STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Hon. Teasa K. Weaver
Circuit Court Judge

Appellant Case No. 2023-000044

Aracely Sanchez, Respondent,

v.

Vanessa M. Sumpter, Appellant,
IN RE: Pennington Place Homes Owners Association of York, Inc, Plaintiff

v.

Vanessa M. Sumpter, Appellant

CORRECTED
FINAL BRIEF OF APPELLANT

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PROCEDURAL BACKGROUND

On the date of July 26, 2022, Counsel for Sanchez filed a motion for Rule to Show Cause and Petition for Writ of Assistance against Sumpter, who continued post-foreclosure to occupy and possess her residence at 3025 Rocket Road in Rock Hill. The filing follows at least two (2) Eviction attempts by Sanchez within the Magistrate Court in Rock Hill, all denied and not acted upon by the magistrate. The 2020-05-06-01 Administrative Order signed by Hon. Donald W. Beatty pertaining to statewide evictions and foreclosures was in effect as published by the Supreme Court on May 6, 2020. Pursuant to the Certification Order, Appellant respectfully asserts the filing(s) by Petitioner Sanchez was Void Ab Initio. However, a Writ of Assistance was Ordered by the Hon. Teasa K. Weaver, Master in Equity providing Sumpter was to be set out or vacate no later than 12 O'clock noon on September 12, 2020. (R. p. 39). Prior to the Petition for Writ of Assistance by the master, Sumpter filed three motions to stay execution, inclusive of Rule 59(e) and Rule 60 motions. (R. p. 102). All were argued before the master. The master in equity issued its Order denying Sumpter's motions (R. p. 44). The Appeal to this court followed. (R. p. 184).

As stated above, this was a foreclosure action brought by a homeowners' association Pennington Place of York, Inc. ("Pennington"). The lien foreclosure action resulted in judicial sale of defendant's home to third party Aracely Sanchez ("Sanchez"), the Respondent. (R. p. 105-107). The home at 3025 Rocket Road, Rock Hill was acquired by Sumpter as a newly constructed residence, and she had occupied the dwelling since 2007. (R. p. 130; 106). The litigation arose out of foreclosure of home owner association ("HOA") lien and fees in the amount of $427.50 (four hundred twenty-seven dollars and 50/100) owed to Pennington. After a Surplus fund is generated, Pennington later sought total additional assessments and attorney's fees of $ 3,081.56 by amended assessments and costs affidavit. (R. p. 79). The Pennington complaint sought that equity of redemption be forever barred in its Complaint and prayer for relief. (R. p. 67). Aracely

Sanchez was high bidder the debt for $36,500.00 dollars of a dwelling purchased by Sumpter for $183,790.00 from Crestwood Homes, LLC March 30, 2007. A final order by the Master issued October 3, 2019. (R. p. 19). The Appellant's home was sold public auction to the highest bidder on December 2, 2019. (R. p. 106) The deed was recorded in York County on December 4, 2019. (R. p. 106).

STATEMENT OF THE CASE

This is a case involving post foreclosure issuance of a Writ of Assistance issued under Petition and Rule to Show Cause (R. p. 109). The Order provided that Sumpter would be set out September 12, 2022. (R. p. 181). This was a foreclosure action involving dues and assessments, not a purchase money mortgage or secondary mortgage lien. (R. p. 68). The suit does not name the first or second position mortgage liens owed by the Appellant. (R. p. 93). Sumpter had a first mortgage with Wells Fargo Home Mortgage, (R. p. 95) and a second mortgage with Family Trust Federal Credit Union (R. p. 93). Neither are named in the action filed by Pennington. (R. p. 64). These were disclosed to the court late under Surplus proceedings (R. p. 64) and under Motion to Reconsider and Memorandum Exhibits filed by Sumpter counsel on 8/25/2022 by memorandum Exhibit-B, and Exhibit-C in the court record. (R. p. 92). The lien foreclosure case is filed by Pennington Place Home Owner's Association of York, Inc. ("Pennington) May 20, 2019. Foreclosure occurs during the Covid pandemic. The July 26, 2020, Petition for Writ of Assistance and Rule to Show Cause occur during pandemic moratorium Orders of the Supreme Court.

(A) Foreclosure of HOA assessment lien with Equity of Redemption Barred.

Pennington filed foreclosure over HOA dues. It sought recovery of past due dues and assessments—a past due account involving dues, assessments, and legal fees. (R. p. 79). Its Complaint prayer for relief, however, requested the equitable remedy of foreclosure with the

equity of redemption forever barred. (R. p. 67 at 4). Appellant raised before the master in equity that neither first nor second lien mortgages had been named in the action, thus Sanchez took subject to these mortgage liens. This is acknowledged by Sanchez in court hearings. Provided, however, Appellant asserts abuse of discretion and error of law where the court used neither the debt method or the equity method, refusing to consider either in issuing Title under Order of the Court. (R. p. 48). Sumpter further argued that as occupant and holder of beneficial interest under these instruments, she would be entitled to stand in the shoes of her mortgage lenders given the liens were not satisfied by the court's orders. (R. p. 98 at 2).

