THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Master in Equity

Case No. 2019-CP-46-04302

Appellate Case No. 2023-000390

Ex Parte: Maritza Flores Alvarado, ... Appellant,

In re:

U.S. Bank National Association, as Trustee For Securitized Asset Backed Receivables LLC Trust 2006-NC1, Mortgage Pass-Through Certificates, Series 2006-NC1, ... Plaintiff,

v.

Aaron C. Wurdemann and Heather J. Wurdemann, ... Respondents.

BRIEF OF APPELLANT

Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Other Authority

STATEMENT OF ISSUE ON APPEAL

DID THE MASTER IN EQUITY ERR IN CONSTRUING RULE 71(c), SCRCP, BY FAILING TO PROTECT THE INTERESTS OF APPELLANT, WHO WAS AN EQUITABLE OWNER OF THE PROPERTY AND/OR AN INNOCENT ASSIGNEE OF THE OWNER OF RECORD, IN FAVOR OF RESPONDENTS, WHO HAD NO INTEREST IN THE PROPERTY AT THE TIME OF THE FORECLOSURE SALE?

STATEMENT OF THE CASE

This case started out as a typical mortgage foreclosure suit filed by U.S. Bank National Association, as Trustee For Securitized Asset Backed Receivables LLC Trust 2006-NC1, Mortgage Pass-Through Certificates, Series 2006-NC1 (the "Plaintiff") on December 18, 2019. Respondents, Aaron C. Wurdemann and Heather J. Wurdemann (collectively, "Respondents"), being the only Defendants named in the suit, were personally served on December 18, 2019. Respondents did not respond to the suit, and they were declared to be in default by a Certification of Service and Default, which was filed on January 22, 2020.

The case was referred to the Master in Equity for York County by an Order of Reference filed on January 22, 2020. A hearing on the merits was scheduled for February 27, 2020, and as reflected by a Certificate of Service by Mail, filed on February 25, 2020, a Notice of Hearing was mailed to Respondents on February 6, 2020.

Respondents failed to attend the hearing, and a Master in Equity's Order and Judgment of Foreclosure and Sale was issued on February 27, 2020, and filed on February 28, 2020. A copy of said Order was mailed to Respondents on March 12, 2020, as indicated by a Certificate of Service by Mail filed on March 12, 2020.

The case was then suspended due to COVID-19, as reflected by Plaintiff's Case Status Report, filed on March 1, 2021. After the moratorium was lifted, the Plaintiff mailed an updated Plaintiff's Case Status Report to Respondents on August 5, 2021, as indicated by a Certificate of

Service by Mail filed on August 19, 2021.

A final hearing was scheduled for September 14, 2021, and as reflected in a Certificate of Service by Mail filed on September 13, 2021, a Notice of Hearing was mailed to Respondents on August 19, 2021.

A Supplemental Order to the Master in Equity's Order and Judgment of Foreclosure and Sale was issued on September 14, 2021, and filed on September 14, 2021. A foreclosure sale was scheduled for November 8, 2021, as reflected by a Master in Equity Notice of Sale. Copies of said Order and said Notice of Sale were mailed to Respondents on September 16, 2021, as indicated by a Certificate of Service by Mail filed on September 16, 2021.

The foreclosure sale was held on November 8, 2021, but the sale was subsequently vacated when the high bidder failed to comply with the bid. The mortgaged property was re-scheduled and re-advertised for sale on February 7, 2022. Respondents were notified of the re-scheduled sale by mail on December 14, 2021, as reflected in a Certificate of Service by Mail filed on December 14, 2021.

A second sale was held on February 7, 2022, but, again, it was subsequently vacated when the high bidder failed to comply with the bid. The mortgaged property was re-scheduled and re-advertised for sale on April 4, 2022. Respondents were notified of the re-scheduled sale by mail on March 9, 2022, as reflected in a Certificate of Service by Mail filed on March 9, 2022.

A third sale was held on April 4, 2022, and this time the high bidder complied with the bid. The Master in Equity subsequently issued a Master's Report of Sale and Disbursement and also a Notice of Surplus Funds (R.p. 14), which were filed on May 9, 2022. Said Notice of Surplus Funds, which indicated a surplus of $50,539.05, was mailed to Respondents on May 9, 2022, as indicated by a Certificate of Service filed on May 10, 2022.

