RECEIVED
Mar 13 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2022-001478

Sterling Hills Homeowners Association and Loyal Cliff, LLC, ... Respondents,

v.

Vickey Coleman and Oliver Coleman III, ... Appellants.

INITIAL BRIEF OF APPELLANTS

Andrew S. Radeker
S.C. Bar No. 73743
Harrison, Radeker, & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
and
Dwight C. Moore
S.C. Bar No. 63008
Moore Law Firm, L.L.C.
Post Office Box 1229
Sumter, South Carolina
(803) 778-6520
moorelawfirm@ftc-i.net
Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

STATEMENT OF ISSUES

I. Did the master-in-equity err reversibly in his decision to deny Appellants' motion to set aside the judgment of foreclosure and sale?

II. Did the master-in-equity lack subject matter jurisdiction to render the foreclosure judgment?

STATEMENT OF THE CASE

This is an appeal of an order that denied Appellants Vickey Coleman (hereinafter "Coleman") and Oliver Coleman's motion to set aside a judgment in a homeowners' association lien foreclosure action. (R. pp. ____; order denying motion to set aside).

Appellants own, but do not live at, the property subject of this case. (R. pp. ____; affidavits of service & non-service; affidavit of Coleman.) Respondent Sterling Hills Homeowners' Association, Inc. (hereinafter "the HOA") filed this action claiming a lien on the subject property and seeking foreclosure of that lien. (R. pp. ____; summons and complaint.) The HOA claimed in its complaint to have a lien composed of "the sum of $1,120.00 in assessments, late fees, interest and other allowable charges." (R. pp. ____; complaint p. 2.) The HOA made numerous attempts to serve Appellants with the summons and complaint, mostly sending a process server to places where they did not live. (R. pp. ____; affidavits of non-service of summons and complaint.) The HOA eventually served Coleman with the summons and complaint at her address in Texas, by certified mail. (R. pp. ____; motion to set aside judgment; affidavit of Coleman.) No proof of this service on Coleman was ever filed (other than in filings made by Coleman after the foreclosure sale in which she states that she was served and how that happened). (R. pp. ____; motion to set aside judgment; affidavit of Coleman.)

Coleman served an answer to the complaint. (R. pp. ____; motion to set aside judgment; affidavit of Coleman.) She denied owing the HOA any money and stated that the HOA had been paid the dues she had owed it. (R. pp. ____; motion to set aside

judgment; affidavit of Coleman.) An attorney at the firm representing the HOA wrote back to Coleman, acknowledging receipt of her answer. (R. pp. ____; motion to set aside judgment; affidavit of Coleman.) Coleman's answer was not filed with the court.

The case was referred to the master-in-equity. (R. pp. ____; order of reference.) The record indicates the HOA's counsel mailed a copy of the proposed order of reference to Coleman. (R. pp. ____; certificate of service of proposed order of reference, etc.) The record does not indicate that a copy of the filed order of reference was ever provided to Appellants.

A foreclosure hearing was held on April 25, 2022. (R. pp. ____; judgment of foreclosure; record of hearing; notice of hearing for 4/25/2022.) Appellants did not attend the hearing. (R. pp. ____; judgment of foreclosure; record of hearing.) A notice of hearing indicating it was mailed to Coleman is in the file, but Coleman later advised that she had never received any notice of the trial. (R. pp. ____; motion to set aside judgment; affidavit of Coleman; notice of hearing for 4/25/2022.)

The master issued a judgment in favor of the HOA, finding that the HOA was entitled to foreclosure of a lien composed of the following amounts:

(a) Assessments	$560.00
(b) Interest from July 9, 2018 through April 18, 2022 at 16% per annum	$0.00
(c) Fines	$1,235.00
(d) Late Fees	$625.00
(e) Previous Legal Fees	$0.00
(d) Costs of collection prior to hearing (service, filing, etc.)	$974.66
(e) Attorney's fee	$2,075.00
(f) Payments	($140.00)
(g) Adjustments	($75.00)
+	
TOTAL debt secured by the Declaration, including interest to date shown	$5,254.66

(R. pp. ____; judgment of foreclosure.)