(B) Initiation of the Foreclosure Action without Notice to First or Second Lien Mortgages.

At oral argument, Sanchez gave sworn testimony that the subject property was not her residential home, that it was an investment for re-sale. Sanchez testified, and the courts deed reflects $36,500.00 bid by Sanchez. Without the first and second lien position mortgages being listed as defendant parties, the price was grotesquely inadequate. There are two methods used to calculate whether a bid price is so grossly inadequate as to shock the consciousness of the court. *Winrose Homeowner Ass 'n v. Hale,* 428 S.C. 563, 837 S.E.2d 47 (2019). Here, as in *Winrose,* the bidder Sanchez took no affirmative steps and testified she had no intentions of assuming two (2) existing mortgages on the property. To Sanchez, the home is an investment with an eye toward re-sale. At no time was the value of the mortgage(s) factored as to the winning bid of $36,500 in determining whether the sale was grossly inadequate, and Appellant avers the bid consequently was so low it should have shocked the conscious of the court. A judicial sale will not be set aside due to an inadequate sale price unless: (l) the price was so grossly inadequate as to shock the conscious of the court; or (2) an inadequate-but not grossly inadequate-price at the sale is accompanied by other circumstances from which the court may infer fraud has been committed.

Winrose, 428 S.C. 563 at hn l. Here, a home purchased at price of $183,790.00 in year 2007 was sold for a 5.035% fraction of its 2007 value, $36,500. The court later becomes aware of secondary liens by virtue of surplus hearing. (R. p. 139-142). In litigation before the court, Sumpter files Rule 68(a) offer of judgment.

(C) He Who Seeks Equity Must Do Equity and One Must Come to Equity with Clean Hands.

It is an old equitable maxim, admittedly. In this case, however, Sanchez seeks aide through equity court after two (2) prior incursions into the courts, evidence of unclean hands. *Pro Se*, Sanchez files notice to Quit. (R. p. 171; (R. p. 83). With counsel, there are two further evictions attempts, all denied, or no action taken by the magistrate. The magistrate's Order cites dismissal due to lack of jurisdiction. (R. p. 36). Sanchez then seeks attorney representation in filings with the master in equity court. (R. p. 181). The second and third attempt is counsel-drafted and filed Writ of Assistance which ignored Administrative Order 2020-0506-01. It occurs after a magistrate judge ruling expressly cites lack of jurisdiction. (R. p. 129). The Rule to Show Cause and the Petition for Writ filed in common pleas does not cite that Sanchez or her counsel have complied with the Certification Order, rather it is the opposite. Pursuant to the Administrative Order 2020-05-06-01, any such Petition shall terminate automatically. (R. p. 34 at π (3). Appellant respectfully asserts the Petition and Writ of Assistance were a legal nullity. Void Ab Initio. More importantly, if true, the master lacked subject matter jurisdiction.

Assuming arguendo had Sanchez counsel in fact complied with the Supreme Court's Order by Certifying their Petition, Order 2020-05-06-01 yet had not expired until September 12, 2020, the date of set out Ordered by the master. (R. p. 40). The motion by Respondent counsel is prematurely filed July 26, 2021. (R. p. 181). Appellant asserts trial court abuse of discretion and error at law by the master's court furthering eviction proceedings despite the Certification Order

being in effect, and particularly where not complied with by Sanchez or her legal counsel after filings dismissed by the magistrate court. (R. p. 36). Under the master in equity court's Order, Sumpter loses possession and occupancy of the home, and Sanchez gains occupancy and possession of an investment she will renovate for sale and profit. The house is not to serve as Sanchez' dwelling. Sanchez sworn testimony before the master in equity court confirms that the subject property was not her home. Sanchez also knows that there exist mortgages on the property by virtue of attorney correspondence and notices. (R. p. 159); (R. p. 162).

(D) Application of Administrative Order of the Supreme Court 2020-05-06-01.

Administrative Order 2020-05-06-01 did not expire until September 12, 2020. The Order does not specify at what time, precisely, on September 12 the Order was to expire. It does not identify 12 O'clock p.m., precisely. Yet the Order by the Master in Equity does so explicitly. (R. p. 40 π (4) at 2). Assuming arguendo the Certification Order's sunset was September 12, 2020, without such time of expiration noted by Chief Justice, it would arguably be end of the calendar date. Meaning, without Certification the action was void and could not properly proceed until September 13, 2020. The Petition by Sanchez' counsel is not Certified. (R. p. 181). Notwithstanding, the master in equity's order under Writ of Assistance in error fails to consider the Certification Order. Sumpter was to be set out or vacate **by 12 O'clock noon on September 12, 2022.** (R. p. 39). The error is not the high noon deadline the equity court imposed. Rather, it is the compelled loss of statutory exemption and failure to consider equity vs. debt associated with the loss of the deed and residence. At prior hearings, the court awarded Surplus to Family Trust Federal Credit Union, a junior mortgage lien. (R. p. 30). Wells Fargo, first lien position, does not appear.

