire balance of indebtedness due and payable. (R. p. 43, ¶12). On August 23, 2019, the balance due was \$57,355.9 plus interest, late charges, costs of the foreclosure action and attorney’s fees. (R. p. 43, line 25-p. 44, ¶ 12).

On October 9, 2019, First Citizens filed a Summons and Complaint seeking to foreclose on

the mortgage. First Citizens hired a process server to serve Justin Spires and Timothy Spires. The process server served the Summons on October 12, 2019. (R. p. 109; R. p. 110) The process server served the Summons and Complaint at the record address of 30 Cardington Court on Mitch Smith who informed the process server that he was a co-resident of Justin Spires and Timothy Spires at their residence. (R. p. 109; R. p. 110). The sworn Affidavits of Service of Justin Spires and Timothy Spires stated that Mitch Smith had informed the process server that he was a co-resident of Justin Spires and Timothy Spires at their residence and that he, Mitch Smith, was of suitable age and discretion. (R. p. 109; R. p. 110).

Justin Spires and Timothy Spires failed to file an Answer in response to the Summons and Complaint. First Citizens filed an Affidavit of Default on November 20, 2019 and an Entry of Default was entered. (R. p. 111). On January 21, 2020, Appellants received a Notice of Hearing, notifying them of the forthcoming foreclosure hearing. (R. p. 112-113).

On February 17, 2020, the Master in Equity issued an Order and Judgment of Foreclosure and Sale concluding that Justin Spires and Timothy Spires owed \$66,710.96 to First Citizens, First Citizens was entitled to foreclosure, and First Citizens was entitled to a deficiency judgment after the sale. (R. p. 5-18, ¶ 21-25). A Notice of Sale was published on March 20, 2020. (R. p. 114).

A foreclosure sale was scheduled for April 6, 2020 but was cancelled due to COVID-19 and rescheduled for July 6, 2020. (R. p. 32, lines 16-17). On June 16, 2020, the Order of Judgment and Notice of Sale were mailed to Appellants record address. (R. p. 34, line 5). Notice of Sale was also published on June 19, 26, and July 3, 2020. (R. p. 152). On July 3, 2020, a telephone call took place between First Citizens and Justin Spires in which Justin Spires was made aware of the foreclosure. (R. p. 34, lines 5-6, 10-14). On July 6, 2020, Justin Spires filed bankruptcy stop the sale. (R. p. 129, ¶ 9). The foreclosure sale was and held on July 6, 2020. (R. p. 32, line 22). On July 9, First Citizens became aware that Justin Spires had filed for bankruptcy on July 6, 2020 and thereafter vacated the July 6, 2020 foreclosure sale by Order filed July 9, 2020. (R. p. 95-100). On August 4, 2020, Justin Spires' attorney informed him that his bankruptcy was being dismissed. (R. p. 132, ¶15).

On November 20, 2020, the Master in Equity signed a new Judgment for Foreclosure and Sale. (R. p. 32, lines 27-29). On December 7, 2020, a Notice of Sale and Judgment were mailed to Appellants. (R. p. 34, lines 7-8). The Notice of Sale was published on November 20, 27, and December 4, 2020. (R. p. 149). First Citizens was the successful high bidder when the sale was completed on January 7, 2021. (R. p. 32, line 30).

On January 25, 2021, Respondent obtained a Notice to Vacate, seeking to eject Appellants from the subject property. (R. p. 33, lines 1-3). The subsequent Rule to Show Cause was posted on the subject property on February 24, 2021. (R. p. 33, lines 2-3).

On May 17, 2021, Justin Spires and Timothy Spires each filed Motions for Relief and Motions to Vacate the Sale. (R. p. 95-100). Justin Spires, Timothy Spires, and Mitch Smith supplied affidavits in support of the Motions. (R. p. 130-38). At the June 21, 2021 hearing on

Appellant's Motions, the Master in Equity denied Appellants' Motions. (R. p. 32-35). On July 1, 2021, Justin Spires and Timothy Spires filed a Motion to Reconsider; the Master in Equity denied this Motion on September 21, 2021. (R. p. 37-39).

