STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Honorable Teasa K. Weaver
Circuit Court Judge

Appellant Case No.: 2023-000044

Aracely Sanchez, Respondent,

v.

Vanessa M. Sumpter, Appellant,

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

v.

Vanessa M. Sumpter, Appellant.

FINAL BRIEF OF RESPONDENT

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PROCEDURAL BACKGROUND

Pennington initiated the within action against the Appellant by Summons and Complaint dated May 20, 2019 (R p 28-32). The Appellant failed to file an answer or otherwise plead to the Complaint resulting in an Order of Default and Order of Reference on August 22, 2019 (R p 38-40). A hearing was held before the Master-in-Equity on October 2, 2019, at which time the Appellant was present (R p 54 lines 7-8). This hearing resulted in the Master-in-Equity's Report and Judgment of Foreclosure Sale dated October 3, 2019, which order provided: "**IT IS FURTHER ORDERED** that each Defendant, all defendants served, and all persons whomsoever claiming under him, her or them, be forever barred and foreclosed of all right of title, interest and equity of redemption in the Property so sold, or any part thereof." (R p 66 11)

No appeal was taken from this order. The Respondent was the successful bidder held pursuant to the Notice of Sale for the consideration of $36,500.00 (R p 75-77)

The sale to the Respondent resulted in excess funds of $33,043.44. The Appellant filed a claim of entitlement to these funds (R p 84). A Petition was filed claiming the surplus funds by Family Trust Federal Credit (R p 85-86). Pennington also filed a claim for additional attorney fees and costs (R p 87-90). A hearing was held before the Master-in-Equity on February 18, 2020 (R p 91-92). The Master-in-Equity ordered the disbursement of $32,209.37 to Family Trust Federal Credit Union and $834.07 to Pennington (R p 101-103). No appeal was taken from this order.

The Respondent initiated an action in Magistrate Court against the Appellant as is shown on the Affidavit and Application for Notice to Quit Premises dated April 1, 2022 (R p 104). This action was initiated pro se by the Respondent. This action resulted in an Affidavit of Non-service which provided that the Appellant no longer resided at the given address of 3052 Rocket Road, Rock Hill, SC 29732 (R p 105).

Based upon the constable's Affidavit of Non service, the Respondent retained the services of the undersigned attorney. The Respondent then initiated an action in the Magistrate Court with a Notice to Quit Premises addressed to any and all occupants of the property located at 3052 Rocket Road, Rock Hill, SC 29732 (R p 106-109) (the "Property"). Prior to this hearing the Appellant then retained the services of the attorney representing her in this appeal and he filed a Return to Notice to Vacate. This Return to Notice to Vacate set forth four issues which the Appellant claimed would be a defense to the Respondent's action: (1) The address of 3052 Rocket Road is the primary residence of the Appellant. (2) That the Respondent acquired title to the Property pursuant to a foreclosure of a homeowners lien. (3) That the Appellant's interest in

title, possession and occupancy is superior to that of the Petitioner [Respondent in this action] by virtue of Respondent [Appellant in this action] Vanessa Sumpter's standing as beneficial user and mortgagee under valid first and second mortgages upon the property." (4) That the Appellant's title having been acquired by a Master-in-Equity deed was inferior to the interest of the Respondent (R p 110-112). Nowhere in the Return to the Notice to Vacate was an issue raised concerning failure to comply with the CARES Act certification. A hearing was then held in the Magistrate Catawba/Ebenezer Township, South Carolina on July 14, 2022. The Magistrate determined that by virtue of the Appellant's claim to have superior title to that of the Respondent this position required that the action be dismissed for lack of jurisdiction (R p 113).

Following the Magistrate Court's action, the Respondent filed with the Master-in-Equity a Petition for Writ of Assistance and Rule to Show Cause on July 26, 2022 (R p 114-116). This resulted in the Master-in-Equity's Order on Rule to Show Cause of the same date (R p 117-118). The Appellant was served with the Order on Rule to Show Cause on July 28, 2022 (R p 119).

A hearing on the Respondent's Order on Rule to Show Cause was held before the Master-in-Equity on August 10, 2022. Following this hearing, the Master-in-Equity issued a Writ of Assistance on August 17, 2022 (R p 120-123). The Writ required the Appellant to vacate the subject Property by 12:00 noon on September 12, 2022 (R p 121), some thirty-three days from the date of the hearing.