Robinhood Investments, LLC ("Robinhood"), the owner of record of the mortgaged real property prior to the foreclosure sale, filed a Claim for Surplus Funds on May 31, 2022. Appellant, Maritza Flores Alvarado, filed a Claim for Surplus Funds on June 17, 2022. (R.p. 16)

The Master in Equity scheduled a hearing ("first hearing") on July 19, 2022, to adjudicate the said Claims. The hearing was attended by Appellant and her attorney along with Respondents. Also in attendance was counsel for TPM Properties, L.P., the purchaser of the property. Robinhood did not appear at the hearing.

By Order to Disburse Surplus Funds, filed on November 15, 2022 (R.p. 1), the Master in Equity awarded all of the surplus funds to Respondents.

Appellant then, pursuant to Rule 59(c), South Carolina Rules of Civil Procedure, timely filed, on November 23, 2022, a Motion to Reconsider Order to Disburse Surplus Funds (R.p. 27). On March 2, 2023, a hearing ("second hearing") on said Motion was held, attended by Appellant and her attorney along with Respondents.

The Master in Equity denied the Motion to Reconsider, and a Form 4 Order was filed on March 2, 2023. (R.p. 5) Appellant filed a Notice of Appeal on March 8, 2023 (R.p. 31).

STANDARD OF REVIEW

In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes. *Green v. Lewis Truck Lines, Inc.*, 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994). This matter is an extension of a mortgage foreclosure action, which is one in equity. *Dockside Ass'n v. Detyens*, 294 S.C. 86, 88, 362 S.E.2d 874, 875 (1987). In an equitable action, the appellate court may review the evidence to determine the facts in accordance with its own view of the preponderance of the evidence. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). In an action in equity, while this

Court is free to take its own view of the preponderance of the evidence, this does not require this Court to disregard the findings of the trial judge who saw and heard the witnesses and, accordingly, was in a better position to judge their credibility. *Donnan v. Mariner*, 339 S.C. 621, 626, 529 S.E.2d 754, 757 (Ct.App. 2000).

STATEMENT OF FACTS

The mortgage foreclosure suit laid the foundation for this matter, which involves only the entitlement to surplus funds. The underlying proceedings to foreclose the mortgage is important to this matter solely to show that Respondents were made aware of the foreclosure proceedings at every step along the way by formal notices mailed (or delivered) to them as follows:

December 18, 2019	Personal service
February 6, 2020	Notice of Hearing
March 12, 2020	Order and Judgment of Foreclosure and Sale
August 5, 2021	Plaintiff's Case Status Report
September 13, 2021	Notice of Hearing
September 16, 2021	Supplemental Order and Notice of Sale
December 14, 2021	Notice of rescheduled sale
March 9, 2022	Notice of second rescheduled sale
May 9, 2022	Notice of Surplus Funds

On July 1, 2020, after the entry of the Master in Equity's Order and Judgment of Foreclosure and Sale (on February 27, 2020), Respondents deeded the mortgaged property to Robinhood. This deed, which was recorded in the Office of the Clerk of Court for York County on July 30, 2020 (R.p. 8), is regular on its face, and it recites a legal consideration and contains a general warranty of the title. The affidavit, which was attached to and recorded with the deed,

indicates that the conveyance was "a gift transfer with no consideration" (other than the recited legal consideration) and that the deed was drawn by Respondents. (R.p. 8) When questioned by the Judge about "no consideration," Mrs. Wurdemann denied that and stated that ". . . he was going to . . . help us get rid of the property sooner because we didn't want the foreclosure on our name." (R.pp. 49-50)

The subject real property was not Respondents' residence. It was rental property. (R.p. 46) Robinhood took control of the property with Respondents' stated understanding that Robinhood would liquidate the property (Mrs. Wurdemann stated that Dennis Lepka, ". . . thought he could sell the house as it was for 95,000" (R.p. 54) and that their expected share of the proceeds of the sale of the property was "None" as "[h]e was supposed to get the house out of our name (sic) so it did not go into foreclosure and ruin our credit.") (R.pp. 54-55)

When pressed about how much money they expected to receive from Robinhood, Mrs. Wurdemann stated that Respondents were told that, ". . . he could probably give us $10,000 dollars because of us having to go without so long with it affecting our credit and the late fees." (R.p. 55) Mrs. Wurdemann further stated, "If we could have got $10,000 out of it, you're right. I would have." (R.p. 57)

In summary, Respondents expected no money but hoped to receive as much as $10,000.00.

