THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe,
Master-in-Equity for Horry County

Appellate Case No.: 2012-213014
Order (S.C. Ct. App. Filed June 6, 2012)

Ex Parte Coastal Designs, Inc. and Tim Wilkes ....Appellants

vs.

In Re: SRB Servicing, LLC, successor by assignment to Synovus Bank, formerly known as Columbus Bank and Trust Company, as successor in interest through name change and by merger with the National Bank of South Carolina ....Respondent

vs.

And Myrtle Beach Grande Hotel, LLC, Harvey L. Jones, Wendy (J.) Bellamy, Billy Joe (J.) Bellamy, Kersi S. Shroff, Mozingo & Wallace Architects, LLC, Harvey Levon Jones and Wendy Beth Jones Bellamy as Personal Representative of the Estate of Ann L. Jones, and as Trustee of the Restated and Amended Trust Agreement of Ann L. Jones, dated October 30, 2006.............................. Respondents.

BRIEF OF RESPONDENT, SRB SERVICING, LLC

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29th day of April, 2014

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STATEMENT OF ISSUES ON APPEAL

Note: Respondent respectfully submits the Statement of Issues on Appeal which it considers properly before the Court whereas it disagrees with those presented by Appellants and specific questions to be considered by the Court and to be addressed by the parties pursuant to Rule 242(i), SCACR were not mandated by the Clerk. However, Respondent will briefly address all issues listed by Appellants.

I. DOES THIS CASE PRESENT A JUSTICIABLE ISSUE FOR APPELLATE REVIEW BECAUSE IT IS MOOT?

II. IS THIS CONTROVERSY SUBJECT TO APPEAL UNDER RULE 201, SCACR INASMUCH AS APPELLANTS ARE NOT PARTIES AGGRIEVED BY THE ORDER VACATING SALE WHERE SAID ORDER IS NOT A FINAL JUDGMENT SUBJECT TO APPEAL? (APPELLANT'S ISSUE V)

III. EVEN IF THE NON-PARTY APPELLANTS MAY HAVE A RIGHT TO APPEAL, ARE THEY AGGRIEVED UNDER RULE 201(B), SCACR BY THE ORDER VACATING SALE INASMUCH AS THE APPELLANTS ACTUALLY BENEFIT FROM THE DECISION?

IV. DID THE COURT OF APPEALS ERR IN AFFIRMING THE LOWER COURT'S ORDER AND DISMISSING THE APPEAL WHERE APPELLANTS SHOULD HAVE INTERVENED IN THE LOWER COURT? (APPELLANT'S ISSUE II)

V. DID THE COURT OF APPEALS ERR AFFIRMING THE LOWER COURT'S ORDER WITHOUT HOLDING THE MASTER-IN-EQUITY DEPRIVED APPELLANTS OF DUE PROCESS? (APPELLANT'S ISSUE III)

VI. DID THE COURT OF APPEALS ERR BY AFFIRMING THE LOWER COURT'S ORDER WITHOUT ADDRESSING THE METHOD OF HANDLING PUBLIC SALES AND THE RIGHTS OF SUCCESSFUL BIDDERS? (APPELLANT'S ISSUE IV)

VII. DID THE COURT OF APPEALS ERR IN AFFIRMING THE DISPOSITIVE ORDER SIGNED BY ONE JUDGE THAT AFFIRMED THE LOWER COURT'S ORDER AND DISMISSED THE APPEAL? (APPELLANT'S ISSUE VI)

STATEMENT OF THE CASE

Pursuant to Rule 53(b), SCRCP, the original action, an action for foreclosure of a mortgage, was referred to the Master-in-Equity for Horry County, by order of a Circuit Court Judge. Thereafter, the Master-in-Equity issued a Master's Order and Judgment of Foreclosure and Sale. The subject property was listed in the Notice of Sale and was bid upon at the judicial sale on February 7, 2011. The Appellants were the successful bidders of three of the four parcels listed in the Notice of Sale with a bid totaling $955,000.00. Two of those three parcels had first mortgages that were not specifically named in the Notice of Sale. Parcel II was subject to a senior and first mortgage of $435,000.00 held by U.S. Bank, and Parcel III was subject to a senior and first mortgage held by National Bank of South Carolina in the approximate principal amount of $1,800,000.00. (R. at 4.)

