THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
Teasa K. Weaver, Master in Equity

Appellate Case No. 2024-001051
Case No. 2019-CP-46-02929

Ex Parte: Byron A. Chavarria, …… ……. Appellant

In Re:

Wilmington Savings Fund Society, FSB, as Trustee of
Stanwich Mortgage Loan Trust, I, …… ……. Respondent

v.

Laura E. Kephart, 1st Franklin Financial Corporation, Defendants

Of which Laura E. Kephart is a Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This is a dispute involving Rule 71(c) of the South Carolina Rules of Civil Procedure regarding the distribution of surplus funds following a judgment and sale on foreclosure of a property in York County owned by Robin Hood Investments, LLC. There were two competing claims to the surplus, and the Master in Equity in York County denied Appellant Byron A. Chavarria's ("Chavarria") Motion to Intervene and Claim for Surplus Funds and awarded the surplus funds to Respondent Laura Kephart ("Kephart"). Chavarria is appealing the Master in Equity's Order regarding the surplus funds.

STATEMENT OF THE FACTS

This matter started with the filing of a Lis Pendens and a Complaint for foreclosure, with deficiency waived, by Pingora Loan Servicing, LLC against Kephart on August 28, 2019. (ROA 71-76.) The property that was the subject of the foreclosure was 3785 Saluda Road, Rock Hill, South Carolina 29730 (the "Property"). (ROA 77-78; ROA 71-76.) Kephart failed to respond to the Complaint[1] and, accordingly, was declared to be in default on December 19, 2019. (ROA 84.) The case was then referred to the Master in Equity for York County by an Order of Reference filed the same day. (ROA 4-5.)

A hearing on the merits was scheduled for February 11, 2020, and a Notice of Hearing was mailed to Kephart on January 24, 2020. (ROA 85-86.) Despite receiving notice of the hearing, Kephart failed to attend and, subsequently, the Master in Equity entered an Order and Judgment of Foreclosure and Sale on February 12, 2020, and a Notice of Sale scheduled for April 6, 2020.

[1] Kephart could not be located for service and, accordingly, was served by publication. (ROA 1-3.)

(ROA 6-18; ROA 19-21.) A copy of the Order was mailed to Kephart on March 10, 2020. (ROA 87.)

A few weeks after the Order and Judgment of Foreclosure was entered, on March 4, 2020, Kephart—who was fully aware that the Property was in foreclosure and a hearing had been held—executed a Quitclaim deed conveying the Property to Robin Hood Investments, LLC, ("Robin Hood"). (ROA 143-145.) The very next day, Robin Hood entered into a Lease Agreement with Option to Purchase ("Lease-Purchase Agreement") with Chavarria. (Lease-Purchase Agreement signed Mar. 5, 2020 (attached as Exhibit A to Affidavit of Byron Chavarria (ROA 107-109).) Contemporaneously, Mr. Chavarria paid $20,000 on the Option to Purchase[2] and, subsequently, paid an additional $12,000 on the Option to Purchase, for a total of $32,000. (Exhibits B and C to Affidavit of Byron Chavarria (ROA 1112-117.) Chavarria and his family moved into the Property in April 2020 and lived there continuously thereafter. Since the execution of the Lease-Purchase Agreement, in addition to the payments on the Option to Purchase, Chavarria has also made monthly lease payments of $1,000, and made improvements to the Property worth over $16,000 in anticipation of ownership. (ROA 102-117.)

The foreclosure sale was originally scheduled for April 6, 2020. (ROA 6-21.) However, the case, including the sale, was suspended due to the COVID-19 pandemic and a statewide moratorium on foreclosures. (ROA 22.) After the moratorium was lifted, on September 13, 2021, the Master in Equity entered an order amending the caption, to substitute Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust I as Plaintiff. (ROA 23-26.) In December of 2021, the Plaintiff then moved to supplement the Judgment to reflect adjustments in

[2] The receipt for the $20,000 payment is incorrectly dated March 5, 2021; the payment was made on March 5, 2020.

the debt figures, and, subsequently, the Master in Equity issued a Supplemental Order to the Master's Order and Judgment of Foreclosure and Sale. (ROA 27-32.) Additionally, the foreclosure sale was rescheduled for January 3, 2022.[3] (ROA 33-35.)