Appellants filed a Notice of Appeal on November 3, 2021 appealing the Order Denying their Motion to Vacate the Sale and for Relief from the Default Judgment dated June 21, 2021. (R. p. 108).

ARGUMENTS

I. BECAUSE FIRST CITIZENS BANK AND TRUST INC. IS A BONAFIDE PURCHASER, APPELLANTS' CLAIMS ARE BARRED BY THE DOCTRINE OF *RES JUDICATA*.

Respondents assert South Carolina Code §15-39-870 as an additional sustaining ground pursuant to South Carolina Appellate Court Rules 208(b) and 220(c) and *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) (“a respondent . . . may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.”).

Irrespective of Appellants’ claims as to service of process, Appellants’ appeal should fail as Respondent First Citizens is a bona fide purchaser for value at the foreclosure sale and is entitled to the protection of South Carolina Code §15-39-870. Respondent was the successful bidder at the December 7, 2020 foreclosure sale and, as holder of the Masters deed, is a bona fide purchaser for value without notice, thus barring any attack on the foreclosure sale under the doctrines of *res judicata* and collateral estoppel. S.C. Code §15-39-870 states:

“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 proceedings 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.”

South Carolina recognizes a long-standing public policy of “protecting good faith purchasers and upholding the finality of a judicial sale.” *Robinson v. Estate of Harris*, 378 S.C. 140, 144, 662 S.E.2d 420, 422 (2008). To effectuate this policy, the Supreme Court of South Carolina has stated , “a purchaser in good faith at a judicial sale is not affected by irregularities in the proceedings or even error in the judgment under which the sale is made; but is required at his peril only to make inquiry as to the jurisdiction of the court which ordered the sale, and whether all proper parties were before the court when the order was made.” *Id.* at 145. The Supreme Court’s reference to “the jurisdiction of the court which ordered the sale” refers to the statutory requirement that the court is one of “competent jurisdiction” to execute and deliver a deed for property sold at a judicial sale. Further, the Supreme Court in *Robinson* held that affidavits contesting service of process filed after the sale of the foreclosed property could not undermine the protections of a bona fide purchaser. *Id.* at 146.

For a party to qualify for the protections of §15-39-870, it must show (1) the deed

was executed and delivered pursuant to the order of foreclosure and sale of a court of competent jurisdiction and (2) the party is a bonafide purchaser for value without notice. *Id.* at 145-46. All of these protections apply here.

First, the deed was executed and delivered to First Citizens, the successful bidder, pursuant to the Master in Equity's February 17, 2020 Order of Foreclosure and Sale. The Master in Equity is a court of competent jurisdiction by virtue of SCRPC Rules 53 and 71 and the Order of Reference filed November 21, 2019. Therefore, the deed was executed and delivered pursuant to the Order of Foreclosure and Sale of a court of competent jurisdiction.

Second, First Citizens is a bonafide purchaser for value without notice. To establish its status as a bonafide purchaser, a party must show (1) it actually paid the purchase price of the property; (2) it acquired legal title to the property or the best right to legal title to the property; and (3) a bonafide purchase. *Id.* at 146. A bonafide purchase is one made in good faith and with integrity of dealing, without notice of a lien or defect. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006). The party seeking bonafide purchaser status must show all three elements occurred before it had notice of a title defect or other adverse claim. *Robinson*, at 146. If defects or adverse claims are raised in affidavits entered into the record after the foreclosure sale, those affidavits cannot undermine the statutory protection of a bonafide purchaser. *Id.*

Here, First Citizens' purchase of the property at the foreclosure sale satisfies the elements to establish it as a bonafide purchaser. First Citizens paid the purchase price and subsequently acquired legal title. First Citizens' purchase was a bonafide purchase; First Citizens bought the property at the foreclosure sale in a good faith attempt to recover the value of the loan made to Justin Spires and Timothy Spires. Finally, these elements were established prior to Justin Spire's and Timothy Spire's adverse claims, which were asserted only after the sale.

