

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	C.A. No. 2018-CP-23-03124
)	
Clear Skies Restoration, LLC,)	
)	
Plaintiffs,)	
)	ORDER AND JUDGMENT
v.)	
)	
Ivan Martinez and Paula A. Martinez,)	
)	
Defendants;)	
)	
Oriole Properties, LLC and Rallis Holdings)	
LLC,)	
)	
Intervenors and Third Party Purchasers,)	
_____)	

This matter came before the Court on remand from the South Carolina Court of Appeals’ decision, which was filed January 11, 2023. Following the appellate court’s decision, the Court held an evidentiary hearing on February 28, 2023. Counsel for all parties were present at the hearing. Several witnesses testified, and the parties submitted numerous exhibits into evidence. The Court has reviewed these matters, and considered the arguments of counsel; and it is now ready to issue its decision.

FINDINGS OF FACTS AND PROCEDURAL HISTORY

The property at issue in this matter (2 Landstone Court, Greer, South Carolina) (hereinafter the “Property”) was sold at public sale pursuant to a previous Order For Judgment and Decree of Foreclosure, which was issued by this Court on May 8, 2019. Pursuant to the terms and conditions of that Order, the Property was advertised for sale at auction, and was thereafter sold at an auction on June 3, 2019.

The Court's Order for Judgment and Decree of Foreclosure provided that the Property would be sold for the purpose of satisfying the debt owed to the Plaintiff (due to its mechanic's lien) in the amount of \$12,020.48. The Order further provided that Plaintiff's mechanic's lien is junior to two (2) mortgage liens: a) a mortgage to Wells Fargo dated April 6, 2011 in the original amount of \$50,000; and b) a mortgage to Sun Trust Bank dated November 25, 2014 in the original amount of \$25,000. See, Order, p. 2. The Order further provided that following the sale, the proceeds would be applied as follows:

The Master-in-Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the Mortgage liens;

NEXT: To the payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus shall be held pending further Order of this Court.

(See, Order p. 4-5)(emphasis added).

The transcript of record from the foreclosure hearing evidences a discussion between this Court and Plaintiff's attorney regarding questions surrounding the payoffs of the two senior mortgage liens. The Plaintiff, by and through its attorney who attended the foreclosure hearing, has asserted that the discussions that occurred on the record and off the record at the foreclosure hearing centered around the amount of senior lien debt to which the purchaser would be taking the property subject.

After the foreclosure hearing and the Order being filed, the notice of sale was prepared by Plaintiff's attorney and then published in *The Greenville News* ("Notice of Sale"). In the Notice of Sale, it states, in pertinent part:

"This property will be **sold subject to** the following mortgage(s)/senior encumbrances: Mortgage to Wells Fargo Bank, N.A. dated April 6, 2011 filed in the Greenville County Register of Deeds Office on May 4, 2011 in Book MO 5117 at Page 5827; and Mortgage to SunTrust Bank dated November 25, 2014 filed in the Greenville County Register of Deeds Office on December 19, 2014 in Book MO 5278 at Page 3522."

(*See Notice of Sale*)(emphasis added).

The foreclosure sale took place on June 3, 2019. Attorney Anna Bullington attended the sale on behalf of Plaintiff. Attorney Bullington has testified that after the auction for the sale of the subject property had begun, and after the auction had elicited bids on the purchase of the property but before the final bids were made, the undersigned Judge reminded the bidders that the Notice of Sale stated the sale was subject to two senior mortgage liens. Plaintiff's total debt was \$12,020.45. At the sale, Plaintiff bid as high as \$80,000.00.

The property was sold at auction for \$120,100.00 to Rallis Holdings, LLC, of whom Ron Rallis is the sole member who attended the sale and placed the high bid. In the afternoon shortly after the sale, Ron Rallis contacted Attorney Bullington with questions regarding whether the sale was subject to the senior mortgages. Clay Custer of Oriole Properties, LLC also attended the sale. Mr. Custer has testified that he met with Ron Rallis shortly after the sale where Rallis further questioned Custer as to whether the sale was subject to the senior mortgages. Custer and Rallis agreed at that meeting for Rallis to assign one-half of Rallis Holdings, LLC's interest in the bid to Oriole Properties, LLC.