Mrs. Wurdemann stated that, "[W]e have a contract . . . that we signed with Mr. Lepka" (R.p. 57); and although being afforded "a couple of weeks" by the Master in Equity to produce the contract (R.p. 69), no contract was produced by Respondents.

The only written evidence of the agreement between Respondents and Robinhood is the deed, which, standing alone, provides the terms and conditions of (i.e. the grantors' intentions regarding) the title transfer to Robinhood.

Before the deed (and the alleged contract) were signed, Respondents were aware of the pending mortgage foreclosure suit, and they knew that a Judgment of Foreclosure and Sale had already been issued. (See list of notices to Respondents on page 4, supra.) At all relevant times, Respondents knew that the property was at risk of being sold at foreclosure and that the foreclosure sale was not finalized until 22 months after Respondents conveyed the property to Robinhood.

On August 27, 2020, almost two months after it became the owner of the property, Robinhood entered into a "Lease Agreement with Option to Purchase Real Estate" with Appellant. (R.p. 11) By said Agreement, Appellant leased the subject real property (including the lot next door) from Robinhood for a term of 60 months, with a monthly rental rate of $1,200.00. Robinhood also agreed by said Agreement to sell the property to Appellant, and Appellant agreed to purchase the property, for a price of $150,000, with Buyer (Appellant) "putting down $45,000.00 cash" with the balance owed ($105,000) to be paid in part by crediting the monthly rent payments.

There is no evidence that Appellant had any actual knowledge whatsoever of the pending mortgage foreclosure suit. Importantly, Appellant "doesn't speak English." (R.p. 35)

After being on hold due to a COVID-19-related moratorium for over 16 months, the foreclosure suit resumed, and Respondents were notified of a supplemental hearing and then the issuance of a Supplemental Order in September 2021. This was 14 months after the deed was signed by them. There is no allegation that Respondents made any effort to rescind or dispute their deed to Robinhood or to institute a claim against Robinhood with regard to the property.

Even when they were informed that the property was auctioned-off twice and that the foreclosure sales were vacated in December 2021 and March 2022 – another 5 months or so after the foreclosure decree was supplemented – Respondents still made no effort to try to protect their claims against Robinhood or to the property, if they had any such claim.

After a finally-successful foreclosure sale on April 4, 2022, a Notice of Surplus Funds was mailed to Respondents on May 9, 2022. Appellant filed a timely Claim for Surplus Funds (R.p. 16), which claim was the only valid claim filed in this matter.

No timely claim to the surplus funds was made by Respondents. The Master's Order stated that, "[t]he Defendants timely inquired about filing a claim but were instructed by court staff that as the mortgagors, no formal claim was required by the court." (R.p. 2)

Although not filing a Claim for Surplus Funds and claiming to have had an expectation to receive from Robinhood somewhere between "None" and up to $10,000.00, as discussed on page 5, supra, Respondents were awarded $50,539.05 (the entirety of the surplus funds).

ARGUMENTS

I. RULE 71(c), SCRCP, MUST BE PROPERLY CONSTRUED AND APPLIED.

The relevant portion of Rule 71(c), SCRCP, is as follows:

> Any **party** to the action, or any person who had a lien on the mortgaged premises at the time of the sale, upon filing with the master or other officer conducting the sale a claim of entitlement to the surplus fund, may have a hearing to determine such entitlement. All such claims must be verified or supported by affidavit and must be filed with the master or other officer conducting the sale within forty-five (45) days from the date of the filing of the statement of receipts and disbursements provided in Rule 71(b). If a claim is not filed within the said forty-five (45) day period, the same shall be considered abandoned and waived as to such surplus. The claim must contain the name of the claimant, the nature of the claim, the date the claim arose, and a calculation of the amount claimed. At the expiration of the claim filing period, the master or other officer conducting the sale shall set a hearing to accept proof of the claims filed. Only those who have filed a timely claim are entitled to notice of the hearing. In the event no claims are filed against the surplus funds, the fund shall be paid over to the **mortgagor or lienor** entitled to the fund. (emphasis added)

The Master in Equity concluded that, since Respondents were parties to the mortgage foreclosure suit and were the original mortgagors of the foreclosed mortgage – and since no other interested persons are either parties or mortgagors – Respondents alone are entitled to the surplus

fund. (R.pp. 100-02) This analysis ignores that a "lienor" also may be entitled to the surplus funds.

