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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-In-Equity

Case No. 2024-CP-23-04910
Appellate Case No. 2025-002386

Harbor Town Association, Inc.; Oriole Properties, LLC; Thomas and Son Properties, LLC; and Kelley Yarborough Woody, Esq., Guardian ad Litem Nisi .... Respondents,

v.

Estate of Rajiv Kumar Lakhaney, Deceased... Appellant.

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Court Rules

INTRODUCTION[1]

This appeal concerns whether a judicial sale may stand when the foreclosure judgment was entered without service upon the known and reachable fiduciary of a deceased owner. The Association knew of the Estate, held the Administrator's Letters of Administration and contact information, and executed a payment agreement with her. It nonetheless proceeded by publication against unknown parties, served neither Administrator, and sold the Property for $25,000.

The Respondents' Brief identifies no affidavit of diligence under S.C. Code Ann. § 15-9-710, no mailing to either Administrator under § 15-9-740, and no service upon either fiduciary. It argues instead that § 15-39-870 and the bona fide purchaser doctrine protect the sale notwithstanding any defect in the underlying proceeding. That argument fails at the threshold, because those protections presuppose a decree of a court of competent jurisdiction, and the Master acquired no personal jurisdiction over the real party in interest. Part I addresses that predicate. Parts II, III, and IV address, in turn, Respondents' bona fide purchaser authorities, their formulation of the standard for setting aside a judicial sale, and their defense of the Order's valuation analysis. None supplies an independent basis for affirmance.

<u>ARGUMENT IN REPLY</u>

I. Section 15-39-870 Does Not Apply Because Its Statutory Predicate Is Absent.

Section 15-39-870 protects purchasers under a decree of "a court of competent jurisdiction." S.C. CODE ANN. § 15-39-870. Respondents do not contend that the Master in fact acquired jurisdiction. They offer two answers instead. First, they read the phrase to protect "purchasers who relied on a court that appeared to have jurisdiction based on the record before

[1] Defined terms have the meanings given in the Estate's Initial Brief.

them." (Respondents' Br. at 15.) But the statute conditions its protection on the decree, not on the purchaser's impression of it, and a court either has jurisdiction or it does not. Second, they argue that the Estate's reading "proves too much," because "[e]very Rule 60(b)(4) service challenge is, by definition, framed as a jurisdictional challenge," and would "destabilize every foreclosure sale in South Carolina." (Respondents' Br. at 14-15.)

Belle Hall forecloses that position: although the purchasers had paid value and recorded a deed, this Court nonetheless affirmed vacatur because the master "never had personal jurisdiction over [the homeowner]." Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray, 419 S.C. 605, 618, 799 S.E.2d 310, 317 (Ct. App. 2017). The rule the Estate urges is correspondingly narrow. It does not reach every disputed question of service, but only the case in which the foreclosing plaintiff filed no diligence affidavit, made no statutory mailing, and never served a known fiduciary. On such a record the court acquires no jurisdiction and the decree conveys nothing.

Respondents seek to distinguish Belle Hall on the ground that the affidavit there "was facially defective because it attached a search that had been conducted for the wrong defendant," whereas "[h]ere, by contrast, no facial defect appeared in the court file." (Respondents' Br. at 14.) That distinction, however, only underscores the deficiency in this case. Belle Hall involved a diligence affidavit that was actually filed but proved inadequate; this record contains no diligence affidavit at all, much less a facially sufficient one. The application for publication was a combined Motion and Order for Appointment of Guardian Ad Litem Nisi and Attorney, reciting no effort to verify the death and no step taken to locate the Estate. (Mot. & Order for Appointment of Guardian Ad Litem Nisi, R. at ____.) Put simply, a *greater* departure from the statute cannot yield a *lesser* consequence.

That omission continued through the sale itself. The Certificate of Mailing for Notice that Foreclosure Sale Has Been Scheduled names one addressee: "Kelley Yarborough Woody, Esq. . . . Guardian ad Litem for Unknown Defendants." (Cert. of Mailing for Notice of Foreclosure Sale (July 9, 2025), R. at ____.) That mailing issued roughly seven months after the Association received Letters of Administration. Counsel for the Association acknowledged below that notice "should have been sent" before the foreclosure hearing, and confirmed that the Association does not oppose vacatur. (Vacatur Hr'g Tr. 149:8-20, 150:10-13, R. at ____.)