(E) Hearing and Subsequent Ruling Denying Appellant's Motions to Reconsider and Motion for New Trial.

Appellant filed motions under Rule 59(e) and Rule 60(b)(5) SCRCP before the master in equity. (R. p. 96). The HOA lien foreclosure failed to name Wells Fargo Home Mortgage and Family Trust Federal Credit Union. (R. p. 43). Sumpter argued that she should be able to remain within the property as holder of beneficial interest and that it was an error to eliminate the right of redemption, argued under Sumpter's Rule 60(b)(5) motion. An offer of judgment to Sanchez is filed with the court record, offering approximately three times the Sanchez bid. Sumpter argued at court that she would have the right to stand in the shoes of her mortgagee(s), irrespective of whether Sanchez had been issued Title under Order of the Court. (R. p. 98 at π 2). The court did not grant Sanchez a General Warranty deed, and Sanchez as investor took the property and its title under court order as-is. Meaning, with knowledge that it was a Pennington HOA lien foreclosure; and with knowledge Sumpter and her tenants continued to occupy and did possess the home. Sanchez' discovery of a person other than Sumpter inside the property prompts service upon all occupants. (R. p. 84) Sanchez alleges to the court Sumpter had vacated by permitting renters to occupy the home with her. (R. p. 89). Appellant alleges it was abuse of discretion under controlling error of law for the court to conclude without proper evidence Sumpter abandonment of the dwelling, especially if the court lacked subject matter jurisdiction. However, Sanchez has finally found way around the COVID moratorium of the Supreme Court. Her counsel argues that Sumpter has vacated the home entirely. (R. p. 127 at π 2). The arguments of legal counsel are not evidence. *Trivelas v. S.C. Dept. of Transportation*, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001). The finding of the trial judge of Sumpter vacating the home is not supported by property adduced evidence Supporting the factual conclusion.

(F) Notice of Appeal.

The master in equity court denied Sumpter's motions under Rule 59 and Rule 60 on December 14, 2022. (R. p. 44). This appeal to the South Carolina Supreme Court followed

January 13, 2023 (R. p. 184). Through Counsel, Respondent filed a motion to Dismiss the appeal due to inability to procure certain transcripts. (R. p. 135). Attached to this memorandum is a request for transcripts from the undersigned to and through court administration and the court reporter. There was no transcript of court proceedings available to be transcribed from the last hearing on October 13, 2022. (R. p. 189). While the undersigned cites no fault of Appellant or Respondent, the court nonetheless was unable to produce the most important transcript of all — a third hearing proceeding in violation of the Supreme Court's Certification Order upon a filing that was arguably Void Ab Inititio. Nonetheless, the hearing went forward. Appellant respectfully asserts reversible error on this ground alone.

(G) Motion to Dismiss by Court of Appeals Denied.

The Court of Appeals denied Respondent's Motion to Dismiss under Order dated October 25, 2023, granted until November 28 for Appellant to file Designation of Matter and Appellants Initial Brief. (R. p. 59; 60; 135).

QUESTIONS PRESENTED

I. DID THE MASTER ERROR BY FAILING TO RECOGNIZE THAT SANCHEZ HAD COME TO THE COURT SEEKING EQUITY WITH UNCLEAN HANDS?

II. WAS THE JULY 20, 2020 PETITION FOR WRIT AND RULE TO SHOW CAUSE VOID AB INITIO?

III. IF THE JULY 27, 2020 P[ETITION WAS VOID, DID THE MASTER IN EQUITY LACK SUBJECT MATTER JURISDICTION TO RULE UPON THE WRIT OF ASSISTANCE PRIOR TO SEPTEMBER 13, 2020?

IV. WAS THE MASTER'S THREE (3) HEARINGS AND RULING ON WRIT OF ASSISTANCE EJECTING SUMPTER IN ERROR WHERE FINDINGS OF FACT AS TO THE HOME BEING VACATED WERE NOT SUPPORTED BY EVIDENCE PROPERLY ADDUCED?

V. DID THE MASTER ABUSE ITS DISCRETION AND ERR AT LAW BY RULING THAT THE EQUITY OF REDEMPTION WAS TO BE BARRED WHERE THE SALE PRICE OF $36,500 SHOULD HAVE SHOCKED THE

CONSCIOUS OF THE COURT GIVEN PRIOR MORTGAGE LIENHOLDERS NOT IDENTIFIED?