This analysis also ignores the purpose and importance of the filing of a Lis Pendens in suits affecting the title to real property (see Sections 15-11-10, et seq., Code of Laws of South Carolina, 1976, as amended). According to Section 15-11-20, **". . . every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action.**" (emphasis added) Under this statute, Appellant and Robinhood would each qualify (Appellant as an "encumbrancer" or an "equitable purchaser," and Robinhood as an "owner"), and each would be treated, as a "party." Judge Weaver understands the importance of a lis pendens. She stated at the second hearing: "that's why you have a lis pendens." (R.p. 97)

The word "mortgagor" also requires an explanation. As commonly used, this word generally means the owner of certain property, which is pledged to secure a loan. Consider Section 29-3-10, Code of Laws of South Carolina, 1976, as amended, which effectively equates "mortgagor" with "the owner of the land" ("the mortgagor shall be deemed the owner of the land"). Judge Weaver disagrees: "I equate mortgagor with who executed the mortgage." (R.p. 102) Respondents were the original mortgagors (as they mortgaged the property); but after they deeded the property to Robinhood, are they still mortgagors? Why isn't Robinhood (the owner of record of the property, which was encumbered by a mortgage until the mortgage was discharged by the foreclosure sale) the mortgagor? Respondents certainly would not be mistaken for the owners of the property, after they conveyed their interest in the property to Robinhood.

The Master in Equity was fixated on the words "mortgagor" and "lienor" in Rule 71(c):

> . . . my issue is, that Rule 71 says the money goes to the mortgagor or a lienor. (R.pp. 89-90)

> The rule says that the money goes to the mortgagor or lienors. The Wurdemanns are the mortgagors. (R.p. 98)
>
> . . . I just go by the rule. The rule says mortgagor, lienor. (R.p. 98)
>
> . . . the rule requires that the money goes to the mortgagors . . . . (R.p. 100)
>
> . . . The rule says it goes to the mortgagor. (R.p. 101)
>
> . . . The rule doesn't say owners as (sic) the time of sale. The rule says mortgagors. (R.p. 106)

The facts in this case present a routine scenario where real property is sold and conveyed "subject to" an existing mortgage. Both sellers (Respondents) and purchaser (Robinhood) were well aware that the property was subject to the lien of a mortgage and that such mortgage was being foreclosed. When a property is sold "subject to" a mortgage, after the closing and the delivery of a deed, the seller, who is likely the "mortgagor" (grantor of the mortgage), which mortgage was intentionally left unaffected by the transfer of title, retains no interest in the property.[1] Unless the deed expressly limits the extent of the transfer, the new owner acquires the entire interest of the seller.[2]

To construe the word "mortgagor" (in Rule 71(c)) to mean exclusively the person who executed the mortgage (rather than the owner of the property encumbered by a mortgage) would often result in the denial to the titled-owner of his equity-interest in "his" property.

Judge Weaver disagrees. She stated at the second hearing, "I find that they [Respondents] did not assign their rights to surplus to Robinhood Investments." (R.p. 106) She further stated, ". . . I don't think you get to Ms. Alvardo (sic) [Appellant] without finding that everything was

---

1 Often, the seller/mortgagor remains obligated on the mortgage loan, and this situation would be a factor to be considered by the seller when contracting to sell the property.
2 See page 10, infra.

appropriately done in equity and law with . . . Robinhood Investments. And it was not." (R.p. 105)

These points conflict with Section 27-5-130, Code of Laws of South Carolina, 1976, as amended, which establishes that a deed, like here, which transferred title to Robinhood, "passes to the grantee **the entire interest of the grantor** . . . ." (emphasis added) It would cause chaos if unambiguous deeds (without any expressed limitation or intention of grantor to the contrary) could be construed to convey less than grantor's "entire interest." "Entire interest" should logically include (among other interests) any surplus funds recovered upon a foreclosure sale of the property.