Respondents' remaining authorities do not close the gap, because each presupposes the predicate this record lacks. Robinson rested on the determination that "the Master had competent jurisdiction to execute and deliver the deed." Robinson v. Est. of Harris, 378 S.C. 140, 145, 662 S.E.2d 420, 423 (Ct. App. 2008), aff'd, 390 S.C. 272, 701 S.E.2d 740 (2010). Bloody Point turned on a file reflecting that the appellants "had been served" and "had received notice." Bloody Point Prop. Owners Ass'n, Inc. v. Ashton, 410 S.C. 62, 68-69, 762 S.E.2d 729, 733 (Ct. App. 2014). Section 29-3-610 supplies nothing further: Respondents defend it only as an "analogous foreclosure principle," (Respondents' Br. at 18), and it addresses joinder rather than the notice owed a known fiduciary. S.C. CODE ANN. § 29-3-610. Moreover, *no* statute displaces the requirement of notice reasonably calculated to apprise an interested party. See Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950).

Finally, Respondents answer the Association's non-opposition by asserting that its "litigation posture . . . cannot waive or compromise the Third-Party Purchasers' independently vested property rights." (Respondents' Br. at 13.) The Estate does not contend that the Association may divest title by consent. Its position is relevant for a narrower reason: the very party that conducted the publication, and that alone possesses the facts concerning its own diligence, does not maintain that the statutes were satisfied.

II. The Defects Were Disclosed by the Master's File, and Gladden, Rallis, and Cumbie Therefore Afford No Protection.

On the question of notice, Respondents' bona fide purchaser argument rests on three decisions. Gladden and Rallis protect a purchaser only from defects the record does not reveal; Cumbie defines the inquiry a purchaser must make. Neither of those principles assists Respondents here.

Gladden sustains a judgment against collateral attack "unless it affirmatively appears upon the face of the record that the court had no jurisdiction of the subject of the action, or of the parties," and it protects the purchaser only from "irregularities or errors in the record" and from "secret vices affecting the judgment, which are not disclosed by examination of the record." Gladden v. Chapman, 106 S.C. 486, 91 S.E. 796, 797 (1917). The same passage confirms what the purchaser must do: he "is bound only to see that the court had jurisdiction of the subject of the action and of the parties in interest." Id. Rallis is to the same effect, protecting a purchaser unless the defect was "readily apparent on the face of the materials in the master's file before he ordered the foreclosure sale." Rallis Holdings, LLC v. Martinez, No. 2019-001821, 2023 WL 155075, at *1 (S.C. Ct. App. Jan. 11, 2023). The Estate does not dispute either rule. It disputes their application, because the qualifying language in each decision decides this case.

The defects here appeared in the very file the purchaser read. Mr. Custer testified that he reviews the foreclosure file as a matter of practice and did so before bidding. (Vacatur Hr'g Tr. 112:20-113:12, R. at ____.) He observed the Estate, the New Jersey docket number, and the appointment of a Guardian ad Litem for unknown defendants. (Vacatur Hr'g Tr. 130:17-131:4, R. at ____.) What that file did not contain is equally significant: no diligence affidavit, no proof of mailing, and no return of service upon any fiduciary. Section 15-9-710 makes the diligence affidavit a condition precedent to publication, so its absence affirmatively appears from the face of the record and goes directly to whether the court acquired jurisdiction over the parties. S.C. CODE ANN. § 15-9-710.

Respondents' two answers do not meet that point. They describe the sequence as ordinary, "death, appointment of GAL, service by publication, entry of judgment," (Respondents' Br. at 12), but the description holds only if the statutory predicates are presumed satisfied. The file shows they were not. Respondents further object that Rallis imposes no duty "to audit the plaintiff's service efforts [or] independently investigate out-of-state probate records." (Respondents' Br. at 11.) The Estate asserts no such duty, and none is needed. Detecting a missing affidavit in a file the purchaser has already read requires no investigation at all.