Nothing in the record indicates that either the proposed order of judgment or the filed order of judgment was ever provided to Appellants.

A foreclosure sale was held, at which Lacey Thompson was the successful bidder. (R. pp. ____; report on sale.) Ms. Thompson assigned her bid to Respondent Loyal Cliff, LLC (hereinafter "Loyal Cliff"). (R. pp. ____; assignment of bid.)

Appellants filed and served a motion to set aside the judgment and sale. (R. pp. ____; motion to set aside judgment.) The thrust of the motion was that Coleman had not been provided with notice of the foreclosure hearing and was treated as though she had been in default despite her answer. (R. pp. ____; motion to set aside judgment.) The master heard the motion, but no court reporter was present to transcribe the hearing. (R. pp. ____; order denying motion to set aside judgment; email noting no court reporter.)

The master issued an order denying the motion. (R. pp. ____; order denying motion to set aside judgment.) The master's order contains the following statement: "At the motion hearing, Plaintiff's Counsel provided Defendant's Counsel with a copy of the Notice of Hearing mailed to Vickey Coleman along with the certificate of mailing electronically filed on February 22, 2022." (R. pp. ____; order denying motion to set aside judgment p. 2.) That statement is immediately followed by a sentence setting out the master's decision: "Based on the aforementioned, I conclude that Defendant Vickey Coleman's Motion to Set Aside the Judgment of Foreclosure and Sale is hereby DENIED." (R. pp. ____; order denying motion to set aside judgment p.

2.) The order contains no analysis of whether Coleman received notice of the foreclosure hearing. (R. pp. ____; order denying motion to set aside judgment.)

This appeal followed.

STATEMENT OF FACTS

The HOA obtained a judgment against Appellants for foreclosure of a lien, despite the HOA not being owed any sums for which it had a lien. (R. pp. ____; judgment of foreclosure; covenant excerpts.) The record contains nothing about the basis for any fines by the HOA against the Appellants, and the covenant excerpts provided to the master contain nothing indicating that the HOA can fine members or that fines may constitute a lien on property. (R. pp. ___; record of hearing & foreclosure hearing exhibits; covenant excerpts; summons and complaint.) Despite this, the master issued a judgment for the foreclosure of a lien comprised almost completely of fines, attorneys' fees, and other costs of collection. (R. pp. ____; judgment of foreclosure.)

Coleman did not attend the foreclosure hearing because she did not know about it. (R. pp. ____; motion to set aside judgment; affidavit of Coleman.) She did not receive any notice of it. (R. pp. ____; motion to set aside judgment; affidavit of Coleman.)

STANDARD OF REVIEW

The denial of a motion for relief from a judgment will be reversed where the lower court has abused its discretion in denying the motion. Tri-County Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779 (1991). "An abuse of discretion

arises where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support." Id.

Whether an order is void is a question of law. See Chew v. Newsom Chevrolet Inc., 315 S.C. 102, 103, 431 S.E.2d 631 (Ct. App. 1993) ("question of subject matter jurisdiction is a question of law for the court"). The appellate court reviews all questions of law *de novo*. Transportation Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010); Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010).

ARGUMENT

I. The master-in-equity never made any determination of whether Coleman received notice of the foreclosure hearing.

The master failed to conduct the inquiry required by precedent when Appellants raised the issue of whether Coleman received notice of the foreclosure hearing (i.e., the trial). The master did not conduct an inquiry into whether Coleman received the notice. The failure to do was error by the master that requires reversal and remand.

No government action may "deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. Amdt. XIV, § 1. When an order is rendered without due process of law, that order is void. Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659 (Ct. App. 2002). "Although the order may be appropriate," i.e., the decision reached in the order may be otherwise legally correct, "it is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are affected." Tryon Fed. Sav. & Loan Assn. v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992). "If

the judgment or order is taken without notice, the absent party may rightly ignore it and assume that no court will enforce it against his person." Id.