On August 25, 2022, the Appellant filed a Motion for Reconsideration under Rule 59(e) SCRCP (R p 124-125). On August 25, 2022, the Appellant filed a Memorandum in Support of Reconsideration (R p 126-134). On August 25, 2022, the Appellant filed a Motin for Relief pursuant to Rule 60(b)(5) SCRCP (R p 135-159). On October 12, 2022, the Respondent submitted an Affidavit and photo attachments (R p 166-183). On October 13, 2022, the

Respondent submitted a Memorandum in Opposition to the Appellant's Motion for Relief (R p 184-186). On September 22, 2022, the Master-in-Equity Court Manager sent an email to counsel for Appellant and Respondent advising the parties that they could have a court reporter present at the hearing at their expense (R p 161). On October 13, 2022, the Appellant submitted an Affidavit (R p 187-188). On October 13, 2022, the Appellant submitted a Reply Memorandum (R p 189-191). A hearing was held before the Master-in-Equity on the Appellant's Rules 59(e) and 60(b)(5) SCRCP Motions which were denied by the Master-in-Equity by Order dated December 14, 2022 (R p 192-195). In considering whether the Appellant was required to file a Certification of Compliance with the CARES Act, pursuant to the Administrative Order of the Supreme Court 2020-05-06-01, the Master-in-Equity concluded, as a matter of law: "IT IS FURTHER ORDERED that Master-in-Equity courts statewide shall not hold a foreclosure sale, or issue a judgment of foreclosure, writ of assistance, or writ of ejectment in a foreclosure action ***until the party pursuing the foreclosure*** has complied with the provision of this order." (Emphasis added to the Supreme Court Order but included in the Master-in-Equity's Order) (R p 193). The Court further noted that the Appellant was not in a forbearance plan as contemplated by the CARES Act at the time of the hearing on the Writ of Assistance or thereafter (R p 193). The form for certification provided that one could proceed with the action as long as the party pursuing the foreclosure certified that the mortgagor was not in a forbearance plan under the CARES Act. This disposed of the Appellant's Rule 59(e) SCRCP Motion.

The Court also ruled that the Appellant was not entitled to relief under 60(b)(5) SCRCP as she sought relief from the Order of Foreclosure by Pennington where the foreclosure action and the sale resulting from the action took place prior to the date of the Certificate Order (R p 194). Additionally, no appeal was taken from this order.

STATEMENT OF THE CASE

Prior to the initiation of the lawsuit by Pennington Place Homeowners Association of York, Inc. ("Pennington") against the Appellant in the within action, Pennington had previously brought suit against Appellant for the collection of past due association fees, costs and attorney fees. This resulted in the Judgement by the Honorable S. Jackson Kimball, Master-in-Equity for York County dated May 31, 2012 (R p 11-18). Following this judgement, the Property was sold and Pennington was the successful purchaser of the Property for the stated consideration of $500.00 (R p 19-22). The Master-in-Equity then issued its Order of Sale and Disbursement on August 17, 2012 (R p 23). Thereafter, Pennington reconveyed the Property to the Appellant for the stated consideration of $4,587.93 (R p 25-27).

Following the Appellant's repurchase of the property, she again became delinquent in the payment of her HOA dues which resulted in a second foreclosure action being filed against the Appellant. Pennington, in the foreclosure action, sought foreclosure of its lien and requested that the Court bar the Appellant's equity of redemption in the Property (R p 28-32). The Appellant was in default in this foreclosure, resulting in a judicial sale of the property (R p 60-74). The Court also ruled that the Appellant's equity of redemption in the property was barred (R p 66 11). No appeal was taken from the Master-in-Equity's Judgment of Foreclosure. The Respondent was the high bidder and purchaser of the Appellant's Property located at 3052 Rocket Road, Rock Hill, SC 29732 at the judicial sale.

The Respondent's bid at the foreclosure sale was in the amount of $36,500.00 (R p 75-77). The Respondent complied with her bid and received a Title Under Order of Court from the Master-in-Equity dated December 3, 2019 and recorded on December 4, 2019 (R p 75-77).

The Appellant purchased the Property which was subject to a first mortgage to Wells Fargo Home Mortgage in the original principal sum of $131,002.00 (R p 132-133) and a second mortgage with Family Trust Federal Credit union in the principal amount of $45,000.00 (R p 134). There was no evidence presented to establish the principal balances on these mortgages at the hearings on the Appellant's motions.