Cumbie states the same rule and must likewise be read whole. Respondents quote its statement that a purchaser "is not affected by procedural irregularities or even errors in the judgment," (Respondents' Br. at 7), but the same passage continues that the purchaser "is required at his peril only to make inquiry as to the jurisdiction of the court which ordered the sale, and whether all proper parties were before the court when the order was made." Cumbie v. Newberry, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968). Irregularities are excused; jurisdiction and the presence of proper parties remain the purchaser's own risk. Respondents rely on the first half of that rule and omit the second, which governs here.

That inquiry was never made. Asked whether he investigated the Estate after seeing the New Jersey docket number, Mr. Custer testified: "[n]ot before the sale." (Vacatur Hr'g Tr. 130:17-131:14, R. at ____.) He confirmed, "I did not try to read any pleadings in New Jersey or get all of them, if that's what you're asking." (Id.) Nor did he inquire when the Estate reached him directly.

Respondents describe a pre-compliance caller who "identified herself only as calling 'about the property.'" (Respondents' Br. at 10.) Mr. Custer testified otherwise: the caller "may have actually said that she was the Estate administrator in that message," and he told his title attorney, "I got a phone call from an administrator but I don't know what it's about." (Vacatur Hr'g Tr. 121:14-25, R. at ____.) He complied with the bid on August 14, 2025, without returning the call. (Vacatur Hr'g Tr. 119:20-120:20, R. at ____.) Respondents correctly note that the Cumbie standard does not vary for purchasers who are attorneys. (Respondents' Br. at 9.) The Estate has never argued otherwise. The standard is uniform, and it was not satisfied on these facts.

Gladden, Rallis, and Cumbie thus support the Estate rather than Respondents. Each protects a purchaser who examines the record and finds nothing amiss. This record disclosed a deceased owner, an out-of-state Estate identified by docket number, and no affidavit, mailing, or service establishing that the court had acquired jurisdiction over the parties in interest. The bona fide purchaser doctrine does not reach that record.

III. Respondents Misstate the Governing Standard, and the Sale-Notice Defect Satisfies Their Own Formulation.

Respondents' equitable argument proceeds from a misstatement of the test. They describe the second prong of Buffalo Creek as requiring an inadequate price "accompanied by other circumstances from which the court may infer fraud has been committed," and conclude that it reaches only "fraud, collusion, chilled bidding, or some irregularity in the conduct of the sale itself." (Respondents' Br. at 17-18); Buffalo Creek Invs., Inc. v. Pettus, 440 S.C. 111, 123, 889 S.E.2d 608, 614 (Ct. App. 2023). That formulation comes from Winrose, which Buffalo Creek applies in Section III of its opinion in addressing **price adequacy alone**. Id. at 123, 889 S.E.2d at 614; Winrose Homeowners' Ass'n, Inc. v. Hale, 428 S.C. 563, 569, 837 S.E.2d 47, 50 (2019). The standard governing whether a sale should be set aside appears in Section II of the

Buffalo Creek Opinion and derives from Poole: a sale will be set aside where "(1) the sale price 'is so gross as to shock the conscience[;]' or (2) the sale 'is accompanied by **other circumstances warranting the interference of the court**.'" Id. at 122, 889 S.E.2d at 613 (quoting Wells Fargo Bank, 378 S.C. at 150, 662 S.E.2d at 425). The second prong is, in fact, disjunctive—and does not depend on price.

Read correctly, Buffalo Creek is contrary to Respondents on its facts as well. This Court held there that a court may not decide whether to vacate a sale by comparing what each side stands to lose. The referee had weighed "the equities of each party's potential loss," setting the mortgagors' $242,500 against the buyers' refundable bid, and this Court reversed because that comparison displaced the governing Poole inquiry. See Buffalo Creek, 440 S.C. at 122-23, 889 S.E.2d at 613-14.

The Master performed the same comparison here, asking counsel how to balance "seasoned investors who have spent a fair amount of money" against "a seven-year-old who stands to inherit the funds." (Vacatur Hr'g Tr. 151:3-10, R. at ____.) The Order adopted that framework, measuring the Third-Party Purchasers' renovations and their "reliance on the finality of the judicial sale" against the Estate's loss. (See Order ¶ 21; Order, Conclusions of Law §§ 3-4, R. at ____.) Respondents now ask this Court to affirm on precisely that reasoning, citing an investment of "approximately $73,000-$83,000." (Respondents' Br. at 21.) Thus, Respondents cannot rely on Buffalo Creek while urging the analysis Buffalo Creek held to be legal error.