"[D]ue process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property." LaSalle Bank Nat'l. Ass'n. v. Davidson, 386 S.C. 276, 279, 688 S.E.2d 121, 122-23 (2009) (quoting State v. Brown, 178 S.C. 294, 300, 182 S.E. 838, 841 (1935)); accord Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review").

> For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." Baldwin v. Hale, 1 Wall. 223, 233, 17 L.Ed. 531; see Windsor v. McVeigh, 93 U.S. 274, 23 L.Ed. 914; Hovey v. Elliott, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215; Grannis v. Oredean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62.

Fuentes v. Shevin, 407 U.S. 67, 80, 92 S. Ct. 1983, 1994, 32 L. Ed. 2d 556 (1972).

In Mullane v. Central Hanover Bank & Trust, the Supreme Court of the United States noted of "the cryptic and abstract words of the Due Process Clause" that "there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." 339 U.S. 306, 314 (1950).

The inquiry required here under South Carolina Supreme Court precedent is whether the party actually received the notice. In the Tryon Federal Savings and Loan decision, our state Supreme Court noted that it had held in Sijon v. Green that "where a party litigant denies receiving notice of a hearing with finality," – in that case, a foreclosure hearing – "and the judgment roll or record does not reflect evidence of such notice, that party is entitled to a judicial determination as to whether or not they received proper notice." Tryon Fed. Sav., 307 S.C. at 362-63 (citing Sijon v. Green, 289 S.C. 126, 345 S.E.2d 246 (1986)).

In pertinent part, the Sijon decision reads as follows:

> On November 14, 1978, Green appeared in Greenville County Magistrate's Court pursuant to a summons for debt filed by Sijon. Neither the plaintiff, Sijon, nor the Magistrate was present. Green requested that the Magistrate's secretary reschedule a hearing.
>
> On August 7, 1979, a rescheduled hearing was held. Sijon appeared and presented his evidence. Green did not attend. Judgments totalling $1,175 were entered against him in his absence.
>
> Green alleges that he received no notice of the August 7, 1979, trial date and that he was unaware of the judgments until 1984. He brings this action in Circuit Court for vacation of the judgments and a new trial.
>
> Sijon concedes that the judgment roll contains no evidence of notice to Green of the August 7 trial.
>
> . . .
>
> The Circuit Judge held that Green was entitled to notice of the August 7, 1979, trial date. We agree. He held, further, that absence of such notice from the judgment roll required, as a matter of law, vacation of the judgments and a new trial. We disagree.

> We hold that where a judgment roll does not contain evidence that a party-litigant received notice of the hearing or trial and a judgment is rendered, the absent party, upon motion, is entitled to a judicial determination of whether he received proper notice. If it be determined that the party received such notice, the judgment remains; if not, the absent party is entitled to a new trial.

Sijon, 289 S.C. at 127-28. In both Sijon and Tryon Federal Savings and Loan, the Court remanded the case for proceedings to determine whether the required notice had been received. Tryon Fed. Sav., 307 S.C. at 363; Sijon, 289 S.C. at 128.

The master made no assessment of whether Coleman received notice of the foreclosure hearing. (R. pp. ___; order denying motion to set aside judgment.) Instead, the master's entire inquiry began and ended with whether the HOA's counsel mailed a notice of the foreclosure hearing to Coleman – not whether Coleman received the notice. (R. pp. ___; order denying motion to set aside judgment p. 2.)

That is an abuse of discretion. Our state's Supreme Court recently "clarif[ied] that no court is entitled to the deference associated with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law." Morris v. BB&T Corp., Op. No. 28131 (S.C. Sup. Ct. filed Jan. 25, 2023) (Howard Adv. Sh. No. 4 at 11, 13).

> The exercise of discretion is not to simply make a decision. The *exercise* of discretion requires first that the trial court recognize it has the responsibility of discretion. The exercise of discretion is then to follow a thought process that begins with the trial court's clear understanding of the applicable law, continues with the court's sound analysis of the situation before it in light of the law, and ends with the trial court's ruling that follows the law and is supported by the facts and circumstances. The trial court's recognition of its responsibility to exercise discretion will be apparent when the record indicates the court followed such a

> thought process. Thus, when a trial court's - or the [Workers' Compensation] commission's - thought process of applying sound principles of law to the court's view of the facts and circumstances is evident in the record of proceedings in a hearing, in a written order, or otherwise, the appellate court will defer to the trial court's exercise of discretion, even when the judges on the appellate court might have made the decision differently.