STANDARD OF REVIEW

A foreclosure action is an equitable action. *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 440-41 (2014). The standard of review is de novo. *Stoney v. Stoney*, 421 S.C. 528, 530, 809 S.E.2d 59, 59 (2017); *see* S.C. Const. art. V, § 5 (*stating in equity cases, the supreme court "shall review the findigns of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside").* Under de novo review, the appellate court may consider two principles long recognized by our courts "(1) a trial [court] is in a superior position to assess witness credibility, and (2) an appellant has the burden of showing the appellate court that the preponderance of the evidence is against the finding of the trial [court]." *Stoney v. Stoney*, 421 S.C. at 530, 809 S.E.2d at 59. A de novo review allows the appellate court to take its view of the evidence and make its own findings of fact.

An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the appllicable standard of review on appeal. "*Corley v. Ott*, 326 S.C. 89, 92 n. 1, 485 S.E.2d 97, 99 n. 1 (1997). The reviewing court should "view the actions separately for the purpose of determining the appropriate standard of review." *Jordan v. Holt*, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005). In an action in quity, tried by the judge alone, without a reference, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Townes Assocs., Ltd. V. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). On the other hand, when reviewing an action at law, on appeal of a case

tried without a jury, the appellate court's jurisdiction is limited to the correction of errors at law, and the appellate court will not disturb the judge's findings of fact as long as they are reasonably suported by the evidence. *Epworth Children's Home v. Beasley*, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005).

ARGUMENT

I. DID THE MASTER ERROR BY FAILING TO RECOGNIZE THAT SANCHEZ HAD COME TO THE COURT SEEKING EQUITY WITH UNCLEAN HANDS?

Yes. This case, like most other cases, was impacted by the Covid Pandemic moratoriums. Sanchez received Title under Order of the Court during the pendency of Covid, December 3, 2019 (R. p. 106). However, Sanchez is in a hurry. This was not Sanchez' dwelling, nor would it become her dwelling per her testimony. The courts simply are not moving fast enough for Sanchez. Sanchez testifies she is guided by a realtor. The magistrate eviction attempts begin. Unsuccessful, Sanchez next engages legal counsel. (R. p. 36); (R. p. 181). All magistrate court filings by Sanchez pro se or via counsel neglect to comply with Supreme Court Administrative Order. There also exist two (2) mortgage liens upon the dwelling. (R. p. 92-95). But, there is a back door. Sanchez serves an "occupant", the renter of a room within the dwelling. (R. p. 89). Appellant asserts error where the trial judge found as fact that Sumpter had "abandoned" or vacated the property as a conclusion which was not properly supported by evidence property adduced. Again, there is no record of the October 13, 2020, hearing available. (R. p. 189). Yet, the court's Order denotes the court's conclusions under presumed and unproven facts, leading to issuance and execution of the Writ. (R. p. 39). Noteworthy is the language of the order. (R. p. 40 at π (3) and π (4)). (R. p. 41 lines 5-9). No less than three (3) attempts to stay execution are filed by Sumpter, noted by the trial judge. (R. p. 44 at π (1) and π (2)). Appellant respectfully asserts error where the court conducted hearings and ultimately issues a Writ of Assistance and Ejectment upon a Petition that was Void

Ab Initio under Supreme Court Administrative Orders. Sumpter is ejected from her home under an instrument that is a legal nullity.

II. WAS THE JULY 26, 2020, PETITION FOR WRIT AND RULE TO SHOW CAUSE VOID AB INITIO?

Yes. Under Chief Beatty's Order the July 27, 2020, Petition drafted by Sancez' legal counsel was, no different than Sanchez' magisterial court filings, terminated. As set forth above, Appellant asserts the filing was Void Ab Initio. A legal nullity. Pursuant to the 2020-05-06-01 Order of Honorable Donald W. Beatty, a moratorium on writs of assistance and writs of ejectment was still in effect and would remain so through September 12, 2020. (R. p. 34). Moreover, the order directed "nor should Masters-in-Equity proceed in any other manner regarding foreclosures until directed by subsequent order by the Chief Justice. (R. p. 34 at π (5)). Sanchez utilizes the magisterial court instead, filing a Notice to Quit premises dated April l, 2022 (R. p. 171). The magistrate courts declines to act. Pursuant to Administrative Order 2020-04-30-02 Re: Statewide Evictions and Foreclosures, the magistrate cites lack of jurisdiction. (R. p. 36). There was not in the case sub judice any case-by-case exception that would apply. Sumpter continued to occupy the premises, and neither Sanchez nor her counsel properly adduced any threat to essential services and/or harm to persons or the property as listed exception under the Certification Order. Sanchez took title under court order knowing this was a HOA lien foreclosure. She knew Sumpter still occupied the home. She observed a renter at the premises. She well over-paid at $36,500 bid upon a debt of $3081.56 total. All Sanchez filings, including those by her attorney, were void and were a nullity under the Certification Order 2020-05-06-01. Appellant respectfully seeks this court to reverse the master's orders and remand this case for further proceedings upon the debt and Sumpter's right to redemption of the home.