Respondents' remaining reliance on Buffalo Creek fails on the facts. The mortgagors there were served at their usual place of abode, defaulted, and never appealed the decree, and their complaint concerned a disputed administrative order rather than the absence of jurisdiction. 440 S.C. at 116-18, 889 S.E.2d at 610-11. And where, as here, the judgment is void, the prong is never reached at all, because the court had no authority to order a sale. See Belle Hall, 419 S.C. at 618, 799 S.E.2d at 317.

This Court need not decide how broadly the second Poole prong sweeps, because the Estate satisfies it even on Respondents' own account. Respondents would confine the prong to "fraud, collusion, chilled bidding, or some irregularity in the conduct of the sale itself," and not to "alleged defects in the underlying foreclosure proceedings," (Respondents' Br. at 18), and on that view they assert that the Estate "does not contend that bidding was chilled, that notice of sale failed to comply with the Master-in-Equity's requirements, . . . or that any bidder was misled," (Respondents' Br. at 19).

That assertion is inaccurate as to the notice of sale. The final notice ran August 1, 2025 for a sale conducted Monday, August 4, leaving three days and an intervening weekend. (Aff. of Publication for Foreclosure Sale; Order on Sale of Real Estate, R. at ____.) Unlike the service defects preceding judgment, advertisement concerns the conduct of the sale itself, and our Supreme Court has long required that judicial sales be "openly and freely conducted" with "nothing . . . to chill the bidding." Howell v. Gibson, 208 S.C. 19, 31, 37 S.E.2d 271, 276 (1946). The abbreviated publication period is therefore a circumstance concerning the sale under Respondents' own formulation, and their brief does not address it.

Nor does the competitive bidding Respondents emphasize show that the sale produced a fair result, because their own witness identified a condition that depressed every bid. Mr. Custer testified that "what depressed the bidding, in my view, was that your clients didn't pay off the taxes," and that had the taxes been paid the Property "might have sold for 50 or 60." (Vacatur Hr'g Tr. 133:10-22, R. at ____.) Moreover, that the bidding was competitive says nothing about whether the price it produced was adequate.

Respondents' equitable defenses fare no better. Laches applies when a party fails to act upon known rights, and the Substitute Administrator did the opposite: she telephoned the Guardian ad Litem twice before the sale, most recently on July 23, 2025, and neither call was returned. (Cortes-Sykes Aff. ¶¶ 7-8, R. at ____.) She learned of the sale two days after it occurred, and the Estate moved to vacate within a month. (Cortes-Sykes Aff. ¶ 9, R. at ____.) Nor does finality control. Spillers protects judicial sales only absent "cogent reasons" for disturbing them, and this record supplies them: a judgment entered without jurisdiction, a known fiduciary who attempted to act before the sale, and a final advertisement published three days before the Property was sold. See Spillers v. Clay, 233 S.C. 99, 104, 103 S.E.2d 759, 761-62 (1958).

IV. The Order's Adequacy Analysis Cannot Be Sustained on the Grounds Respondents Advance.

The Order credited the $25,000 bid with approximately $13,196.79 in delinquent taxes and $35,000-$45,000 in prospective renovations. (Order, Conclusions of Law § 4, R. at ____.) Respondents defend only the taxes, computing an acquisition burden of $38,196.79 and deriving ratios of 21.5% and 35.7% from it. (Respondents' Br. at 23.) They no longer defend the renovation figure as a credit, conceding that "[t]he required repairs do not need to be added to the Debt Method calculation to matter." (Respondents' Br. at 23.) Every ratio they offer therefore depends on the tax credit, and that credit is unauthorized.

Winrose permits Debt Method credit only for obligations the purchaser has affirmatively assumed or must satisfy to take free-and-clear title; where the purchaser has "taken no affirmative steps to legally obligate itself to take on the debt," the credit is "wholly inappropriate." Winrose, 428 S.C. 563, 572, 837 S.E.2d 47, 52 (2019).