Morris, (Howard Adv. Sh. No. 4 at 14-15) (emphasis in original, citations and citation-related parentheticals omitted).

Here, the record shows that the master did not exercise discretion according to law. (R. pp. ___; order denying motion to set aside judgment.) The master did not "follow a thought process that begins with the trial court's clear understanding of the applicable law[]." Morris, (Howard Adv. Sh. No. 4 at 14). That he did not follow such a process is demonstrated by the lack of any inquiry into whether Coleman received note of the foreclosure trial. Tryon Fed. Sav., 307 S.C. at 362-63; Sijon, 289 S.C. at 127-28; (R. pp. ___; order denying motion to set aside judgment). Having failed to begin an analytical process grounded in a clear understanding of the law, the master could not "continue[] with [a] sound analysis of the situation before [him] in light of the law[.]" Morris, (Howard Adv. Sh. No. 4 at 14). The master's order reveals he did not conduct such an analysis. (R. pp. ___; order denying motion to set aside judgment.) Having failed to engage in these preliminary steps, the master unsurprisingly did not then engage in a decision-making process that "end[ed] with the trial court's ruling that follows the law and is supported by the facts and circumstances." Morris, (Howard Adv. Sh. No. 4 at 14). What analysis the master did engage in did not take into account the relevant law. Tryon Fed. Sav., 307 S.C. at 362-63; Sijon, 289 S.C. at 127-28. It

did not attempt to determine whether Coleman received the notice. (R. pp. ___; order denying motion to set aside judgment.)

If the master had exercised discretion and followed the required process to do so, Morris, (Howard Adv. Sh. No. 4 at 14-15), recognizing and implementing the correct analysis under the law, on this record he would have had to conclude that Coleman did not receive notice of the foreclosure hearing. The only evidence in the record about whether Coleman received notice of the foreclosure trial was that she did not. (R. pp. ____; motion to set aside judgment; affidavit of Coleman.) Under Sijon and Tryon Federal Savings and Loan, she was entitled to a determination of whether she *received* notice of the hearing, not just whether it was sent to her. Tryon Fed. Sav., 307 S.C. at 362-63; Sijon, 289 S.C. at 127-28. The only conclusion to be drawn from the record is that she did not receive it. (R. pp. ____; motion to set aside judgment; affidavit of Coleman.)

Coleman is entitled to this court's reversal of the master's order and remand of this case for proceedings to determine whether Coleman received it. Tryon Fed. Sav., 307 S.C. at 362-63; Sijon, 289 S.C. at 127-28.

II. The record indicates the master lacked subject matter jurisdiction.

The record also reveals that notice that the case had been referred was never provided to Coleman. There is nothing in the record that indicates that the filed order of reference was ever provided to her, and the only thing in the record about whether she ever received notice of the reference to the master are Coleman's statements that she did not. (R. pp. ____; motion to set aside judgment; affidavit of Coleman.)

This reveals a lack of subject matter jurisdiction. "A master's authority to determine issues referred to him by the circuit court is a question of subject matter jurisdiction[.]" Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 74-75, 773 S.E.2d 607, 616 (Ct. App. 2015); accord Bunkum v. Manor Properties, 321 S.C. 95, 99, 467 S.E.2d 758, 761 (Ct. App. 1995) (question concerning scope of master's authority under order of reference was "issue[] relating to subject matter jurisdiction"); Bonney v. Granger, 292 S.C. 308, 322, 356 S.E.2d 138, 147 (Ct. App. 1987) ("[b]y consenting to an order of reference without limitation, [the appellant] submitted to the master's subject matter jurisdiction to the same extent as if the matter were before the circuit court").