Fran Powell, a closing paralegal for the law firm of Guest & Brady, LLC also testified. She testified that Rallis hired Guest & Brady, LLC to handle the title work and property acquisition on

behalf of Rallis. Mrs. Powell testified that she discussed the sale with Rallis on the same day of the sale whereby Rallis questioned the inconsistency in the Order versus the Notice of Sale regarding whether the sale would be subject to the senior mortgage liens. Mrs. Powell testified to having sent an email to Attorney Bullington at 2:48pm on the afternoon of the sale wherein she stated:

Hope you are doing well. Our client was the successful bidder at the foreclosure auction today for the above property. Your office represented the plaintiff, Clear Skies Restoration LLC.

As part of our closing process, we will need to obtain the payoffs of the 1st and 2nd mortgage that the property was sold subject to and the third party bidder believed you may already have this information based on your bid of \$80,000.00 at the sale which was above the judgment amount being foreclosed. Our office may have difficulty obtaining the payoffs in light of the fact that we do not have Mr. or Mrs. Martinez' personal information and are inquiring whether you do in fact have the mortgage payoffs information and if you would be able to provide a copy to us for use to payoff the same.

(See Email from Fran Powell to Plaintiff Attorney).

The Notice of Sale was filed of record on June 4, 2019.

An Affidavit of Attorney Kevin Phillip Brady of the Guest & Brady, LLC law firm was filed in this matter. In Mr. Brady's Affidavit, he states, in part, that "As part of our usual and customary title search of a foreclosure action, we reviewed the entire foreclosure file".

Rallis Holdings, LLC and Oriole Properties, LLC complied with the bid on June 7, 2019 by paying the full bid amount into the Court; and those entities were issued a deed by the Court on June 10, 2019. Their deed was recorded on June 11, 2019, in Deed Book 2568, at page 290 with the Greenville County Register of Deeds Office. At the time this deed was recorded, there had been no motions filed by Plaintiff relative to the Order filed May 8, 2019.

Thereafter, the Court disbursed proceeds of the bid to the Plaintiff in the full amount of the indebtedness owed to Plaintiff. The Court did not disburse any monies to either of the two (2)

senior mortgage holders since no information relative to the payoffs on these mortgages had been provided to the Court.

After being issued a deed, Rallis and Oriole applied to the court for a Writ of Ejectment, as the property remained occupied. On June 12, 2019, an Order for Writ of Ejectment of Defendants Ivan Martinez and Paula Martinez was entered by the court. On July 2, 2019, after being served with the Order for Writ of Ejectment, Defendant Ivan Martinez filed a Motion to Stay the Order.

Subsequent to being served with an Order for a Writ of Ejectment, the Martinezes filed several additional motions. On July 17, 2019, Ivan Martinez filed a Motion for Relief from Judgment and Motion for New Trial. On July 31, 2019, Paula Martinez filed a nearly identical Motion. A hearing was held on August 1, 2019 on those motions. The attorney for Plaintiff has asserted, and Custer testified confirming the same, that it was during a phone call between Custer and the Plaintiff's attorney during this time frame when Custer informed the Plaintiff's attorney of the inconsistency between the terms of the Order and the terms of the Notice of Sale, at which point the attorney for Plaintiff told Custer that there was a mistake in the Order.

This mistake in the Order is evidenced by the disbursement of proceeds to Plaintiff, which the Court staff acknowledged in emails with the Plaintiff's attorney during this same timeframe - whereby the Court staff requested that Plaintiff pay the proceeds back into the Court until the developing issues with the senior mortgages were resolved. In response, the Plaintiff's attorney stated, in part: "That was an error in the Order, which we'll need to address. As the record should reflect, the purchaser would be taking the property subject to the mortgage liens". Thereafter, on August 21, 2019, Clear Skies filed a "Rule 60, SCRCP Motion To Correct Mistake in Order for Judgment and Decree of Foreclosure".