III. IF THE JULY 26, 2020, PETITION WAS VOID, DID THE MASTER IN EQUITY LACK SUBJECT MATTER JURISDICTION TO RULE UPON THE WRIT OF ASSISTANCE PRIOR TO SEPTEMBER 13, 2020?

Yes. It is acknowledged that neither Plaintiff nor Defendant raised Subject Matter jurisdiction by *express name* in the master in equity court below. Petitioner Sanchez did not. Defendant Sumpter likewise did not. Conversely, however, the pleadings of record evidence the court lacked subject matter jurisdiction. The Certification Order 2022-05-0601 was, however, expressly raised by Sumpter at oral argument. It is reflected by the Pleadings before the Court. (R. p. 127; 132). This occurred by Sumpter's Rule 59 and Rule 60 Motion to Alter and Amend, and/or Motion for New Trial. It is acknowledged by the Court's orders. (R. p. 44); (R. p. 133). Provided, the master in equity finds that Sanchez did not bring the foreclosure, thus no compliance with Chief Beatty's Order had to occur. (R. p. 45). The problem ignored by the court remains: The Petition for Writ of Assistance and Ejectment was Void Ab Initio and would thus implicate Subject Matter Jurisdiction of the court. (R. p. 34).

Subject matter of the court is fundamental. *"Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. It is well-settled that issues related to subject matter jurisdiction may be raised at any time, including for the first time on appeal in this Court."* *Brown v. State*, 343 S.C. 342, 346, 540 S.E.2d 846, 848-49 (2001) (citation omitted). The action of a court, regarding a matter as to which it has no jurisdiction, is void. *State v. Funderburk*, 259 S.C. 256, 261, 191 S.E.2d 520, 522 (1972). Likewise, the plain language of administrative and Certification Order is unambiguous: "[I]f a party required to file a Certificate of Compliance neglects to do so the eviction or foreclosure ***shall terminate without further action taken.*** (*sic)" (R. p. 34 at π (4)).

IV. WAS THE MASTER'S THREE (3) HEARINGS AND RULING ON WRIT OF ASSISTANCE EJECTING SUMPTER IN ERROR WHERE FINDINGS OF FACT AS

TO THE HOME BEING VACATED WERE NOT SUPPORTED BY EVIDENCE PROPERLY ADDUCED?

Yes. An abuse of discretion occurs where the decision is controlled by error of law or is based on un-supported legal conclusion where no supporting factual evidence. Affidavits are filed alleging that Sumpter had a renter in place and had thus, according to Sanchez, had expressly vacated the residence. (R. p. 44 at π (17). The court prior records reflect the renter of Sumpter within the home who appeared in court with Sumpter. (R. p. 39). However, no testimony is preserved as to the allegation Sumpter has "vacated". No evidence of Sumpter vacating the residence is adduced, but yet the Order cites the conclusion made upon nothing more than affidavit photographs and allegations of a person with unclean hands, or arguments of her counsel. [1]Appellant alleges the error of law is the court refusing to acknowledge the action was Void Ab Initio by the Supreme Court Certification Order. Appellant asserts error where the master proceeded in violation of administrative order of the Supreme Court, to coerce ouster of Sumpter from the residence. (R. p. 40 π 5 at 2).

Irrespective of the Petition being void, or not properly Certified, the court nonetheless proceeds to issue a Writ of Assistance. (R. p. 39). Appellant further cites trial court error where the master found that Sanchez did not have to comply with the Certification Order, not having initially been the foreclosing Plaintiff. (R. p. 45). However, Sumpter would and did argue Sanchez' rights derive from Pennington's foreclosure action, and the Title under Order of the Court.

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[1] Again, no recording of the transcript was able to be produced from the October 13, 2022, oral arguments and the writer of this brief assigns no blame to any party. Appellant, however, asserts that the failure to preserve the record is itself reversible error, particularly if the findings of fact and conclusions of law were made upon a Petition that was Void Ab Initio from its date of filing. Or, alternatively, the Order is not supported by sworn testimony where the findings of fact and conclusions of law by the master are predicated upon arguments of legal counsel, which are not evidence. (R. p. 189).

