

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

EDGAR W. DICKSON , FIRST CIRCUIT

CASE # 2009-CP-18-2200

RENE McMASTERS.....Respondent

Vs.

HOWARD W. CHARPIA.....Appellant
Jody E. Charpia.....Defendant

INITIAL BRIEF

“Order of Foreclosure and Sale”

Howard W. Charpia
1450 Jahnz Ave.
Summerville, SC 29485

Attorney Frank M. Cisa , for Respondent

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DEC 02 2013

SC Court of Appeals

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2. Did the Court err in not properly notifying the Appellant / Defendant ?
3. Did the Court err in denying the Appellant / Defendant his right to his or an Attorney ?
4. Did the Court abuse its discretion in referral to the Master-In-Equity In this case ?
5. Did the Court present a bias and prejudicial attitude ? Page 7 , lines 3,4
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STATEMENT OF ISSUES

- 1. Did the Court violate the Supreme Court's decision on foreclosure Intervention ? (2011-05-02-01 The Supreme Court of South Carolina)**
- 2. Did the Court err in notification of hearing to the Appellant / Defendant ? (Webster v. Clanton , 259 S.C. 387 , 192 S.E. 2d 214 (1972))**
- 3. Did the Court err in denying the Appellant / Defendant his right to his or an Attorney ?**
- 4. Did the Court abuse its discretion in referral to the Master-In-Equity in this case ?**
- 5. Did the Court present a bias and prejudicial attitude ? Page 7 , lines 3,4**
- 6. Did the Court err in the Appellant's Homestead Exemption request ?**
- 7. Did the Court err in establishing an equitable lien against Jody E. Charpias ½ interest in the property ?**

STATEMENT OF THE CASE

Howard W. Charpia attended an " Order of Foreclosure and Sale" hearing on July 30 , 2012 in Dorchester County . An Order was signed by Judge Dickson on October 29 , 2012 ; three months after hearing . Order was recorded in Clerk's office on November 27 , 2012 ; four months after hearing .

A "Compulsory Order of Reference " hearing was held on March 23, 2010 . An Order was signed by Judge Dickson on April 27 , 2010 ; eight

months after the commencement of this action being filed , August 10, 2009 . Thus violating the time limit to refer said action to a Master-In-Equity . (Section 4 , Article V, South Carolina Constitution)

(exhibit 1 , attached)

Charpia's Appeal of this Order was dismissed by the Appeals Court , 2011-UP-445. Appellant believes that the Court erred in it's dismissal. The Court did not read the statute (Rule 38) as a whole , " issues of fact in an action for the recovery of money only or of specific real property *must be tried by a jury* , unless waived " .

The "Order of Reference" of April 27, 2010 refers the action to the Master-In-Equity for purposes of conducting a hearing , making findings of facts and conclusions of law and to render a final decree with "*direct appeal to the SC Court of Appeals in accordance with Section 14-11-85.*"

This action was never heard by the Master nor a Referee . There was never a hearing , findings of facts and conclusions of law and a final decree rendered.

Appellant has challenged "subject matter" jurisdiction on many occasions with the lower Court which were / are futile . The lack of

subject matter jurisdiction can be raised at any time and can be raised for the first time on Appeal. (State v. Brown opinion # 3549)

Charpia was not properly notified of the “subject matter” for the hearing of July 30 , 2012 .

Charpia first ordered the transcript of this hearing in August 2012 . Appellant Charpia received said transcript in September 2013 , thirteen (13) months elapsed before receiving the transcript . Attempts with the South Carolina Court of Administration were futile .

Charpia appeals this Order and does challenge jurisdiction.

FACTS

The “Order of Foreclosure and Sale “ appeal pertains to the following :

1. That pursuant to , 2011-05-02-01 Supreme Court of South Carolina ;

This action did not have a foreclosure intervention as required . Attorney

Cisa’s argument and Judge Dickson’s Order of April 27 , 2010 clearly state

that this action was / is based on Rule 71 , SCRPC . (exhibit 2) (page 2 of transcript)

Pursuant to the Supreme Court’s rule , Charpia was never served with a notice of foreclosure intervention *nor* have any of the requirements of this Rule have been fulfilled .

2. **Charpia has on file several motions prior to the hearing of July 30 , 2012 with the Dorchester County Clerk's office . (exhibit 4) The Clerk's office sent Charpia a "Notice of Case Scheduling" in May 2012 . (exhibit 5) Due process requires that a litigant be placed on notice of the issues which the Court is to consider. *Charpia's motions on file are pending* .**

It is a fundamental doctrine of the Law that a party whose personal rights are to be affected by a personal judgment must have his day in Court, and that without proper notice and a opportunity to be heard a Court has no jurisdiction to adjudicate such personal rights. And a judgment by a Court without jurisdiction , the subject matter is a nullity and must be so treated by the Courts whenever and for whatever purpose it is presented and relied on. (Webster v. Clanton , 259 S.C. 1972)

The Clerk's notice and Attorney Cisa's letter to Charpia did not specify the issues that were to be before the Court on July 30, 2012. (exhibits 6 , 7)

And they failed to sufficiently allege the "grounds therefore " to be argued.

Charpia raised this issue with Judge Dickson repeatedly and his attempts were futile .

3. Charpia pleaded with Judge Dickson for a continuance until his Attorney could represent him in a proper way . (page 4 / transcript)

The Court deprived Charpia of a liberty that mandates a State due process right to an Attorney. Charpia was not made aware of the dangers and disadvantages of self-representation so the record would establish that he knew what he was doing.

The Court prevented Charpia from enjoying this fundamental constitutional protection of an Attorney.