The following year, a Second Supplemental Order to the Master's Order and Judgment of Foreclosure and Sale was filed on October 31, 2022, and the sale was once again rescheduled for December 5, 2022. (ROA 36-41; ROA 42-44.) Kephart was served with notice of the Sale by Publication as evidenced by the Affidavit of Publication. (ROA 88.) Soon thereafter, Kephart filed a Chapter 13 bankruptcy in the Western District of North Carolina on December 5, 2022. (ROA 125.) She then filed an Amendment to Chapter 13 Plan, surrendering the Property to the Plaintiff Wilmington Savings Fund Society on March 2, 2023. (ROA 126-128.)

A Third Supplemental Order to the Master's Order and Judgment of Foreclosure and Sale was filed on July 19, 2023. (ROA 45-50.) A new Notice of Sale was entered on September 5, 2023, scheduling the sale for December 4, 2023. (ROA 51-53.) The Notice of Sale was mailed to Kephart at the Property on November 16, 2023, and November 21, 2023. (ROA 89; ROA 90.) The Notice of Sale was also published, and an Affidavit of Publication was filed. (ROA 91.) Despite the repeated notices to her by mail and publication, Kephart never responded to or participated in the foreclosure action although she was well aware of it. (ROA 137 (testifying "I had moved out of the apartment or the home, and was allowing the bank to foreclose on it and sell it because I could no longer afford it"); 13:11–18 (testifying she talked "a lot" with Robin Hood about how Robin Hood could "help [Kephart] stop the foreclosure process").)

The Property was ultimately sold on December 4, 2023, to Quality Home Remodeling, Inc. (ROA 54-55.) Quality Home Remodeling, Inc. filed a Petition for Rule to Show Cause on

[3] The record is unclear as to why, but the foreclosure sale did not proceed on January 3, 2022.

February 7, 2024, and the Master in Equity filed a Rule to Show Cause on February 8, 2024, directing Chavarria to show cause why he should not be evicted from the Property. (ROA 92-95; ROA 58-59.) Chavarria filed a Response to Petition for Rule to Show Cause and Motion to Stay Writ of Possession on February 15, 2024. (ROA 118-120.) Quality Home Remodeling, Inc. filed a Brief in Support of Petition for Rule to Show Cause on February 26, 2024, and an Order for Writ of Assistance was filed by the Master in Equity on March 7, 2024, ejecting Chavarria from the property. (ROA 123-124; ROA 60-61.)

In the meantime, on January 16, 2024, following the sale of the Property, the Master in Equity issued a Notice of Surplus Funds, indicating a surplus of $37,561.08. (ROA 56-57.) On February 13, 2024, Chavarria filed a Motion to Intervene and Claim for Surplus Funds. (ROA 96-98.) On February 22, 2024, Kephart also filed a Claim to Surplus Funds, (ROA 121-122), and on March 7, 2024, the Master filed and issued a Notice of Hearing to address Chavarria's motion to intervene and disbursement of the surplus funds. (ROA 62-63.) The hearing was conducted on March 28, 2024, and both Kephart, appearing *pro se*, and Chavarria, along with his counsel, were present. During the hearing, Chavarria filed and presented his Affidavit in support of his claim for the surplus funds and, at the request of the Master in Equity, Kephart testified. (ROA 132-135; ROA 136-140.) At the close of the hearing, the Master in Equity issued her ruling denying Chavarria's claim for surplus funds and disbursing all surplus funds to Kephart. (ROA 141.) The Master's written Order followed on May 24, 2024, denying Chavarria's motion to intervene and his claim for surplus funds and disbursing all surplus funds to Kephart. (ROA 64-68). This appeal was timely taken thereafter. (Notice of Appeal, June 21, 2024.)

STANDARD OF REVIEW

The standard of review on a Rule 24 motion to intervene is abuse of discretion. *Ex parte Builders Mut. Ins. Co.*, 431 S.C. 93, 98–99, 847 S.E.2d 87, 90 (2020). "'An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support.'" *Watts v. Chastain*, 438 S.C. 597, 603, 885 S.E.2d 398, 401 (Ct. App. 2022) (quoting *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502–03 (2006)).