Now, turning to Appellant, whose involvement with the property originated almost two years before the foreclosure sale, and she continued to occupy the property for months after the sale. She was (1) a "party;" (2) an "encumbrancer" or "lienor;" (3) an owner of an equitable interest in the property and (4) an assignee of the record owner of the property.

(1) As discussed above (page 8, supra), the Lis Pendens statute would cause Appellant (as well as Robinhood) to each be treated as a "party;"

(2) Appellant, as a lessee with an option to purchaser involving the subject property (R.p. 11), would be an encumbrancer and have a compensable interest in Robinhood's title. See *Ingram v. Kasey's Assocs.*, 328 S.C. 399, 410-11, 493 S.E.2d 856 (Ct. App. 1997);

(3) Pursuant to a written contract to purchase the subject property from Robinhood for an established price (R.p. 11), Appellant paid a "down-payment" to Robinhood of $45,000.00, thereby acquiring a significant equitable interest in the property owned of record by Robinhood, which interest would be termed an "equitable ownership." Appellant's contract with Robinhood was, by its terms, an executory contract of sale, at the time of the foreclosure sale. It was essentially an **installment land contract.**

Quoting from *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 171, 568 S.E.2d 361 (2002),

> . . . installment land contract is frequently called a "poor man's mortgage" because the vendor, as with a mortgage, finances the purchaser's acquisition of the property by accepting installment payments on the purchase price over a period of years . . . .

Under that kind of contract, Appellant would be considered as vendee in possession of the land, which is considered to be an owner of an equitable interest in the property. See *Southern Pole Bldgs., Inc. v. Williams* 289 S.C. 521, 524, 347 S.E.2d 121 (Ct.App. 1986). See also *Brooks v. Council of Co-Owners of Stones Throw Horizontal Property Regime I*, 315 S.C. 474, 476, 445 S.E.2d 630 (1994) ("The theory of equitable conversion provides that under an executory contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor."); and

(4) Under the contract with Robinhood (R.p. 11), Appellant stood in the shoes of Robinhood as an assignee of an interest in the property. "An innocent assignee receives all the rights of his assignor." See *BAC Home Loan Servicing, L. P. v. Kinder*, 398 S.C. 619, 624, 731 S.E.2d 547 (2012).

Rule 71(c) must be construed to enable a proper claimant to receive surplus funds to the extent of monies available and based upon priority. Logically, a proper claimant would ordinarily not include a former owner (non-lienholder) of the property (at the time immediately prior to the foreclosure sale). Importantly, the surplus funds were created by competitive bidders bidding to supplant the owner of record immediately prior to the foreclosure sale. To the extent that the bid exceeded the debt owed to the foreclosing party, such excess bid occurred because of the value of the property, which should only benefit the last (the supplanted) owner of the property (including equitable owners and assignees) along with any lienholders. Respondents then were neither owners

nor lienholders. They had intentionally deeded away any and all of their interest in the property almost two years before the foreclosure sale.

II. RESPONDENTS, BY VOLUNTARILY CONVEYING THE PROPERTY, ASSIGNED ALL OF THEIR RIGHTS IN THE PROPERTY, INCLUDING THE RIGHT TO SURPLUS FUNDS, TO ROBINHOOD.

The deed, which was executed by Respondents and delivered to Robinhood, was an absolute conveyance of any and all interests which Respondents had in the property. It expressly granted to Robinhood **". . . all of the Grantor's remaining interest in the following-described property. . . ."** before setting forth the legal description of the subject real property. (R.p. 8) (emphasis added) The deed contained no reservation or limitation whatsoever. It also expressly provided: **"TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anyway incident or appertaining."** (R.p. 9) This provision indicates that Respondents, as grantors, intended to convey to Robinhood, with the fee, every interest (all essential rights) they had in and to the property. See *Smith v. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 468, 441 S.E.2d 331, 336 (Ct. App. 1994) (The phrase "all and singular, the rights, members, hereditament and appurtenances to the said premises belonging, or in anywise incident or appertaining, which followed a deed's property description, showed an intent to grant all rights essential to the enjoyment of the premises conveyed). Although "surplus funds" derived from a subsequent sale of the property is not specifically mentioned in the deed, it is an interest, right or benefit, which was not expressly reserved or withheld by Respondents but which was conveyed along with any and every other interest, right or benefit related to the property.