4. The Court “abused its discretion” in an Order dated April 27 , 2010 by referring this action to the Master-In-Equity . In place at that time was an Order pursuant to Section 4 , Article V, South Carolina Constitution :

IT IS ORDERED that no reference to a Master or referee shall be made after a case has been filed for more than six (6) months , unless approved in writing by the Chief Judge for Administrative Purposes upon a showing of exceptional circumstances.

This action was filed August 10 , 2009 . Order signed by Dickson is dated April 27 , 2010 . (eight months)

The Court had no jurisdiction to refer to Master . Subject matter jurisdiction may be raised at any time.

5. Judge Dickson's bias and prejudicial attitude . Charpia made a motion for Judge Dickson to disqualify himself at said hearing of July 30 , 2012 .
(page 18 / transcript)

Charpia filed a "complaint" with the Office of Disciplinary Counsel in September 2012 . Charpia filed a "civil action " against Judge Dickson in October 2012 , case # 2012-CP-18-2380 . This action was referred to the Federal Court in December 2012 and dismissed "without prejudice" at the state level by the Federal Court. Charpia filed a "Motion to Disqualify" Judge Dickson with the Clerk's office on October 23 , 2012 ; this *motion was never* heard . Charpia filed an Affidavit with the Clerk's office on December 5 , 2012 ; for a "change of Judge" , this request was not honored nor heard .

Charpia has followed all requirements to disqualify Judge Dickson from his case and cause , all efforts and requests are and were futile. Said requests were made pursuant to 28 U.S.C. Section 455 .

The US Supreme Court held that disqualification is required if an objective observer would entertain reasonable questions about a Judge's impartiality. If a Judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely , the judge must be disqualified.

(*Liteky v. U.S. , 114 S. Ct. 1994*)

Should a Judge not disqualify himself as required by law , then the Judge has given another example of his “appearance of partiality “which possibly further disqualifies the Judge. Judge Dickson had / has knowledge of ALL actions requested and filed by Charpia against him.

6. Charpia raised the matter of Section 15-41-10 , Homestead Exemption ; how the Court would enforce said rule . Judge stated that this had to do with taxes. Judge Dickson boasted in March 2010 that “when he was practicing law , he was involved in a lot of foreclosure actions.” (page 29 / transcript)

If said experience was gained from foreclosure actions , Judge Dickson should have known about the Homestead Exemption practices. Judge Dickson did not rule on Charpia’s Homestead Exemption issue as requested.

7. The Court did not establish an equitable lien against Jody’s interest in the property. For an equitable lien to arise as to specific property ; there must be a debt , a duty (obligation) owing from one person to another and an implied or expressed intent the property serve as security for payment of the debt. This judgment is against Howard W. Charpia (Charpia Residentials LLC) only and not Jody E. Charpia . (Opinion # 5138 SC Court of Appeals 2013)

CONCLUSION

Appellant Charpia was not afforded the requirements of Chief Justice Jean Toal's foreclosure intervention after Judge Dickson ruling that this action falls under Rule 71 , SCRPC .

Charpia was not properly notified by the Clerk's office , the Court or Judge Dickson's office the "grounds therefore" to be argued at this hearing of July 30 , 2012 . It is an error of law for a Court to decide a case on a ground not before it . Charpia *objected* to the Court and Judge Dickson on this merit many times at said hearing.

Charpia was denied his constitutional and state right to legal Counsel. The U.S. Supreme Court set precedent and has determined that the standard for the "right to counsel" is not whether the matter is criminal or civil , but whether the Defendant's (appellant) liberty is at stake.

The Court "abused its discretion" in an Order dated April 27 , 2010 by referring this action to the Master-In-Equity . In place at that time was an Order pursuant to Section 4 , Article V, South Carolina Constitution . No referral to a Master may be made more than six (6) months after the action was filed.

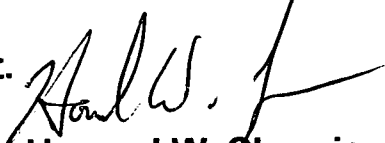
Judge Dickson refused to disqualify himself after many requests and motions. Pursuant to Canon 3 (E)(1)(a) of Rule 501 , SCACR , a Judge should disqualify himself or herself in a proceeding in which the Judge's impartiality might reasonably be questioned.

Charpia and his dependents are qualified for the Homestead Exemption pursuant to the rules and laws of South Carolina .

No equitable lien was established against Jody E. Charpia's interest in the property . Jody does not owe a debt to the respondent and does not have a judgment against her.

There was a sale of this property in 2009 and Attorney Cisa cancelled the sale without following the rules and laws of the Court . A "judicial sale " will not be set aside except for cogent reasons . No motion was ever made , no hearing was ever held nor Order signed to set aside the sale (s) of this property in 2009 .

WHEREFORE , Charpia prays to this Court that this " Order of Fore-Closure and Sale" by Judge Dickson be reversed and void , pursuant to Rules and laws of South Carolina and this Court.


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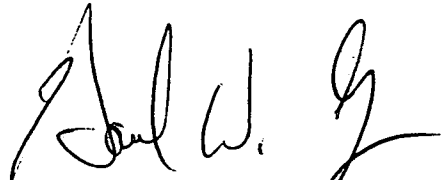
Vs.

HOWARD W. CHARPIA.....Appellant
Jody E. Charpia.....Defendant

PROOF OF SERVICE

I , Howard W. Charpia , hereby certify that I mailed the "INITIAL BRIEF"
to Attorney Frank M. Cisa and the South Carolina Court of Appeals on :

Date mailed 11-26 , 2013



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Attorney Frank M. Cisa , for Respondent