However, as to the ultimate issue on appeal—whether the master in equity erred by concluding all surplus funds should be paid to Kephart and denying Chavarria's claim—the standard of review is *de novo*. In actions in equity, the "appellate court can review the record and make findings based on its view of the preponderance of the evidence." *J&W Corp. of Greenwood v. Broad Creek Marina of Hilton Head, LLC*, 441 S.C. 642, 664, 896 S.E.2d 328, 340 (Ct. App. 2023) (quoting *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 290–91 (2000)). "'It is now well settled that this court has jurisdiction in appeals in equity cases to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the lower court in such cases where the appellant satisfies this court that the finding is against the preponderance of the evidence.'" *Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004) (quoting *Crowder v. Crowder*, 246 S.C. 299, 301, 143 S.E.2d 580, 581 (1965)). This standard of review is called *de novo*, which "literally means 'anew.'" Jean Hoefer Toal, et.al., *Appellate Practice in South Carolina* 224 (3d ed. 2016) (quoting *Black's Law Dictionary* 368 (8th ed. 2005); *see also Nutt Corp. v. Howell Road, LLC*, 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011) ("We review factual findings and legal conclusions in an equitable action de novo.").

ARGUMENT

I. The Master Abused Her Discretion by Denying Chavarria's Motion to Intervene.

A motion to intervene is governed by Rule 24 of the South Carolina Rules of Civil Procedure. Rule 24(a) governs intervention as a matter of right and Rule 24(b) addresses when a party may be permitted to intervene. Rule 24, SCRCP. Rule 24(a) provides, in relevant part as follows:

> Upon timely application anyone shall be permitted to intervene in an action . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24(a), SCRCP.

It is beyond any doubt that Chavarria has an equitable interest in the Property, which is the subject of the foreclosure action, by virtue of the $32,000 he has paid on an Option to Purchase the Property, his improvements to the Property, his continuous residence in the Property since April 2020, and his monthly lease payments. *S.C. Fed. Sav. Bank v. San-A-Bel Corp*., 307 S.C. 76, 78, 413 S.E.2d 852, 854 (Ct. App. 1991) ("It is generally recognized that the purchaser under an executory contract for the purchase and sale of real property has an equitable lien on the property in the amount paid on the purchase price."); *see also Equitable Lien*, BLACK'S LAW DICTIONARY (9th ed. 2009) (defining an "equitable lien" as "a right, enforceable only in equity, to have a demand satisfied from a particular fund or specific property, without having possession of the fund or property[,]" which arises, *inter alia*, "when an occupant of land, believing in good faith to be the owner of that land, makes improvements, repairs, or other expenditures that permanently increase the land's value"). Further, it is certain that neither Kephart nor the Plaintiff adequately represents Chavarria's interest in the Property. Therefore, Rule 24(a) requires that Chavarria "shall

be permitted to intervene," and the Master in Equity abused her discretion by denying his motion to do so.

Although unnecessary in light of Rule 24(a), Chavarria also should have been permitted to intervene under Rule 24(b), which allows intervention "(1) when a statute confers a conditional right to intervene[.]" To begin, section 15-11-20 of the South Carolina Code provides that "[f]rom the time of filing [of a lis pendens] . . . every person whose conveyance or encumbrance is subsequently executed . . . 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***." S.C. Code Ann. § 15-11-20 (emphasis added). Additionally, as discussed more thoroughly below, Rule 71(c), SCRPC, provides that "any person who had a lien on the mortgaged premises at the time of the [foreclosure] sale, upon filing with the master . . . a claim of entitlement to the surplus fund, may have a hearing to determine such entitlement." Additionally, Rule 71(c) requires that "[a]t the expiration of the claim filing period, the master . . . ***shall*** set a hearing to accept proof of the claims filed." Rule 71(c), SCRCP (emphasis added); *see also Beasley v. United States*, 81 F. Supp. 518, 527 (E.D.S.C. 1948) (noting "the Court and all the parties are bound to follow the Rules of Civil Procedure just the same as they would be required to obey a statute").