After a hearing, and on September 4, 2019, this Court entered an Order which did the following: 1) granted Paula Martinez' Motion; 2) vacated the Foreclosure sale of June 3, 2019; and 3) declared the deed issued to Rallis and Oriole void. The basis of the Court's Order was its belief that service of the Summons and Complaint upon Paula Martinez had not been effective. The Court denied the motion of Ivan Martinez. The Court did not rule at that time on Clear Skies' Rule 60, SCRCPC Motion to Correct.

On September 16, 2019, at 3:01 p.m., Rallis and Oriole filed a Motion to Reconsider the September 4 Order, with supporting Affidavits. Thereafter, on September 16, 2019, at 4:21 p.m., Clear Skies and the Martinezes filed a Stipulation of Dismissal with Prejudice.

This court denied the Motion to Reconsider filed by Rallis and Oriole, and they both appealed to the South Carolina Court of Appeals. The Court of Appeals in its Opinion reversed and remanded this court's Order of September 4, 2019, citing S.C. Code Ann. §15-39-870(2005) and finding that this court had committed an error of law in vacating the sale. The Court of Appeals did not rule on Clear Skies' Rule 60 SCRCPC Motion to Correct or the bona fide purchaser for value issues, noting that this court had not ruled yet on that issue.

Prior to the evidentiary hearing held in this matter on February 28, 2023 the Martinezes formally filed notice to join in Clear Skies' Rule 60 SCRCPC Motion to Correct to which all parties consented and agreed that the Martinizes had standing to join said motion and to present evidence in furtherance of the Motion to Correct and regarding the issue of whether or not Rallis and Oriole were bona fide purchasers under South Carolina law.

BONA FIDE PURCHASER ANALYSIS

In South Carolina, it is well settled that being a bona fide purchaser for value requires "(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.'" *Robinson v. Est. of Harris*, 378 S.C. 140 at 146, 662 S.E.2d 420 at 423 (quoting *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006)). The rationale behind the bona fide purchaser statute, S.C. Code Ann. §15-39-870 (2005) "is the well established public policy of protecting good faith purchasers and upholding the finality of the judicial sale."

In determining whether Rallis and Oriole were bona fide purchasers within the meaning of the South Carolina statutes, the parties agree that the proper analysis is to look at facts and information available to the purchaser as of the date that the deed was issued to them. The courts of this State have established that the determination of a bona fide purchaser status is the date upon which the purchaser acquired legal title, and not the date of the prior foreclosure sale. *Belle Hall Plantation Homeowner's Ass'n v. Murray*, 419 S.C. 605, 799 S.E.2d 310 (Ct. App. 2017). Thus, it is necessary and proper in this case to determine whether the Purchasers can satisfy the elements of a bona fide purchaser as of the date they acquired legal title.

The Deed in favor of the purchasers in this case was filed June 11, 2019. So, the bona fide purchaser analysis in this case must account for the time period up until that date. Accordingly, the next question is whether the purchasers had notice of the purported defect, to the extent the same existed, in the Foreclosure Order prior to June 11, 2019.

The Supreme Court of South Carolina has held that the bona fide purchaser determination for a real estate transaction must include an analysis of both the actual and constructive knowledge of the purchaser. "There are two basic forms of notice by which a purchaser may be charged with knowledge of the rights of another in real property: actual notice and constructive/inquiry notice. *S.C. Tax Commn. v. Belk*, 266 S.C. at 544-43, 225 S.E.2d at 179; *Jones v. Eichholz*, 212 S.C. at

422, 48 S.E.2d at 25-26; Epps v. McCallum Realty Co., 139 S.C. 481, 498-99, 138 S.E. 297, 302 (1927).” Spence v. Spence, 368 S.C. 106, 118, 628 S.E.2d 869, 875 (2006).