The Respondent initially sought to have the Appellant evicted from the premises through a filing with the Magistrate Court for Catawba Ebenezer township which she initiated pro se. In response to this filing, an unknown individual residing at the Property informed the Constable who was attempting to serve the Appellant, that the Appellant no longer resided in the Property (R p 105). The Respondent then sought legal counsel and a Notice to Quit action was initiated in Magistrate Court (R p 106-109). At that time, the Appellant retained counsel and appeared at the scheduled hearing (R p 110-112). Counsel for the Appellant raised an issue relating to a claimed equitable interest in the Property which the Appellant retained due to her continued payment of the first and second mortgages on the Property. As the Magistrate Court lacks jurisdiction to hear matters where there is a question relating to claims of title, the Magistrate Court dismissed this action due to a lack of jurisdiction (R p 113).

On July 26, 2022, the Respondent then filed a Petition for Writ of Assistance and Order and Rule to Show Cause to require the Appellant to vacate the Property on (R p 114-116). The Master-in-Equity then issued the Rule to Show Cause on July 26, 2020 and scheduled a hearing for August 10, 2022 (R p 117-118).

A hearing was held before the Master-in-Equity on August 10, 2022, which resulted in the Writ of Assistance being issued on August 17, 2022 (R p 120-123). The Writ of Assistance

allowed the Appellant 33 days from the date of the hearing before she was required to vacate the premises (R p 122).

The Respondent went to the Property on September 13, 2022, which was the day after the Master-in-Equity's Writ required the Appellant to vacate. She found the Property to have been trashed with all appliances having been removed, light fixtures having been removed and trash throughout the Property both inside and outside (R p 166-183).

On August 25, 2022, the Appellant filed with the Master-in-Equity, a Rule 60(b)(5) SCRCP, seeking relief from foreclosure order of October 3, 2019 (R p 135-159). The Appellant also filed a Rule 59(e) motion requesting that the Master-in-Equity reconsider its ruling resulting in the Writ of Assistance (R p 124-125).

A hearing on the Appellant's motions was held before the Master-in-Equity on October 13, 2022, resulting in the Master-in-Equity's ruling denying both motions on December 14, 2022 (R p 192-195). The appellant then filed the within notice of appeal (R p 196-216).

QUESTIONS PRESENTED

I. Did the Master err by failing to recognize that Sanchez had come to the Court seeking equity with unclean hands?

II. Was the July 27, 2020 Petition for Writ and Rule to Show Cause void ad Initio?

III. If the July 27, 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?

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 vacant were not supported by evidence properly adduced?

V. Did the Master abuse its discretion and err at law by ruling that 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 were not identified?

VI. Did the trial court err by failing to maintain the record of hearing pertinent to the Writ of Ejectment?

VII. Did this case become moot when the Appellant vacated the property?

VIII. Is the within appeal meaningless?

STANDARD OF REVIEW

Certainly, there is no argument that a foreclosure action is one in equity. However, this appeal does not involve an appeal from the foreclosure action. Rather, the Appellant has appealed the Master-in-Equity's denial of her Rule 60(b)(5) SCRCP. "A party seeking to set aside a judgment pursuant to Rule 60(b)(5) has the burden of presenting evidence entitling him to the requested relief. *Perry v. Heirs at law of Gadsden, 357 S.C. 42, 590 S.E.2d 502 (Ct. App. 2003).*" *Lanier v. Lanier 364 S.C. 211, 612 S.E.2d 456 (CT. App. 2005).* Trial courts are granted discretion in ruling on 60(b) motions and the Appellant's review is limited to determining whether the trial court abused its discretion. Thus, this Court must determine whether the trial court ruling lacked evidentiary support or was controlled by an error of law.