The facts of this case parallel those in *Robinson*. In *Robinson*, the appellants' property was purchased at a foreclosure sale. *Robinson*, at 143. Affidavits of Service were filed alleging proper substituted service of the appellants through their son. *Id.* The appellants brought an action to quiet title and set aside the foreclosure sale. *Id.* The respondent moved for summary judgment under the theory that he was a bonafide purchaser. *Id.* Following the respondent's motion, the appellants submitted an affidavit in which the appellants' son asserted that he was not the person served and that the appellants were incompetent. *Id.* The South Carolina Court of Appeals upheld the judicial sale relying on the rules stated above. *Id.* at 147.

First, the Appellate Court found that an Order of Foreclosure and Judicial Sale established that the deed was executed and delivered pursuant to the order of foreclosure and sale of a court of competent jurisdiction because the Order stated (1) the Defendants were served; (2) the Defendants were in default; (3) the attorneys of record were notified

of the hearing; and (4) Defendants were not in military service. *Id.* at 145. Here, the Master in Equity's Order of Foreclosure and Sale parallels that in *Robinson* and establishes that the deed was executed and delivered pursuant to the order of foreclosure and sale of a court of competent jurisdiction.

Second, the *Robinson* court applied the elements of a bonafide purchase and found that the purchaser was a bonafide purchaser. *Id.* at 146-47. The *Robinson* court finds that, as in this case, the purchaser paid value for the property and acquired legal title or the best right to legal title of the property. *Id.* at 146. The *Robinson* appellants asserted that the purchaser could not establish the third element – a bonafide purchase, i.e. a purchase made with integrity and fair dealing, without notice of a lien or defect – because appellants were not properly served. *Id.* The *Robinson* appellants, like the Appellants in this case, filed affidavits after the foreclosure sale, which were not matters of record at the time of the foreclosure sale. *Id.* The *Robinson* court held that affidavits that were not part of the record at the time of the foreclosure sale could not be used to deny a purchaser its status as a bonafide purchaser. *Id.*

Here, Justin Spires, Timothy Spires and Mitch Smith, like the Appellants in *Robinson*, entered affidavits into the record contesting service of process on May 17, 2021, well after the foreclosure sale. These affidavits, like those in *Robinson*, allege improper service. However, under the authority of *Robinson*, because these affidavits were not matters of record at the time of the foreclosure sale, they cannot be used to deny First Citizens its status as a bonafide purchaser.

Because First Citizens meets the requirements of §15-39-870, any challenge to the foreclosure sale is barred by *res judicata* and collateral estoppel. Here, Justin Spires and Timothy Spires seek to vacate the foreclosure sale by alleging the Court had no jurisdiction to order the sale. Because Justin Spires and Timothy Spires's claims arise under the foreclosure sale, they are barred by *res judicata*. Here, Justin Spires, Timothy Spires and Mitch Smith entered affidavits into the record after the foreclosure sale. These affidavits, like those in *Robinson*, allege improper service. However, because these affidavits were not matters of record at the time of the foreclosure sale, they cannot be used to deny that First Citizens its status as a bonafide purchaser. Under the authority of §15-39-870, this Court must affirm the Master in Equity and uphold the judicial sale.

II. THE MASTER IN EQUITY DID NOT ABUSE HIS DISCRETION IN CONCLUDING THAT THE COURT HAD PERSONAL JURISDICTION OVER JUSTIN K. SPIRES AND TIMOTHY J. SPIRES.

A court obtains personal jurisdiction over an individual defendant by service of the summons pursuant to SCRPC Rule 4(d)(1), which states:

(d)(1) Individuals. Upon an individual other than a minor under the

age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process.