The South Carolina Supreme Court has explained that "actual notice means all the facts are disclosed and there is nothing left to investigate. Notice is regarded as actual where the person sought to be charged therewith either knows of the existence of the particular facts in question or is conscious of having the means of knowing it, even though such means may not be employed by him. Generally, actual notice is synonymous with knowledge." *Id.* (quoting Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, n.6, 504 S.E.2d 117, 122 n.6 (1998) (citations omitted)). “Moreover, ‘actual notice may be shown by direct evidence or inferred from factual circumstances.” *Id.* (quoting Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 65, 504 S.E.2d 117, 123 (1998) (citations omitted)).

The Supreme Court of South Carolina has held further:

[I]n the context of a real estate transaction, a purchaser of real property has actual notice of a title defect or other claim, lien, or interest adverse to his own in a particular property when he actually knows about the defect or claim, or when a reasonable person, if made aware of the same information known to the buyer, would be charged with actual notice of the defect or claim. Actual notice may consist of facts or conditions observed by a prospective purchaser as well as information conveyed orally or in writing to him. E.g. Adams v. Willis, 225 S.C. 518, 522, 83 S.E.2d 171, 173 (1954) (purchaser with actual knowledge that property was subject to lease, as well as fact that service station existed on lot, was charged with knowledge of the lease); Walker v. Taylor, 104 S.C. 1, 15, 88 S.E. 300, 303-04 (1916) (where land buyer prior to sale had actual notice, orally and in writing, of stepdaughter's claim of one-third interest in property, buyer was not a bona fide purchaser for value without notice; the stepdaughter's claim "was of interest to him, and he is charged with all the knowledge he could have had that day for the asking. He is charged with this full and complete information in ordinary fairness as well as in law.”).

Spence v. Spence, 368 S.C. 106, 118, 628 S.E.2d 869, 875 (2006) (emphasis added).

The South Carolina Supreme Court has also outlined what is to be considered constructive notice/knowledge of a purchaser in the context of a real estate transaction, specifically in relation

to a bona fide purchaser analysis. “[C]onstructive notice is a legal inference which substitutes for actual notice. It is notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts. Therefore, this person is presumed to have actual knowledge of the undisclosed facts.” *Spence v. Spence*, 368 S.C. 106, 118, 628 S.E.2d 869, 875 (2006)(quoting *Strother*, 332 S.C. at 64 n.6., 504 S.E.2d at 122).

Constructive or inquiry notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents asserting an interest or claim in real property which gives constructive notice to the world. *Id.* The recording of a document alerts all future grantees of the rights of the recorder because the law assumes the grantee will search the index and discover the interest or claim. *Id.*; *Epps*, 139 S.C. at 499, 138 S.E. at 303 (“recording amounts to notice, whether known or unknown, because the means of information are at hand”). “A purchaser of real property is bound by both actual and constructive notice and has no right to shut his eyes or ears to the inlet of information, and then say he is a bona fide purchaser for value without notice.” *Spence v. Spence*, 368 S.C. 106, 118, 628 S.E.2d 869, 875 (2006).

The *Spence* court further held:

Constructive or inquiry notice in the context of a real estate transaction also may arise when a party becomes aware or should have become aware of certain facts which, if investigated, would reveal the claim of another. The party will be charged by operation of law with all knowledge that an investigation by a reasonably cautious and prudent purchaser would have revealed. As this Court has explained in a case involving the transfer of real property,

If there are circumstances sufficient to put a party upon the inquiry, he is held to have notice of everything which that inquiry, properly conducted, would certainly disclose; but constructive notice goes no further. It stands upon the principle that the party is bound to the exercise of due diligence, and is assumed to have the knowledge to which that diligence would lead him; but he is not held to have

notice of matter which lies beyond the range of that inquiry and which that diligence might not disclose. There must appear to be, in the nature of the case, such a connection between the facts disclosed and the further facts to be discovered, that the former could justly be viewed as furnishing a clue to the latter.

Spence, supra (quoting *Black v. Childs*, 14 S.C. 312, 321-22 (1880)).