In this case, the Lis Pendens was filed on August 28, 2019 (ROA 77-78), and the Lease-Purchase Agreement was executed on March 5, 2020 (ROA 107-107). Therefore, under section 15-11-20, Chavarria's interest under the Lease-Purchase Agreement constitutes an encumbrance on the property such that Chavarria is bound by and should be treated as if he were a party to the action. Furthermore, Chavarria's interest under the Lease-Purchase Agreement, his payment of $32,000 towards the purchase price, his extensive improvements to the Property, and his

continuous residence in the Property since April 2020 establishes an equitable lien that was certainly in existence at the time the Property was sold on December 4, 2023. *San-A-Bel Corp*., 307 S.C. at 78, 413 S.E.2d at 854. Chavarria timely filed his Claim for Surplus Funds on February 13, 2024. Thus, the Master in Equity was required under Rule 71(c) to hold a hearing and accept proof of Chavarria's claim. Rule 71(c), SCRCP. By denying Chavarria's motion to intervene, the Master in Equity essentially ignored Chavarria's position as a subsequent encumbrancer and valid claimant to the surplus funds under section 15-11-20 and Rule 71(c). Moreover, the Master in Equity's finding that Chavarria's motion to intervene was untimely is also an abuse of discretion because it ignores material facts, including that Chavarria speaks very little English and did not have the benefit of a lawyer at the time the Lease-Purchase Agreement was executed to explain his rights and responsibilities thereunder, on which the Master in Equity relied heavily in her analysis. Such denial was clearly an abuse of discretion which this Court can and should reverse.

II. The Master Erred in Concluding that All Surplus Funds Should Be Paid to Kephart and in Denying Chavarria's Claim for the Surplus Funds.

In denying Chavarria's claim for surplus funds, the Master in Equity improperly asserted that Chavarria is not entitled to the equitable relief of claiming surplus funds because he has other remedies at law under the Lease-Purchase Agreement. This is a blatant error of law. To begin, it is well-established that foreclosure actions are actions in equity. *Wachovia Bant, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 440–41 (2014) (citing *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997)), *abrogated on other grounds by Deutsche Bank Nat'l Trust Co. as Trustee for NovaStar Mortgage Funding Trust, Series 2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 v. Estate of Houck*, 440 S.C. 409, 892 S.E.2d 280 (2023). Therefore, any claims or proceedings with respect to surplus funds in a foreclosure action pursuant to Rule 71(c) are also, necessarily, equitable in nature. *See Martin v. Jenkins*, 51

S.C. 42, 27 S.E. 947, 948 (1897) (referring to "an accounting in equity for the surplus, if any, over the debt secured by the mortgage" following a foreclosure sale). Indeed, the Master in Equity acknowledged the same in her Order. *See* ROA 67.

However, the Master's error lies in reading into Rule 71(c) a prohibition that does not exist—namely, that a party or lienor is barred from claiming the surplus funds if they have other, unrelated remedies at law. It is a long-standing rule of statutory construction that "a court cannot read into [a] statute something not within the manifest intention of the legislature as gathered from the statute itself." *State v. Zulfer*, 345 S.C. 258, 261–62, 547 S.E.2d 885, 886 (Ct. App. 2001); *see also Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99, 102 (Ct. App. 2004) (providing that the rules of statutory construction apply to procedural court rules). Rather, "the words of the rule must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." *Stark Truss Co.*, 360 S.C. at 508, 602 S.E.2d at 102 (quoting *Green v. Lewis Truck Lines, Inc.*, 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994)). Rule 71(c) provides that "[a]ny party to the action, or any person who had a lien on the mortgaged premises at the time of the [foreclosure] sale, upon filing with the master . . . a claim of entitlement to the surplus fund, may have a hearing to determine such entitlement." The only limitation placed on who may assert a claim for surplus funds is that they be either a party or a lienholder at the time the property was sold. Therefore, the Master in Equity erred by reading into this rule an additional requirement that the party or lienholder have no separate legal claims related to the property at hand.[4]

[4] Even if the Court were inclined to recognize such a limitation on the availability of Rule 71(c), the limitation would not apply to Chavarria because his claims, as recognized by the Master in Equity, were against Robin Hood and arose out of the Lease-Purchase Agreement. Chavarria has no claims against Kephart, nor do his potential claims relate specifically to the Property. Indeed, his claims would all be for breach of the Lease-Purchase Agreement for which he could recover