In obtaining service of process, the process server for First Citizens attempted to serve Justin Spires at his residence, which was also the mortgaged property. Affidavit of Justin K. Spires ¶1. The process server, however, obtained substituted service on both Justin Spires and Timothy Spires by serving Mitch Smith who informed the process server that Justin Spires, Timothy Spires, and Mitch Smith were co-residents at their residence and that he, Mitch Smith, was of suitable age and discretion. Affidavit of Service on Justin K. Spires p.1; Affidavit of Service on Timothy J. Spires, Sr. p.1. The process server provided First Citizens with two sworn Affidavits of Service that established proper service of process had been accomplished pursuant to Rule 4(d)(1).

After the foreclosure sale was completed, Justin Spires, Timothy Spires and Mitch Smith provided affidavits which contradicted the Affidavits of Service provided by the process server. The Affidavits of Justin Spires, Timothy Spires, and Mitch Smith stated that Timothy Spires and Mitch Smith did not reside at the mortgaged property. Affidavit of Justin K. Spires ¶1-5; Affidavit of Timothy J. Spires, Sr ¶1-2; Affidavit of Mitch Smith ¶1-5. The Master in Equity was therefore confronted with competing and conflicting affidavits. In rejecting the Appellants affidavits, the Master in Equity was guided by established precedents, holding,

"[A]n [officer's] return of process creates the legal presumption of proper service that cannot be 'impeached by the mere denial of service by the defendant.'" *Fassett v. Evans*, 364 S.C. 42, 47, 610 S.E.2d 841, 844 (Ct. App. 2005). Where a court is faced with conflicting affidavits, one by a "by no means disinterested party", and one which is "an affidavit of service, regular in all respects, by one not a party to the cause," that court's determination that service was proper is "not without evidentiary support." *Singleton v. Mullins Lumber Co.*, 234 S.C. 330, 343-44, 108 S.E.2d 414, 420 (1959).

Here, the Master in Equity exercised his discretion and accepted that the sworn Affidavits of Service established proper service. Then, when Appellants and Mitch Smith, who are "by no means disinterested", offered affidavits that conflicted the Affidavits of Service, the Master in Equity exercised his discretion and determined that the affidavits of Appellants and Mitch Smith did not overcome the sworn Affidavits of Service which were "regular in all respects, by one not a party to the cause." As in *Singleton*, the Master in Equity's exercise of discretion was "not without evidentiary support" and must be affirmed.

In the present case, the Master in Equity was confronted with the affidavits of the Appellants contesting the jurisdiction of the court. The affidavits of the Appellants directly

contradicted the affidavit of the process server. In exercising his discretion as to which affidavits were to be relied upon, the Master in Equity was aware of certain undisputed facts: the Summons and Complaint were allegedly served on the Appellants on October 12, 2019, a notice of the foreclosure hearing was mailed to the defendants on January 21, 2020; the Order of Foreclosure was served on the Appellants by the Court on February 18, 2020; the notice of sale was published in the newspaper on March 20, 2020 March 27, 2020 and April 3, 2020; the foreclosing law firm served a copy of the order of foreclosure on the defendants on June 19, 2020; the Appellant Justin Spires spoke with the bank and learned of the foreclosure on July 3, 2020; the Appellant Justin Spires, by his own admission, filed bankruptcy to prevent the foreclosure sale on July 6, 2020; the Notice of Sale was republished in the newspaper on November 20, 2020, November 27, 2020, and December 4, 2020; a letter to Appellants instructing them to vacate the property was sent on January 25, 2021; the writ of assistance was served by the Sheriff on March 19, 2021 after which the Motion to Vacate was filed on May 17, 2021. Order I p.3. Despite all such notice, Appellants failed to take any action until more than three months after the foreclosure sale when presented with a Writ of Assistance, ejecting them from the property. Faced with this extraordinarily dilatory behavior and considering the fact that the affidavit of service was submitted by a neutral nonparty, the Master in Equity properly exercised his discretion to reject the affidavits of Appellants. This exercise of discretion comports with the case law that recognizes the Master in Equity's superior position to determine credibility and two-way the conflicting affidavits. The Master in Equity's exercise of discretion is therefore supported by the preponderance of evidence.