Also, this Court's review of the Master-in-Equity's denial of the Appellant's Rule 60(b)(5) SCRCP motion is limited to an abuse of discretion review or an error of law. *Skydive Myrtle Beach, Inc. v. Horry County, 424 S.C. 298, 302, 303, 818 S.E.2d 224, 226, 227 (Ct. App. 2018), McNair v. United Energy Distribs., 390 S.C. 44, 49, 699 S.E.2d 723, 726 (Ct. App. 2010).*

ARGUMENT

I. Did the Master err by failing to recognize that Sanchez had come to the Court seeking equity with unclean hands?

No. As the Petition for an Order for Rule to Show Cause and for a Writ of Ejectment are merely possessory actions, the doctrine of unclean hands, being an equitable defense, has no application to these proceedings. There is no evidence in the record that the Master-in-Equity

made any finding that the Appellant was no longer residing in the Property. The reason that Appellant filed a notice to Quit action in Magistrate Court was due to the fact that an occupant of the Property in a previous eviction action represented to the Constable that the Appellant no longer resided in the Property. Had the Appellant been residing in the Property when the Constable attempted to serve the papers, the occupant of the Property could have had her come to the door to be served or she could have been served by substituted service on a person of an age of discretion residing with the Appellant. Neither of these things happened.

In relation to the issue of unclean hands, it should be noted that the Appellant had previously been through another foreclosure of an HOA lien. Pennington brought suit for the collection of dues and attorney's fees on December 28, 2010 (R p 1-8). This action resulted in a sale of the Property wherein Pennington was the successful bidder. Title was then conveyed to Pennington by Deed of the Master-in-Equity (R p 19-22). Evidently, Appellant then negotiated with Pennington resulting in Pennington re-conveying the Property back to the Appellant for $4,587.93 (R p 25-27). Thus, the Appellant clearly understood from this proceeding that she could lose the Property for nonpayment of HOA dues.

II. Was the July 27, 2020 Petition for Writ of Assistance and Rule to Show Cause void ab Initio?

No. The answer to this issue requires a complete reading of the Supreme Court's Order. The original order relating to Certification Of Compliance With The Corona Virus Aid, Relief, and Economic Security Act (CARES Act) in evictions and foreclosures forms must be read in its entirety. The original order is dated May 6, 2020. The original order was then amended on May 12, 2020, and further amended by order on July 23, 2020. The first paragraph relates to restrictions on evictions, or foreclosures, applicable to cases pending before a trial court. The second paragraph places restrictions on proceedings in Magistrate Courts. The third

paragraph is applicable to Master-in-Equity courts. The Master-in-Equity courts are not trial courts as set forth in this order. If they were deemed to be trial courts, there would have been no reason to have separate and distinct restrictions applicable to Master-in-Equity courts. The Appellant attempts to take the language applicable to trial courts and have those restrictions applicable to Master-in-Equity courts. The provision for Master-in-Equity courts prohibit "...a judgment of foreclosure, writ of assistance or writ of ejectment in a foreclosure action until the party **pursuing the foreclosure** has complied with the provisions of this Order." (emphasis added) (R p 99-100). Plain and simple, the Respondent was not pursuing the foreclosure action, as Pennington Place Homeowners Association of York, Inc. was the Plaintiff in the foreclosure action. Thus, the restrictions of the CARES Act order have no bearing on the Respondent seeking a Writ of Assistance.

III. If the July 27, 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?

No. First of all, there was no Petition dated July 27, 2020. The Petition for Writ of Assistance and Rule to Show Cause was dated July 26, 2022.

The Appellant acknowledges that the Master-in-Equity denied her Rule 59(e) motion on the basis that the Respondent did not initiate the foreclosure so there was no requirement for compliance with the Supreme Court Administrative Order. Nowhere in the Appellant's brief does she establish any basis for disputing the Master-in-Equity's ruling. In spite of this, the Appellant continues to argue that the Petition for Writ of Assistance and Ejectment was void ab initio. If the Petition for Writ of Assistance and Ejectment was not void, then clearly the Master-in-Equity had jurisdiction over the subject matter of this action.

IV. Was the Master's hearings and ruling on Writ of Assistance ejecting Sumpter in error where findings of fact as to the home being vacant were not supported by properly adduced evidence?

No. The Master-in-Equity's Writ of Assistance dated August 17, 2022, makes absolutely no reference to the Appellant not occupying the subject Property (R p 120-123). In fact, just the opposite is the case. The following are quotes contained in the Writ of Assistance; "This matter is before me on August 10, 2022, upon Petition of the Petitioner [Respondent in this action] who seeks an Order directing the sheriff to eject the Respondent [Appellant in this action] who still occupies and remains in possession of the subject property as well as any and all tenants and other occupants who claim under the Respondent [Appellant in this action]... (R p 120) 3. The Respondent [Appellant in this action] and others occupying under the Respondent [Appellant in this action] still occupy and remain in possession of the subject property … (R p 121 3) NOW, THEREFORE, it is ORDERED that the Respondent [Appellant in this action] and those claiming under her shall vacate the subject property no later than **12 o'clock noon on September 12, 2022** (emphasis in the original)…" (R p 121).