They are alleged intrinsically linked, and it was abuse of discretion and error for the master to not recognize Sanchez's Unclean Hands and distinct failure(s) to do equity before the court if she was seeking aide of Equity. Meaning, as investor Sanchez advanced two (2) Magistrate evictions and the Writ of Ejectment by counsel through the Master in Equity Court, where the actions were Void In Abnitio. Appellant asserts Reversal is proper on this ground alone. Moreover, Sanchez by use of service upon an "occupant" (R. p. 39) (renter Anthony Ailer) misrepresenting to the court that the dwelling is no longer inhabited by Sumpter, the way around the moratorium order of the Supreme Court found at last. The equity court fails to evaluate the affidavit and accepts, as fact, the arguments of Sanchez' counsel, which were not evidence property adduced. *Trivelas v. S.C. Dept. of Transportation*, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001).

V. DID THE MASTER ABUSE ITS DISCRETION AND ERR AT LAW BY RULING THAT THE EQUITY OF REDEMPTION WAS TO BE BARRED WHERE THE SALE PRICE OF $36,500 SHOULD HAVE SHOCKED THE CONSCIOUS OF THE COURT GIVEN PRIOR MORTGAGE LIENHOLDERS NOT IDENTIFIED?

The master knew this was a lien foreclosure, not foreclosure of a purchase money note or mortgage. (R. p. 68). The Pennington HOA action ultimately sought an amended judgment of $3,086.56. (R. p. 24). No consideration is given under the secured debt owing to two (2) lenders on the property. There are two mortgage liens. (R. p. 92-95). Sumpter had alleged she could stand in the shoes of her lenders while still in possession of the beneficial use of the dwelling. No consideration is given pertaining to the equity that may yet exist in the property, nor Sumpter's Rule 68 Offer of Judgment or the value of the home in total.

Recall, Pennington initially was seeking foreclosure of a $427.50 past due account as an owner's association. (R. p. 24 at π 13). Appellant argues it was abuse of discretion and error of law by the master that Sumpter's Equity of Redemption be *forever barred* where the foreclosing entity sought collection by deed foreclosure of $427.50 dues and assessments, particularly where

Sumpter's first mortgage and second mortgage were *omitted* from suit. While not party to this Appeal, Pennington and their counsel are not an innocent party. The sale under Pennington's foreclosure garnished $36,500.00 (Thirty-Six Thousand Five Hundred Dollars), well over eighty-five percent (85%) of what Pennington was owed — even with amended claim for assessments. Stated differently, the sale price for title under order of the court signed by the master was grotesquely inadequate, if not unconscionable, given the value of the dwelling and the two (2) mortgages owed. (R. p. 28 at π 11). From the start the master in equity is ultimately working in the blind, admittedly due to manner in which the Pennington action was filed. The first notice of priority or junior lien holders will occur later - at the Surplus Funds hearing (R. p. 159). Family Trust Federal Credit Union petitions the court for surplus for credit to its mortgage lien. Moreover, the court looked to intervenor Family Trust learning it held a secondary (not first) mortgage lien. This is evidenced by Master award of surplus of $33,043.44 to Family Trust Federal Credit Union which was not a named party in the action. (R. p. 30). It is here that the master learns for the first time of a *secondary* position mortgage lien on a June 5, 2017, mortgage lien of Family Trust in the amount of $45,000. Noteworthy is the Sanchez bid was $36,500. Family Trust testifies on record that due and owing on their second mortgage is $44,025.27." (R. p. 142 at 1-2). Appellant asserts it was an error at this stage for the master to not inquire about the first position lien, even at the surplus stage. The record evidences the court is aware of a second position lienholder. (R. p. 141). Thus, there must be a first. But, there is no inquiry. Rather, the court focuses on disbursement of the surplus fund.

THE COURT:

- *"Ms. Jones, Family Trust is requesting the remainder"* (R. p. 141 at 20).

- PENNINGTON COUNSEL:
  *"Of course, we had no idea that it would produce a surplus (*sic).* When it did, additional time was required, and that's what's reflected in the amounts that we have before the court." (R. p. 141 at 11-14).

As stated above, senior lien holders were purposefully not named in the Pennington action. The undersigned can find no authority which necessitates doing so in a debt foreclosure or collections action necessarily. That said, failure to do so in the case at bar rendered the master to work in the blind, which was not equitable to Sumpter. The resulting obscurities are that the master abuses its discretion and errs at law by focusing on the case as a mere Ejectment entirely disregarding any consideration of the debt method analysis carrying out of the prior judicial foreclosure sale and the Writ of Assistance. Even HOA Pennington files amended affidavits after a surplus is generated by sale of the debt and the property, somehow amazed that a surplus result occurred. (R. p. 141 at 11). Appellant asserts that any Writ of Assistance or Ejectment filed by Sanchez would derive from the judgment and order issued by the court to Pennington HOA, even if the suit excluded Sumpter's mortgage lenders. The Orders of the court so reflect this. (R. p. 15). If they are excluded, there was no way for the master in equity court to properly evaluate equities including possession, appraised value, or debt. The issue for this court to consider is in order to be granted equity, one must do equity. That is not what occurred here. The trial court granted relief to a party who had failed to do equity and came to the court(s) knowing of the moratoriums on evictions with Unclean Hands. Three times. Twice the new title owner brings suit against Sumpter and any occupants of Sumpter's dwelling (R. p. 171); (R. p. 181). Twice Sanchez fails to comply with the Administrative Orders of the Supreme Court before the magistrate. She is watching the investment she holds Title under Court Order and deed. She knows the owner is not the sole occupant, and she makes use of this before the Master to falsely advance Sumpter vacated. (R. p. 127 at π (2)). Again, Appellant asserts error where the master concluded Sumpter had vacated under allegations involving a renter, not supported by record evidence property adduced.