In this case, based on the facts presented into evidence, the prior case law from our state, and the order of reversal from the Court of Appeals, this court is compelled to find that Rallis and Oriole were aware of the conflict between the Notice of Sale and the Order, and they were aware of such conflict on the date of the Sale, which was several days before a Deed was delivered to them.

However, the Court is compelled to find the purchasers in this case are, in fact, bona fide purchasers because “the [purchaser] was charged with notice of the terms of the decree of sale, and the master had no authority to vary these terms.” *Fed. Nat'l Mortg. Ass'n v. Brooks*, 304 S.C. 506, 510-511 (Ct. App. 1991). As further explained in *Fed. Nat'l Mortg. Ass'n, supra*,

In the conduct of a judicial sale, the selling officer acts in a ministerial capacity as the arm of the court to carry out its orders. He in no way acts in a judicial capacity. *Ex Parte Keller*, 185 S.C. 283, 194 S.E. 15 (1937). Thus, the clerk of court as selling officer has no authority to modify the terms and conditions of the foreclosure decree in any material way. In *Keller*, the master supplemented the foreclosure decree with a condition not found in the decree. The *Keller* opinion stated:

The master supplemented the order of the court by a condition not found in said order, to-wit, that the land should be sold subject to the claim of the homestead. This addition to the order was made by the master on the day of sale, when Crawford & Co., attorneys of the petitioner, gave notice of this claim. But by what authority could the master thus supplement said order? We know of none; and, even admitting for this case, that, had the order been carried out according to its terms, the result might have been different, yet, said order not having been executed, the matter stands as if there had been no sale. It was a void sale, the master having no authority to sell as he did (*Baily v. Baily*, 9 Rich.Eq. [392], 395), and consequently the petitioner was not bound to pay in her bid.

Fed. Nat'l Mortg. Ass'n v. Brooks, 304 S.C. 506, 510-511 (Ct. App. 1991).

Accordingly, as of June 11, 2019, when the subject deed was filed, the purchasers had made their good faith purchase for value and without notice of any claim or defect. See Robinson v. Estate of Harris, 378 S.C. 140, 662 S.E.2d 420 (Ct. App. 2008).

Martinez and Clear Skies argued at the hearing that Rallis and Oriole could not be bona fide purchasers because they were on notice that the Court's Order and the advertisement of sale were in conflict with each other, and that such conflict creates a "notice of a lien or defect." See Spence v Spence, 368 S.C. 106, 117, 628 S.E. 2d 869, 874-75 (2006). Specifically, the advertisement stated that the sale would be subject to two separate mortgages and that the sale would be subject to a one (1) year right of redemption by the United States of America due to tax liens. Both statements were inconsistent with the Court's Order on file as of the date of the sale. As noted, the Court noted during the sale that the Notice of Sale provided that the purchase would be subject to two senior mortgages. Notwithstanding this, even with Rallis and Oriole being aware of a conflict between the Notice of Sale and the Order and they were aware of such a conflict prior to the deed being transferred to them, the law is clear that the Court's Order must control under the circumstances. *See Fed. Nat'l Mortg. Ass'n, supra*. In such cases, a reasonably prudent purchaser who might become aware of such conflict should then be directed back to the controlling terms of the Court's Order. *Id.* To rule otherwise would be to elevate the advertisement and statements by the selling officer during the sale to the same level of a Court Order, which, according to *Fed. Nat'l Mortg. Ass'n, supra*, is simply not permissible. Further, it would invite confusion and uncertainty into the judicial sale. The judicial sale itself is simply a ministerial act; and nothing said at the sale can or should be allowed to alter the language of the Court's Order, which is necessarily controlling. *Id.*

Based on the foregoing, the Court must deny the Motion of Paula Martinez, as the evidence shows that Rallis and Oriole were bona fide purchasers and the sale as to them is final once the deed was issued to them.