V. Did the Master abuse its discretion and err at law by ruling that equity of redemption was to be barred where the sale price of $36,500 should have shocked the conscience of the Court given prior mortgage lienholders not identified?

No. The argument that the sales price of $36,500.00 should have shocked the conscience of the Court is not an argument that can be made under Rule 60(b) SCRCP motion. This is a matter ruled upon by the Master-in-Equity at the time of the foreclosure hearing and as evidenced in her October 3, 2019 Master-in-Equity Report and Judgment of Foreclosure sale. No appeal was taken from this judgment and the judgment specifically barred the Appellant's equity of redemption. An un-appealed order becomes the law of the case. *Judy v. Martin, 674 S.E.2d 151, 153, 381 S.C. 455, (2009)* Even if the Court were to consider this matter, the sum of $36,500.00 does not represent the Respondent's total consideration in purchasing the Property. This was the amount of the bid at the sale. However, in taking title to the Property, the

Respondent acquired the title subject to two mortgages, the first mortgage being in the amount of $131,002.00 (R p 132-133) and the second mortgage being in the amount of $45,000.00 (R p 134). Taking into account the mortgages which continue to be liens against the Property, the total amount of consideration clearly does not shock the conscience.

VI. Did the trial court err by failing to maintain the record of hearing pertinent to the Writ of Ejectment?

No. It is well known to every South Carolina attorney who practices in equity courts that the South Carolina Court Administration does not assign Court Reporters to hearings held before the Master-in-Equity. Even though this should be well known to all attorneys, the court manager for the York County Master-in-Equity advised counsel for Appellant and Respondent that they would have the opportunity to have a court reporter present at their expense (R p 161). The Appellant had every opportunity to have a court reporter present at those hearings and failed to make this election. That is not the fault of the Master-in-Equity.

VII. Did this case become moot when the Appellant vacated the Property?

Yes. It is clear that based upon the Affidavit of the Appellant dated October 13, 2020, that the Appellant vacated the Property prior to September 13, 2022 (R p 187-188). This is also confirmed by the Affidavit of the Respondent dated October 12, 2022, together with photographs attached thereto (R p 166-183). Not only did the Appellant vacate the Property but she saw to it that it was left in shambles after she vacated the Property. In 1951, the South Carolina Supreme Court dismissed an appeal on an ejectment action where the tenant had vacated the home. *Berry v. Zahler, 220 S.C. 86, 87, 66 S.E.2d 459, 459 (1951).* The Court went on to find that the sole issue in an ejectment action was the right of possession of the Property. When the issue of possession was no longer before the court, the case became moot and the appeal should be dismissed. Id. In *Skydive Myrtle Beach, Inc v. Horry County 424 SC 298, 302, 818 S.E.2d 224,*

226, the Court of Appeals stated: "As in Berry, there is nothing more for this court to consider once the party appealing has vacated the premises." This Court should dismiss this appeal.

VIII. Is the within appeal meaningless?

Yes. Had the Master-in-Equity ruled that the Supreme Court Order 2020-05-06-01 required a Certificate of Compliance by the Respondent in this action, then it would not have issued the Writ of Assistance. The Respondent could then have completed a Certificate of Compliance and refiled the Petition for Ejectment and for an order for Rule to Show Cause. In the event that this Court would reverse the Master-in-Equity, the Respondent could then refile a new action seeking to eject the Appellant. The Supreme Court Order 2022-09-12-01 rescinded the previous order of certificate of compliance with the CARES Act (R p 160). Thus, no requirement for a certificate of compliance exists at this time. A reversal in this action would create chaos as the Respondent has maintained possession of the Property continuously since September 13, 2022. Reversing the Master-in-Equity would mean that the Appellant was under no order for ejectment. However, the Respondent would remain the owner of the Property and is in actual possession of the Property. Such a result does not make sense.

CONCLUSION

It is respectfully submitted that this Court should dismiss the within appeal.

Respectfully submitted,

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