"When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers." Deep Keel, 413 S.C. at 75 (quoting Smith Cos. of Greenville, Inc. v. Hayes, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993)). "Once an action is referred, the master possesses all power and authority that a circuit judge sitting without a jury would have in a similar matter." Normandy Corp. v. S.C. Dept. of Transp., 386 S.C. 393, 688 S.E.2d 136, 142 (Ct. App. 2009).

For a case to be referred to a master-in-equity, the order of reference must be valid, and that requires notice of the order of reference to be provided to all parties who have appeared in the case. See Tryon Fed. Sav., 307 S.C. at 362-63. "If the judgment or order is taken without notice, the absent party may rightly ignore it and assume that no court will enforce it against his person[,]" because it is then void. Id.; accord Universal Benefits, 349 S.C. at 183. If an order is void, relief from it must be granted;

the order is a nullity, and there is no need for further analysis. See BB&T v. Taylor, 369 S.C. 548, 552 n. 1, 633 S.E.2d 501, 503 n. 1 (2006).

This case has some similarity to Tryon Federal Savings and Loan, in which the sole issue was whether the *pro se* defendants consented to or were notified of the case's reference to the master-in-equity. 307 S.C. at 361-63. The record did not indicate that the order of reference was ever provided to the appellants, so, citing Sijon, the Supreme Court applied the same analysis as when notice of trial is at issue and remanded the case "for a hearing to determine whether or not appellants consented to and received notice of the order of reference authorizing the master to enter final judgment in these proceedings." Tryon Fed. Sav., 307 S.C. at 362-63 (citing Sijon, 289 S.C. at 127-28).

As the record contains no indication that notice of the order of reference's entry was provided to Coleman, she is entitled to a reversal and remand, as in Tryon Federal Savings and Loan, for proceedings to determine whether she "received notice of the order of reference[.]" Id. at 363.

III. These are not mere technicalities. Coleman has a defense to the underlying case, and the way the master decided the case reveals that he was indeed treating Coleman like she was in default.

When a judgment is void, relief from it is mandated, without regard to whether the movant for relief from the judgment has a meritorious defense. See BB&T, 369 S.C. at 552 n. 1. That said, Appellants have a meritorious defense to the HOA's claim.

To show a meritorious defense, one does not need to show entitlement to certain victory; rather, the appropriate question is whether the defense "is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful

evidence." Mictronics, Inc. v. S.C. Dept. of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223 (Ct. App. 2001) (quoting Graham v. Town of Loris, 272 S.C. 442, 453, 248 S.E.2d 594 (1978)). Appellants have this. Indeed, one wonders how the master came to the conclusions he did in the order of judgment of foreclosure. (R. pp. ___; judgment of foreclosure and sale.)

The master's judgment orders foreclosure of a lien mostly composed of collection costs and fines. (R. pp. ___; judgment of foreclosure and sale.) Nothing was ever presented to the lower court to the effect that the HOA has any contractual or other right to levy fines. The HOA provided the master with excerpts of the covenants involved here, but they do not state that the HOA has any authority to levy fines at all, much less that fines levied by the HOA constitute a lien on a homeowner's property. (R. pp. ___; covenants excerpts.)

Real property covenants are contracts. Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987); Kinard v. Richardson, 407 S.C. 247, 754 S.E.2d 888, 893 (Ct. App. 2014); Queen's Grant II Horizontal Property Regime v. Greenwood Dev. Corp., 368 S.C. 342, 628 S.E.2d 902, 913 (Ct. App. 2006); Houck v. Rivers, 316 S.C. 414, 418, 450 S.E.2d 106, 109 (Ct. App. 1994). A claim that a party has violated such a covenant is a claim that the party has breached the contract embodied in the covenants. See Kinard, 754 S.E.2d at 893; Queen's Grant, 628 S.E.2d at 913.

Here, the contract does not provide for the levying of fines, much less that the failure to pay them will make them constitute a lien on property. (R. pp. ___; covenants excerpts.) Coleman's affidavit and answer make out a defense of her having paid the

assessments (which could, if unpaid, comprise a lien). See First Service Corp. of S.C. v. Cape, 299 S.C. 147, 150, 382 S.E.2d 919 (1989) (payment defense).