Furthermore, practically speaking, the Master in Equity's reading of Rule 71(c) would essentially make surplus funds only recoverable by the mortgagor, and no one else. It is conceivable—if not generally recognized—that subsequent or secondary lienholders to Property often have other contractual legal remedies against the mortgagor. If the Court were to adopt the Master in Equity's reading of Rule 71(c), such parties and lienholders would never be permitted to assert claims to the surplus funds. That has never been and cannot be the intended purpose of Rule 71(c). The existence of separate legal claims belonging to a party or lienholder do not impact their right to assert an equitable claim to the surplus funds under Rule 71(c). The same logic must apply to Chavarria in this case, and any legal claims he may have under the Lease-Purchase Agreement have no import to his claim for the surplus funds on the Property under Rule 71(c).

As a result of the Master in Equity's error of law as to Chavarria's right to assert a claim for the surplus funds, the Master further erred by finding that Kephart was entitled to all of the surplus funds by virtue of her position as the mortgagor and the (incorrect) fact that no other claims had been filed. As discussed above, Chavarria had a right to file a claim for the surplus funds under Rule 71(c) due to his equitable lien on the Property, and his interest in and claim to the Property—and, by extension, the surplus funds—far exceeds that of Kephart. In fact, Kephart has no interest to assert whatsoever.

First, Kephart defaulted on her mortgage payments and abandoned the Property. (ROA 74, ¶18; ROA 79-83.) She then failed to appear in or otherwise respond to the foreclosure action. Therefore, she has waived any interest she might otherwise have as a mortgagor in this case.

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pecuniary damages, but this is still not an adequate remedy because none of his legal claims can provide him with what he is equitably entitled to and bargained for under the Lease-Purchase Agreement—namely, an interest in the Property.

Second, she quitclaimed the property to Robin Hood.[5] Once Kephart deeded the property to Robin Hood, she lost and waived any remaining interest she had in the Property as mortgagor or otherwise. Moreover, Kephart surrendered the Property in her Chapter 13 bankruptcy to the mortgagee, Wilmington Savings Fund Society, who waived any deficiency in the foreclosure on May 2, 2023. (ROA 126-128.)

Kephart wants her cake, and to eat it too. She did not want to be an owner burdened by any encumbrances, liens, or mortgages on the Property, and she achieved the same when she sold the Property to Robin Hood. Yet now she wants to assert a claim for surplus funds on Property she does not own and which her only interest in was that of a mortgagor on a mortgage that has already been foreclosed. Kephart has no remaining interest in the Property and, as such, she has forfeited any claim for surplus funds.

Accordingly, Chavarria's claim is the only valid claim for surplus funds in this case, and the Master in Equity erred by awarding the funds to Kephart instead of Chavarria.

[5] Although the Master in Equity concluded there was no valuable consideration for the quitclaim deed, this is a clearly erroneous given the Master also found that Kephart received $1000 from Robin Hood. (ROA 65; ROA 139:9–14 (Kephart testifying she received $1000 "at the beginning of the process").) Further, Kephart testified at the hearing that, in exchange for title to the Property, Robin Hood promised to "help [Kephart] stop the foreclosure process," "work[] with the mortgage company to take over the loan and make all the payments on the loan," and "help [Kephart] improve [her] credit[.]" (ROA 136:7–14, ROA 137:11–16.) Robin Hood also partially performed its promises by paying for Kephart's bankruptcy attorney to prevent the foreclosure sale. ROA 138:18–19. It is a long-standing principle of contract law that valuable consideration "may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other[,]" including "[m]utual promises[.]" *Callaham v. Ridgeway*, 138 S.C. 10, 135 S.E. 646, 649 (1926); *see also Dean v. Nelson*, 77 U.S. 158, 166 (1869) (noting "it is not necessary that a consideration should be adequate, but only that it be valuable"). Therefore, Robin Hood's promises to take over the mortgage payments and stop the foreclosure action were also valuable consideration on which Kephart relied in conveying the Property. These promises, along with the $1000 payment, constitute an abundance of consideration for the quitclaim deed, and the Master in Equity erred in not so concluding.

CONCLUSION

For the reasons stated above, this Court should reverse the York County Master in Equity's order denying Chavarria's Motion to Intervene, denying Chavarria's claim for surplus funds, and awarding the surplus funds to Kephart.

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