The court issued a Writ of Ejectment to evict Sumpter on or before 12 O'clock noon on September 12, 2022 — the very date of expiration of Administrative Order 2022-05-06-01. Sumpter vacates prior to set out by law enforcement but cannot remove all personal property from the property by the time set under court order. (R. p. 130-131). The door locks change, and Sumpter loses personal property set out to the curb of 3052 Rocket Road. Renovations by the new owner commence immediately. Absolutely no consideration of Unclean Hands is considered, and the lack of subject matter jurisdiction is entirely ignored under abuse of discretion where alleged abandonment, or Sumpter having "vacated," is determined as fact without properly adduced evidence supporting the masters' conclusion.

VI. DID THE TRIAL COURT ERR BY FAILING TO MAINTAIN THE RECORD OF HEARINGS PERTINENT TO THE WRIT OF EJECTMENT?

Yes. As cited by Respondent in its Motion to Dismiss to this Court of Appeals, it is noted that neither the court nor the court reporter requested via counsel can locate a file of oral argument that occurred before the master on October 13, 2020. (R. p. 189). This was the Writ of Assistance and Ejectment hearing Sumpter alleges occurred under error of law given stay of evictions, ejectments and writs of assistance by Administrative Order 2020-05-06-01. If Sumpter was Ordered to vacate or be set out **by 12 O'clock noon** September 12, Appellant respectfully asserts reversible error where the court acted upon a legal nullity; a Petition that was Void Ab Initio. It matters not that there is not a record of proceedings found or re-produceable. The master's Order evidences the noon hour is when Sumpter is to be out. (R. p. 40). Appellant asserts respectfully that not until September 13, 2021, should enforcement action have been taken by Petitioner's counsel, or the court, Pursuant to the Certification Order. As to Petitioner's filing July 27, 2020, the Supreme Court's Certification Order is unambiguous:

> "[I]f a party required to file a Certificate of Compliance neglects to do so the eviction or foreclosure ***shall terminate without further action taken.*** (*sic)" (R. p. 34 at π 4).

This is what correctly happened in the magisterial court in observance of the Certification Order. Conversely, it is not what occurred in the master in equity court. Despite the magisterial court recognizing Sanchez' eviction attempts to be without jurisdiction, seeking Sumpter be forced to Vacate, the master in equity court proceeds nonetheless with multiple hearings on the Petition and Writ of Assistance. (R. p. 44). Appellant therefore asserts abuse of discretion by the master in equity judge, controlled by error of law: that the Petition for Writ of Assistance was a nullity upon being created and filed, and the master erred by acting upon the non-Certified Petition without subject matter jurisdiction to issue Writ of Assistance dispossessing Sumpter. As stated above, Appellant also asserts it was abuse of discretion where the master's conclusions of the home being vacated without supporting evidence that Appellant had, in fact, vacated or abandoned the residence. The content of the order and Sanchez' representation in seeking them was based upon unsworn representations of Sanchez, and arguments of Sanchez' counsel that Sumpter had "vacated". It is predicated on Sanchez' discovery that a renter is within the property, not just Sumpter. It is a conclusion not on evidence properly adduced to the court and not Certified under the Supreme Court's Order in the first instance. To take such representations upon affidavit where the transcript was not being recorded was abuse of discretion and prejudicial error, particularly where the Petition was Void Ab Initio and was a legal nullity (R. p. 175) pursuant to the Certification Order (R. p. 34).