See *Bell v. Bennett*, 307 S.C. 286, 293, 414 S.E.2d 786 (Ct.App. 1992), quoting from *26 C.J.S. Deeds* §104(a) (1956), "there is a presumption that a grantor intends to convey his entire

interest, and a deed will be taken to convey the entire property and interest of the grantor in the premises unless something appears to limit it to a lesser interest."

The Master in Equity disagrees. She declared that the deed to Robinhood was insufficient to assign the rights to surplus ". . . because there's no consideration given. I don't see how you can have an assignment without consideration." (R.p. 99) She finds that Robinhood acquired ownership by the deed from Respondents (apparently by exchanging sufficient consideration) but apparently not much else. (R.p. 105)

III. RESPONDENTS' DEED, BEING REGULAR ON ITS FACE AND UNAMBIGUOUS, RAISED A PRESUMPTION OF VALIDITY, AND RESPONDENTS FAILED TO PROVE THAT THE DEED DID NOT CONVEY ALL OF THEIR INTERESTS IN THE PROPERTY.

Respondents' deed (R.p. 8) is regular on its face and is unambiguous. No issue of ambiguity has been raised. The lower court should have construed the deed to mean what it says, and it was improper not to do so where there was no proof demonstrating that the deed was ambiguous. As stated in *Snow v. Smith ex rel. Stoudenmire*, 416 S.C. 72, 85, 784 S.E.2d 242 (Ct.App. 2016), "[w]hen a deed is unambiguous, any attempt to determine the grantor's intent . . . must be limited to the deed itself, and using extrinsic evidence to contradict the plain language of the deed is improper. See *Springob v. Farrar*, 334 S.C. 585, 590, 514 S.E.2d 135, 138 (Ct.App. 1999)."

"The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intention unexpressed when the contract was executed." *Pee Dee Stores, Inc. vs. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct.App. 2009).

The deed recited a legal consideration: **". . . in consideration of the sum of FIVE AND NO DOLLARS ($5.00), the receipt of which is hereby acknowledged. . . ." and further stated: ". . . by these presents, grants, bargains, sells and releases unto ROBINHOOD**

INVESTMENTS LLC (hereinafter "Grantee"), its successors and or assigns – forever, all of the Grantor's remaining interest in the following-described real property. . . ." (R.p. 8) (emphasis added)

"There's no question that the ownership of the property had transferred to Robinhood Investments." (emphasis added) These are not Appellant's words. Judge Weaver said this at the second hearing. (R.p. 105)

What then did Robinhood own? Consider Section 27-5-130, Code of Laws of South Carolina, 1976, as amended,

> Every deed of real estate . . . passes to the grantee **the entire interest of the grantor** in the property described in the deed, unless provided to the contrary in the deed. (emphasis added)

The deed to Robinhood is incapable of any interpretation other than as a complete relinquishment by Respondents of any and all interests they had or could claim to have in the property. "[T]he entire interest of the grantor" would logically include any right to claim surplus funds following a mortgage foreclosure sale.

IV. RESPONDENTS FAILED TO PRODUCE THEIR CONTRACT WITH ROBINHOOD, WITHOUT ANY EXCUSE, LEAVING THE CONSTRUCTION OF THE DEED TO THE FOUR CORNERS THEREOF.

Although Respondents asserted that they had a written contract with Robinhood with regard to the parties' intentions to liquidate the property (R.p. 57); and although the Court afforded to Respondents an additional two weeks to produce such contract (R.p. 70), no such contract was produced, nor was any excuse raised by Respondents for their failure to produce the contract. The court was therefore left with the four corners of the deed signed by the Respondents (R.p. 8) for a written expression of Respondents' intentions.

> In construing a deed, the intention of the grantor must be ascertained and effectuated unless that intention contravenes some well-settled rule of law or public

policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part of it if it can be done consistently with the law. The intention of the grantor must be found within the four corners of the deed. (citations omitted) *Rhett v. Gray*, 401 S.C. 478, 491, 736, S.E.2d 873, 881 (Ct.App. 2012).

Appellant submits that the deed (standing alone) is unambiguous and unquestionably is an absolute conveyance by the grantors (Respondents) of their entire interest in the property.