CLEAR SKIES' MOTION TO CORRECT

Two months after Oriole and Rallis had been issued a deed, Clear Skies filed a Motion to Correct the foreclosure judgment. In the Motion, Clear Skies asked the court to amend its May 2019 Order so that only Clear Skies would be paid from the sales proceeds. The Motion further requested the Court amend its Order and Judgment to state that Oriole and Rallis would take the Property subject to, rather than free and clear of, the two (2) senior mortgage liens.

The Court concludes that the status that Rallis and Oriole enjoy as bona fide purchasers requires that this motion of Clear Skies be denied as well. They purchased the property in reliance on the language contained in the Court's May 8, 2019 Order, which provided that such liens would be paid off with the sales proceeds. Furthermore, and as previously noted, Plaintiff's attorney acknowledged at the hearing that she bid as high as \$80,000.00, well in excess of Clear Skies' total judgment amount. Clay Custer, who represented Oriole at the auction, testified that this high bid confirmed to him at the auction that Clear Skies was bidding an amount high enough to be certain it could get paid from the sales proceeds (after both senior mortgages were paid). Such would have been a reasonable conclusion to have been reached under the facts herein.

The court finds that the plain terms of S.C. Code Ann. §15-39-870 (2005) prevent post-sale attempts such as this to change the terms of the court's Order, well after purchasers have relied on the terms of that Order and been issued a deed. Accordingly, the Motion to Correct filed by Clear Skies must be denied.

MOTION FOR WRIT OF EJECTMENT

The Motion to Stay Eviction of Ivan Martinez is GRANTED IN PART, but only until such time as the parties agree to an ejectment date or request a hearing on the same. If requested, said hearing shall be set on an expedited basis.

CONCLUSION

Accordingly, based on the facts of this case, and the controlling opinion in *Fed. Nat'l Mortg. Ass'n v. Brooks*, 304 S.C. 506, 510-511 (Ct. App. 1991), the Court is compelled to conclude that (1) Oriole and Rallis are bona fide purchasers within the meaning of S.C. Code Ann. §15-39-870 (2005); (2) the Court's deed previously issued to them and recorded on June 11, 2019 must be reinstated; and (3) Clear Skies Motion to Correct, which was filed over two months after the deed was issued in this matter, must be DENIED.

Accordingly, it is hereby ORDERED as follows:

1. The Motion of Paula Martinez of July 31, 2019 is hereby DENIED, and the senior mortgage liens shall be paid prior to any payment to Clear Skies, in accordance with the Court's Order for Judgment and Foreclosure of May 8, 2019;

2. The Motion of Clear Skies of August 21, 2019 is hereby DENIED.

3. ¹The deed of June 11, 2019 issued to Oriole and Rallis, which was recorded at Deed Book 2568, page 290, is hereby REINSTATED, and the Greenville County Register of Deeds is Ordered to reinstate same.

¹ In their pre-trial briefs and in the hearing of this matter, both Rallis and Oriole argued that Clear Skies should not be permitted to present evidence or examine witnesses at the evidentiary hearing, because it and Martinez had filed a Stipulation of Dismissal with Prejudice on September 16, 2019; and Clear Skies therefore no longer remains a real party in interest in the case pursuant to S.C. R. Civ. P. 17. The Court let Clear Skies present evidence and examine witnesses at the hearing and took that Motion under advisement. Because of the Court's ruling herein, it does not find it necessary to rule on that Motion.

4. In accordance with the March 3, 2023 Order from the Court of Appeals, Judgment in the amount of \$2,967.51 is hereby entered against Clear Skies Restoration, LLC, Ivan Martinez and Paula Martinez, which amount shall be paid out of any surplus funds remaining from the sale of the Property at auction after paying both mortgages identified in the Order.

5. The Motion to Stay Eviction of Ivan Martinez is GRANTED IN PART, but only until such time as the parties agree to an ejection date or request a hearing on the same. If requested, said hearing shall be set on an expedited basis.

ELECTRONIC SIGNATURE PAGE FOLLOWS



Greenville Common Pleas

Case Caption: Clear Skies Restoration LLC , plaintiff, et al vs. Ivan Martinez ,
defendant, et al
Case Number: 2018CP2303124
Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)