Appellants assertion that the present case is similar to *BB&T v. Taylor* is misguided. The facts of *BB&T* are easily distinguished from the facts here. In *BB&T*, the process server, after 9 attempts to serve the appellants, merely left the documents at the front door of the appellants home, relying on an unconfirmed assumption that the appellants were inside. *BB & T*, 369 S.C. at 550. The *BB&T* process server's sworn affidavit stated as such. *Id.* at 552. In that case, the lower court's finding that service of process was proper was a clear abuse of discretion because leaving documents at the door is wholly improper under Rule 4(d)(1), and the facts left the lower court with no evidentiary or legal basis for its finding. In contrast, here the disinterested process server's sworn Affidavits of Service demonstrate substitute service that is clearly proper under Rule 4(d)(1). Unlike the lower court in *BB&T*, the Master in Equity here had sworn Affidavits of Service providing evidentiary support for his correct interpretation of Rule 4(d)(1). The Master in Equity had to weigh the Affidavits of Service against the affidavits of the Appellants which contradicted the Affidavits of Service.

Crucially, in *BB&T*, the Court did not need to concern itself with the lower court's superior position to determine credibility because service was improper on its face. In contrast, here, the Master in Equity's superior position to determine credibility is highly relevant due to the factual dispute in the conflicting affidavits. Situated in his superior position to determine credibility, the Master in Equity exercised his discretion as to the conflicting affidavits and relied on the Affidavits of Service. Because the Master in

Equity's decision had evidentiary support and correctly applied Rule 4(d)(1), reversing his decision would undermine lower courts' superior position to determine credibility, especially where those lower courts are presented conflicting affidavits.

Because the Master in Equity correctly applied Rule 4(d)(1) and the Affidavits of Service provided evidentiary support for his conclusions, the Court must defer to his superior position to determine credibility and find that he did not abuse his discretion in finding that service was proper. *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242 399 S.E.2d 779, 782 (1990); *Crossland v. Crossland*, 408 S.C. 443, 452, 759 S.E.2d 419, 423-24 (2014); *Singleton*, 234 S.C. at 343-44.

III. BECAUSE APPELLANTS CANNOT SHOW SUFFICIENT CAUSE FOR RELIEF UNDER RULE 60(b), THE MASTER IN EQUITY DID NOT ABUSE HIS DISCRETION IN DENYING THEIR MOTION FOR RELIEF.

The Master in Equity, having exercised his discretion to reject the Affidavits of Appellants and rely on the sworn Affidavits of Service, then focused on whether Appellants could show sufficient cause for relief from default under Rule 60(b), SCRCP. The Master in Equity concluded that Appellants could not show sufficient cause for relief from default.

Under Rule 60(b), SCRCP, "the court may relieve a party . . . from a final judgment, order or proceeding" for certain reasons, including mistake, fraud, and misconduct. "In determining whether to grant a motion under Rule 60(b), the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." *Micronics v. South Carolina Dep't of Rev.*, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001).

Here, the Master in Equity addressed the four *Micronics* considerations and found Appellants could not establish sufficient cause for relief from default. Order I p.2-4. The record provides substantial evidentiary support for the Master in Equity's findings. The Master in Equity's decision was not controlled by an error in law or based on factual conclusions that are without evidentiary support.

First, Justin Spires and Timothy Spires did not act promptly to seek relief. Although Justin Spires and Timothy Spires dispute that they ever received service, they were subject to at least eleven notices of the foreclosure. Order I p. 3. As cited in the Master in Equity's Order denying the Motion for Relief, Justin Spires also filed for bankruptcy the day before the foreclosure sale was set to take place in an effort to stop the foreclosure sale. Order I p. 3. Justin Spires filed for bankruptcy and supplied First Citizens' attorneys with the Notice of Bankruptcy on July 6, 2020. Order I p.3. Still, Appellants waited until May 17, 2021 to move for relief; Appellants waited fifteen months from the initial judgment of Foreclosure

and Sale, and five months from the foreclosure sale, before filing the Motion for Relief. Order I p.3. Therefore, the Master in Equity did not abuse his discretion in finding that Justin Spires and Timothy Spires did not act promptly to seek relief.