V. RESPONDENTS' TESTIMONY THAT THEY EXPECTED TO RECEIVE NOTHING OR UP TO $10,000.00 FROM ROBINHOOD, UPON ITS PERFORMANCE, LIMITS RESPONDENTS' ENTITLEMENT TO SURPLUS FUNDS TO A MAXIMUM OF SAID AMOUNT.

Although no money was promised to Respondents (see page 5, supra), even assuming without proof that Robinhood promised to pay Respondents any sum of money, such promise unquestionably would have amounted to not more than $10,000.00. Mrs. Wurdemann stated, "[i]f we could have got $10,000 out of it, you're right. I would have." (R.p. 57)

One must ask: if $10,000 were the maximum Respondents expected to receive in exchange for the deed, why then did the Master in Equity determine that they were entitled to more than **five times** that amount? Frankly, the appropriate finding, when Respondents' testimony is unpersuasive (especially when they failed to produce the contract), is that Respondents had, in the Deed, acknowledged the receipt of any and all consideration they expected to receive. (R.p. 8)

VI. THE ADVICE GIVEN TO RESPONDENTS BY THE MASTER'S OFFICE, THAT THEY NEED NOT FILE A FORMAL CLAIM FOR THE SURPLUS FUNDS IN ORDER TO CLAIM SUCH FUNDS, WAS CONTRARY TO RULE 71(c), SCRCP.

As stated by the Master in Equity at the first hearing,

> . . . I'll note for the record that we instructed the Wurdemanns that they did not need to file a claim as mortgagors, from the way that I read the rule, if there are lien holders that are claiming . . . that the filing is important and priority is important in that respect but the mortgagor does not have to file a claim. (R.p. 36)

Respondents did not file a Claim for Surplus Funds. Referring again to Rule 71(c) (see

page 7, supra), the following are the relevant portions:

> If a claim is not filed within the said forty-five (45) day period, the same shall be considered abandoned and waived as to such surplus. (emphasis added)
>
> In the event no claims are filed against the surplus funds, the fund shall be paid over to the mortgagor or lienor entitled to the fund. (emphasis added)

Therefore, according to Rule 71(c), if any proper claim is filed, such claim would take to the exclusion of any and every not-filed claim, including any claims of a mortgagor or lienor. Where a proper claim is filed, Respondents' failure to file a proper claim, notwithstanding the directions provided by the court staff, leaves them without any rights or interests under Rule 71(c).

VII. APPELLANT, THE ONLY CLAIMAINT TO FILE A PROPER CLAIM TO SURPLUS FUNDS, IS AN EQUITABLE OWNER OF THE PROPERTY AND/OR AN INNOCENT ASSIGNEE OF ROBINHOOD, THE OWNER OF RECORD AT THE TIME OF THE FORECLOSURE SALE.

The Master in Equity properly ruled that Appellant was the only person to file a proper Claim for Surplus Funds in accordance with Rule 71(c), SCRCP. ("Flores' claim was verified, timely filed, and included the required information.") (R.p. 16) However, she made the following comments at the second hearing: ". . . no claim has been made by a person who is authorized or allowed to make a claim in this case." (R.p. 102)[3]

There is no allegation (and no reason) that Appellant should be treated otherwise than as an innocent assignee of Robinhood, which was the owner of record of the property.[4] By her contract with Robinhood, she stands in the shoes of Robinhood (R.p. 11). Because Robinhood could have made, and indeed tried to make, a claim under Rule 71(c), Appellant is entitled to make a claim. Quoting from *BAC Home Loan Servicing, L.P. vs. Kinder*, supra, "To hold otherwise

---

3 See Argument I, supra, for a discussion on proper claimants.

4 Judge Weaver stated, "There's no question that the ownership of the property had transferred to Robinhood Investments." (R.p. 105)

would ignore settled principles governing assignments." "An assignee stands in the shoes of the assignor . . . an innocent assignee receives all the rights of his assignor . . . [B]ecause [the assignor] could have made this claim under Rule 71(c), [the assignee] is entitled to make the same claim."