Further, the fact that the master's judgment of foreclosure contains no analysis of whether fines are validly a part of any lien in favor of the HOA is telling. (R. pp. ___; judgment of foreclosure and sale.) The master ruled that he did not treat Coleman as being in default, but he conducted the trial proceedings as though she was, treating liability as established and simply receiving an affidavit that claimed fines as part of the lien the HOA claimed. (R. pp. ___; order denying motion to set aside; judgment of foreclosure and sale; record of hearing; affidavit of debt.) "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Roche v. Young Bros., Inc. of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998). Indeed, in every way, the proceedings that produced the foreclosure judgment seem to have been conducted as though Coleman were in default. (R. pp. ___; judgment of foreclosure and sale; record of hearing; affidavit of debt; email from court reporter that nothing transcribed.)

The master granted foreclosure of a lien for fines, but the record is devoid of any evidence that the HOA can fine its members or have a lien for the unpaid fines if it does. (R. pp. ____; covenants excerpts.) That is a meritorious defense. First Service Corp., 299 S.C. at 150; Mictronics, 345 S.C. at 511.

IV. Loyal Cliff cannot claim to have acquired this property despite the judgment being void.

In a situation such as this one, the successful bidder at a foreclosure sale is likely to claim bona fide purchaser status under S.C. Code Ann. § 15-39-870, which provides as follows:

> 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 that 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.

Id.

The problem Loyal Cliff will have with such an argument is that, on the record here, it cannot establish that it held bona fide purchaser status at any time. This court, analyzing S.C. Code Ann. § 15-39-870, has held as follows:

> To claim the status of a bona fide purchaser, a party must show (1) actual payment of the purchase price of the property, (2) acquisition of legal title to the property, or the best right to it, and (3) a bona fide purchase, "*i.e.*, in good faith and with integrity of dealing, without notice of a lien or defect." Spence v. Spence, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006). In addition, "[t]he bona fide purchaser must show all three conditions—actual payment, acquiring of legal title, and bona fide purchase—occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property." Id., 628 S.E.2d at 875.

Robinson v. Estate of Harris, 378 S.C. 140, 662 S.E.2d 420, 423 (Ct. App. 2008).

In Robinson, the presence of affidavits of service in the file were of great importance to the determination that the successful bidder at a foreclosure sale was a bona fide purchaser entitled to statutory protection. Id. In the instant case, however, at the time of the foreclosure sale and when Loyal Cliff complied with its bid, the record did not contain any indication that Coleman had ever been served at all, just numerous affidavits of non-service. (R. pp. ___; affidavits of non-service; report on sale.) Loyal

Cliff *was* on notice of a defect in the proceedings. (R. pp. ___; affidavits of non-service; report on sale.)

CONCLUSION

The master erred in his decision to deny the motion to set aside the judgment and sale. He did not exercise discretion, and his decision is controlled by an error or law. Morris, (Howard Adv. Sh. No. 4 at 14-15); Tri-County Ice & Fuel, 303 S.C. at 242. This court should reverse and remand.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Harrison, Radeker, & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
and
Dwight C. Moore
S.C. Bar No. 63008
Moore Law Firm, L.L.C.
Post Office Box 1229
Sumter, South Carolina
(803) 778-6520
moorelawfirm@ftc-i.net
Attorneys for Appellants

March 13, 2023

RECEIVED
Mar 13 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2022-001478

Sterling Hills Homeowners Association and Loyal Cliff, LLC, ... Respondents,

v.

Vickey Coleman and Oliver Coleman III, ... Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing brief on the date given below by emailing it to opposing counsel at the addresses noted below.

Dean A. Hayes, Esq., at dean.hayes@mccabetrotter.com
Stephanie Trotter Kellahan, Esq., at stephanie.kellahan@mccabetrotter.com
Ashley N. Green, Esq., at ashley.green@mccabetrotter.com
Leonard R. Jordan, Jr., Esq., at ljordan@ljordanlaw.com

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Harrison, Radeker, & Smith, P.A.
Attorney for Appellants

March 13, 2023