Second, Appellants failed to provide sufficient reasons for their failure to act promptly. The Master in Equity found that the eleven notices, Justin Spires filing of bankruptcy the day before the foreclosure sale, and a phone call between First Citizens and Justin Spires the day before the sale established that Appellants had personal knowledge that the foreclosure action was ongoing. Order I p.3. Appellants argument that their failure to act was a result of not receiving proper service cannot excuse the Appellants failure to act when they received at least eleven notices of the foreclosure sale and took deliberate action to avoid the sale through bankruptcy. Therefore, the Master in Equity did not abuse his discretion in finding that Justin Spires and Timothy Spires did not have sufficient reasons for their failure to act promptly to seek relief.

Third, Appellants cannot show a meritorious defense to the foreclosure action. The Master in Equity found that, under the contract and South Carolina law, First Citizens is entitled to foreclose in an event of default. Order I p.3. Appellants were in default by failing to make payments when due. Order I p.3. Therefore, the only defense Appellants could assert is that they made the payments required under the contract and First Citizens' account is in error. Order I p.4. Appellants did not, have not and cannot establish this. Order I p.4. Therefore, the Master in Equity did not abuse his discretion in finding that Justin Spires and Timothy Spires failed to establish a meritorious defense.

Finally, the relief sought would prejudice First Citizens. The Master in Equity found that, at the time of the first Order of Foreclosure and Sale, Appellants were eleven months in default and had not made payment since February 2019. Order I p.4. Additionally, the property was sold and, as real property, is subject to depreciation. Order I p.4. Therefore, the Master did not abuse his discretion in finding that First Citizens would be prejudiced if the Master in Equity granted relief from default.

Because the Master in Equity did not make an error of law or rely on factual conclusions without evidentiary support in denying Appellants' Motion for Relief, this Court must defer to the Master in Equity's discretion.

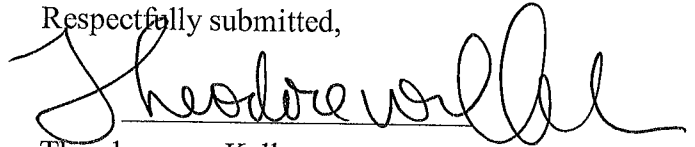
CONCLUSION

First Citizens is a bonafide purchaser entitled to protection under S.C. Code §15-39-870. Therefore, Appellants suit is barred by *res judicata* and the Master in Equity's decision must be affirmed. In the alternative, the Master in Equity's exercise of discretion was substantially supported by facts in the record and did not rely on errors in law. The Master in Equity's superior position to determine credibility is particularly relevant in this case, which relied upon a determination between conflicting affidavits. Further, Appellants

cannot show that the Master in Equity's decision was made against a preponderance of the evidence. Therefore, the Master in Equity did not abuse his discretion and this Court must affirm the judgment of the Master in Equity.

November 29, 2022

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Theodore von Keller', written over a horizontal line.

Theodore von Keller

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RECEIVED

Nov 29 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM RICHLAND COUNTY
Master-in Equity

Joseph M. Strickland, Master in Equity

Appellate Case No. 2021-001219

First Citizens Bank and Trust
Company, Inc.,

Respondent,

v.

Justin K. Spires, Timothy J.
Spires, Sr., South Carolina
Department of Probation,
Parole and Pardon Services
and Warren B. Giese as
Solicitor,

Of who, Justin K. Spires and
Timothy J. Spires, Sr. are the

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR. December 3, 2019.

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