Mr. Custer testified that "you're definitely purchasing subject to" the taxes and that the redemption amount "was extra, and I knew it was extra," (Vacatur Hr'g Tr. 118:12-24, R. at ____), and his affidavit states that he "factored that into the price when [he] placed the bid," (Custer Aff. ¶ 2, R. at ____). Oriole Properties did not pay the redemption amount until November 14, 2025, three months after the sale. (Custer Aff. ¶¶ 3-5, R. at ____.) A sum discounted from a bid has not been assumed as an obligation.

The methodology fails for the same reason. The Order selected the Debt Method because the Property carried no mortgage lien, (Order, Conclusions of Law § 4, R. at ____), and the published terms confirm that premise: the Property was sold "subject to the following mortgage(s)/senior encumbrances: N/A." (Aff. of Publication for Foreclosure Sale, R. at ____.) With no senior encumbrance, there was nothing to add to the bid under the Debt Method and nothing to subtract from fair market value under the Equity Method, so the two methods converge. <u>See</u> <u>Winrose</u>, 428 S.C. at 571-73, 837 S.E.2d at 51-52. Respondents answer that <u>Winrose</u> rejected a "fiction" overstating the purchaser's burden while the Estate would understate it, (Respondents' Br. at 22), but the question is not the direction of the distortion. It is whether a senior obligation existed that could be added to the purchaser's effective price. None did.

Respondents' fallback valuation is refuted by the Order itself. They contend the bid alone represents 25% to 36% of an as-is value Mr. Custer estimated at $70,000 to $100,000. (Respondents' Br. at 23-24.) But the Master found that the Property "had previously sold at a tax sale for $100,000," (Order, Finding 24, R. at ____), a figure Mr. Custer's own affidavit confirms, (Custer Aff. ¶ 3, R. at ____). An arm's-length bidder thus valued the Property at the top of Respondents' range eight months before the judicial sale, in materially the same condition. That fallback is also incompatible with their principal calculation, which adopts the $178,000 appraisal figure. And the remaining evidence runs higher still: an after-repair value of approximately $205,000, a comparable unit at $187,500, and a comparable cash sale at $209,000. (Vacatur Hr'g Tr. 85:2-7, 93:5-9, 139:19-25, R. at ____.)

With the renovation credit abandoned and the tax credit unauthorized, the record permits only a comparison between the $25,000 bid and the Property's demonstrated value. That comparison, together with the circumstances described in Part III, establishes an inadequate price warranting vacatur. See Winrose, 428 S.C. at 569-70, 837 S.E.2d at 50.

CONCLUSION

Respondents do not defend the sufficiency of the publication, and they do not dispute that the Association knew of the death, the Estate, its docket number, and the identity of its Administrator. Their position reduces to the proposition that a completed sale is beyond review irrespective of whether the judgment issued from a court possessing jurisdiction over the party whose property it conveyed. Section 15-39-870 forecloses that proposition by its terms, because it protects purchasers only under a decree of a court of competent jurisdiction, and Belle Hall forecloses it by holding that where the master never acquired personal jurisdiction, the judgment and all that follows from it are a nullity.

The consequences of this Court's ruling extend beyond these parties. In Winrose, the Supreme Court warned that foreclosure "is a last resort, not a business model to be swiftly invoked for the purpose of exploiting property owners," and Chief Justice Beatty added that permitting hard-earned equity "to be confiscated by a bidder's minimal investment is unconscionable," particularly where the sale follows an HOA lien. Winrose, 428 S.C. at 573, 575, 837 S.E.2d at 52, 53 (Beatty, C.J., concurring). Affirmance would confirm that an association may foreclose on a nominal arrearage without serving a known fiduciary, and that a purchaser may take the resulting equity so long as the file appears regular on its face. Nothing in this record required that outcome. The Association faced no prejudice from allowing a four-figure lien to accrue, it does not oppose vacatur, and the party urging affirmance is the purchaser who stands to profit at the expense of a minor child. Reversal would hold that a homeowner, or a fiduciary standing in the homeowner's place, must be given a genuine opportunity to pay before the equity in a home is transferred for a fraction of its value.

For these reasons, and those set forth in its Initial Brief, the Estate respectfully requests that this Court reverse the Order entered October 29, 2025; vacate the Judgment of Foreclosure and Sale entered June 11, 2025, the August 4, 2025 sale, and the August 18, 2025 deed; and remand with instructions to restore title to the Estate.

Respectfully submitted,

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