The Master in Equity stated at the second hearing, ". . . I find that she's [Appellant's] not a party by assignment." (R.p. 91) Going further, she said, ". . . explain to me how Robinhood Investments assigned all of their rights to surplus? (sic) They were still the owner of the property at the time of sale." (R.p. 92) And, ". . . a deed had not been executed." (R.p. 93) And, " . . . if your argument is that the Wurdemanns assigned all their rights by deed to Robinhood, there is no other deed from Robinhood Investments . . . Assigning their rights." (R.p. 94)

She further stated at the second hearing, "[i]f I'm to look at it as an assignment, then I'd have to track it from that (sic) the Wudemanns assigned their interest to Robinhood and that Robinhood assigned **all of its interest** to Ms. Alvardo (sic)." (R.p. 90) (emphasis added) If that were correct, an owner would have to, if at all, convey all of its ownership interest (just like Respondents did) in order to create an interest in another party, an assignee. What about a mortgage interest? What about a conveyance of an undivided interest to a tenant-in-common or a joint tenant? What about an installment land contract? Would any such partial transfer (voluntary or involuntary) of a lien or ownership interest be ineffective to create a claim against surplus funds? Appellant asserts that these partial interests, if reducing the owner's/assignor's equity in the property, would be treated as assignments. Why would the outcome be any different for a claim involving an equitable interest in the property?

The Master in Equity decided that, " . . . if Ms. Alvardo (sic) is deemed with knowledge of the mortgage, then she protects her interest by exercising her option and paying off the mortgage, which she did not do . . . . " (R.p. 90) Because the title to the property – which Appellant does not

own (of record) – is encumbered by the mortgage, somehow she is charged with constructive knowledge thereof and with a responsibility to pay off the mortgagee – which is not her contractual responsibility – in order to protect her interest. No such knowledge or responsibility is charged by the Master in Equity to Respondents, who had actual knowledge of the mortgage and the contractual obligation to pay-off the mortgage loan.

According to *BAC Home Loan Servicing*, supra, an assignee acquiring a lien position after the foreclosure sale, would take the surplus. Certainly, an assignee of a portion of an ownership position prior to the foreclosure sale would not be left unprotected.

VIII. WHICH OF THE TWO VICTIMS SHOULD BE PROTECTED?

As stated by the Master in Equity at the second hearing, "[i]t appears to the Court that Robinhood Investments really wasn't forthcoming with either the Wurdemanns or Ms. Alvardo (sic). (R.p. 89) ". . . [and] I think both parties here . . . have, for lack of a better term, fallen victim to Robinhood Investments." (R.pp. 97-98)

The issue then is which of the victims should be protected in equity? Appellant might be charged with constructive knowledge of the mortgage and the pending mortgage foreclosure suit, and Respondents had actual knowledge. Appellant had no obligation to pay-off the mortgage loan, and Respondents were contractually obligated to pay-off the mortgage loan. Appellant had no involvement whatsoever with Robinhood becoming the fee simple owner of the property, and Respondents actually transferred the title to Robinhood and placed it in the position to victimize others. But for Respondents' voluntary transfer of title to Robinhood, Robinhood would not have been in a position to prey on Appellant. Appellant, on the other hand, did nothing whatsoever to cause injury to Respondents. Respondents were not innocent. Appellant is an innocent victim, and she should be protected.

"Courts have the inherent power to do all things reasonable (sic) necessary to ensure that just results are reached to the fullest extent possible." *Buckley v. Shealy* 370 S.C. 317, 323-24, 635 S.E.2d 76, 79 (2006).

It is repugnant to the principles of law and equity for Appellant to be denied recovery of the surplus funds and for Respondents to receive an unjust windfall.

> Forfeitures are not favored in law or equity . . . Moreover, forfeitures will be allowed only when intent is clear and no other reasonable construction is possible . . . Courts will seize upon even slight evidence to prevent a forfeiture.

Litchfield Co. of South Carolina, Inc. v. Kiriakides, 290 S.C. 220, 225-26, 349 S.E.2d 344 (Ct. App. 1986) (internal citations omitted)

CONCLUSION

The lower court erred in awarding the surplus funds to Respondents. The decision is controlled by substantial errors of law and fact. The subject Order should be reversed, and the case should be remanded with instruction to disburse the surplus funds to Appellant.

Respectfully submitted,

s/Leonard R. Jordan, Jr.
Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Appellant

Columbia, South Carolina
September 26, 2023