As set forth above, the arguments of legal counsel are not evidence. *Trivelas v. S.C. Dept. of Transportation,* 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001); *Higgins v. MUSC,* 326 S.C. 592, 599 S.E.2d 269, 272 (Ct. App. 1997); *Historic Charleston Foundation v. Krawcheck,* 313 S.C. 500, 508 n. 7, 443 S.E.2d 401, 406 n. 7 (Ct. App. 1994); *Gilmore v. Ivey,* 290 S.C. 53,

58, 348 S.E.2d 180, 183 (Ct. App. 1986). The Master was aware of Sumpter's boyfriend and a tenant (R. p. 40 at π (3)) who also cohabitated at the dwelling, as reflected by the record. Neither fact evidences Sumpter had vacated. Noteworthy, is the pleadings of Sanchez's legal counsel in support of Rule to Show Cause or Writ of Assistance evidence the opposite, however. (R. p. 129 at π (4)). Further compounding this error, the court issued its order erroneously prior to sunset of Administrative Order 2020-05-06-01. Appellant respectfully adverse abuse of discretion under controlling error of law where Sumpter is given until precisely 12 O'clock noon on September 12, 2020, per the master's Order. In short, Appellant asserts it was reversible error for the court to even accept, much less rule upon, the Petition for Writ of Assistance prior to the expiration of the Certification Order 2020-06-05-01. Appellant respectfully asserts it was abuse of discretion controlled by error of law for the master to do so absent subject matter jurisdiction under inferred abandonment, and more so failing to consider Sumpter's possession, the debt, equity in the dwelling, or Unclean Hands evidenced by Sanchez' court filings before the magistrate and master in equity. (R. p. July 26). The equity of redemption right would be that of the former owner. It would be the right to dis-encumber the dwelling or free it from claim of lien; specifically, the right to free the property from the encumbrance of a foreclosure or judicial sale, or to recover the title passing thereby, by paying what is due, with interest, costs, etc. Sumpter filed a confession of judgment prior to this appeal. At no time did the master evaluate the debt or equity of the property, or properly consider the mortgage liens. Admittedly, the master was working in the blind due to the manner in which Pennington files the action omitting lien holders of record, easily ascertained by a title exam irrespective of the debt that must be proven. Sanchez testifies at court that the first and second mortgage liens will hopefully be extinguished by her future sale of the investment; again, no record transcript can be found or produced of the March 13, 2020, hearing due to no

fault of Appellant or Respondent. It is patent, however, that Sanchez takes subject to these liens of record.

CONCLUSION

Appellant respectfully avers this case presents review of a Writ of Assistance erroneously issued during Covid Moratoriums and during pendency of Certification Order 2022-05-06-01 where the court lacked subject matter jurisdiction. Appellant avers the Rule to Show Cause and Petition for Writ were, at date of filing, a nullity and Void Ab Initio. Yet, the equity court conducts multiple hearings upon the Petition, and commits abuse of discretion by making findings of fact where no evidence of Sumpter having vacated is properly adduced. The ruling is made upon argument of counsel, only. It is a published order Sanchez obtains by providing that which the Master's Title under Court Order to Sanchez did not convey; the right to exclude. It occurred during the moratorium and pendency of the Supreme Court's Certification Order.

Appellant avers the master in equity court should not have assisted Petitioner Sanchez in light of Sanchez' failures to comply with the CARES act in two (2) magistrate proceedings, and the July 26, 2020, Petition for Writ of Assistance by her counsel which lacked proper Certification and was a nullity. (R. p. 181). And, certainly not for an Investor's purpose where the dwelling served as Sumpter's primary home. The sale price of the residence should have shocked the consciousness of the court but did not. Sanchez testifies she acquired the property title for Investment and sale purpose, not to be an owner-occupied home. Conversely, 3052 Rocket Road was Sumpter's owner occupied dwelling. The court erred by conducting proceedings in the blind, imposed by Pennington's HOA filing that fails to list mortgages of record. It does so upon a Petition that was Void Ab Initio and did so where the master failed to review either the debt or equity relevant to the foreclosure action of a Pennington HOA $427.50 debt. The sale at $36,500 was grotesquely inadequate.

In the equity court's issuance of the Writ of Assistance, Sumpter lost possession of her home now necessitating that she challenges Sanchez' deed and title, should this matter before the Court of Appeals prevail. The ruling did precisely what the moratorium orders of the Supreme Court (2020-05-06-01 Order) over writ. Lastly, equity by the master should not have aided a party who sought equity but came to the court with unclean hands. Three times Sanchez attempts eviction during moratorium imposed by the Supreme Court of this state. Appellant is seeking this court Reverse the Master and Remand the case for further proceedings as to rights of redemption.

Appellant thanks the court for its time and consideration of these matters.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeals Case No. 2023-000044

The Hon. Teasa K. Weaver
York County Master in Equity
Trial Court Case No. 2019-CP-46-01766

Aracely Sanchez, Respondent,

v.

Vanessa M. Sumpter, Appellant,

IN RE: Pennington Place Homes Owners Association of York, Inc, Plaintiff

v.

Vanessa M. Sumpter, Appellant

CERTIFICATE OF SERVICE
OF CORRECTED FINAL BRIEF
OF APPELLANT

I hereby Certify that I have served upon counsel for Respondent this 22nd day of April 2024 by electronic filing and delivery and by U.S. mail postage prepaid the Corrected Final Initial Brief of Appellant Vanessa M. Sumpter, addressed as follows:

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