Appellants deposited $18,000.00 by the end of the sales day; however, that deposit was not in compliance with the Notice of Sale which required a five percent deposit. Although the published Notice of Sale included language that addressed the sale was being made subject to superior liens (R. at 6.), it did not specifically list the known first mortgages. Appellant Wilkes wrote a letter to the Master-in-Equity expressing his intentions to enforce the sale without being subject to the first and senior mortgages. (Wilkes's Aff. ¶¶ 9-10, R. at 8, 9.)

Upon motion of the Respondent, the Master-in-Equity, in an attempt to protect the Appellants as well as the other bidders and purchasers and Respondent, determined the notice of sale was defective and that fairness and equity required setting aside and vacating the February sale, releasing all bidders from their current bids, and republishing notice of the sale thereof specifically listing the

senior mortgages on the properties to which the successful bidder and purchaser would be subject. (R. at 1-2.) An Order to Vacate was submitted and signed. (R. at 1-2.)

The Court of Appeals issued a memorandum Order dismissing Appellants' appeal "[b]ecause the order appealed from is neither a final order nor an exception permitting an appeal from an interlocutory order and Wilkes never moved to intervene to become a named party". Ex Parte Coastal Designs, Inc., S.C. Ct. App. Order dated June 6, 2012. (App. R. at 3-4.)

Holding that Appellants not being a party, not having taken action to intervene, and the order appealed from not being a final order, the Court of Appeals held Appellants lack standing to pursue the appeal and dismissed it. (App. R. at 3-4.) The Court of Appeals denied Appellants petition for rehearing based upon the Court being unable to discover that any material fact or principle of law has been either overlooked or disregarded. Ex Parte Coastal Designs, Inc., S.C. Ct. App. Order dated Aug. 29, 2012. (App. R. at 1-2.)

Upon review of Appellants' Petition and Respondent's Return, this Court granted Appellant's Petition for Writ of Certiorari in this case. Ex Parte Coastal Designs, Inc., S.C.Sup.Ct Order dated Mar. 6, 2014.

ARGUMENTS

I. DOES THIS CASE PRESENT A JUSTICIABLE ISSUE FOR APPELLATE REVIEW BECAUSE IT IS MOOT?

A justiciable controversy is not before the Court, nor is a controversy where relief sought by Appellants may be reasonably granted. Appellants concede that "[i]t is entirely possible that new bidder could purchase the property leaving Wilkes with no remedy at all" (App. Br. at 10.) After republication of proper notice the property at issue has been sold a duly conducted judicial sale and has been conveyed by master's deed. Therefore, as Appellants concede, there is no remedy available.

A justiciable controversy is required for appellate review, and consists of a real and substantial controversy which is ripe and appropriate for judicial determination as distinguished from a contingent, hypothetical or abstract dispute. Spivey ex rel. Spivey v. Carolina Crawler, 624 S.C. 2d 435, 36 S.E.2d. 154 (2005).

A case may become "moot" for the purpose of an appeal as a result of a change of circumstances prior to the appellate decision whereby the case has lost any practical purpose for the parties, for instance, where the grievance that gave rise to the case has been eliminated. Examples of moot cases which appellate courts typically refuse to consider are where the case has been settled between the parties after the appeal was filed or where a criminal defendant or party whose action does not survive the death of such party has died. 5 Am. Jur. 2d Appellate Review § 806.

Appellate courts will generally not hear appeals in cases that have become moot. 15 S.C. Jur. Appeal and Error§ 19, citing Wallace v. York 276 S.C. 693, 281 S.E.2d 487 (1981). When an event occurs that makes it impossible for the appellate court to grant effectual relief, and thus resolution of the appeal would have no practical legal effect on an existing controversy the case has become moot. 15 S.C. Jur. Appeal and Error § 19. Accordingly, any appellate opinion would be merely advisory. Id., citing Knight Publishing Co. v. University of South Carolina, 295 S.C. 31, 377 S.E.2d 20 (1988).

In this case, Appellants seeks to enforce their rights as the successful bidder at a foreclosure sale. Appellants' filing of the Notice of Appeal does not automatically stay the foreclosure sale pursuant to the Rule 241, SCACR. Appellant sought no injunctive or other relief and failed to file or apply for any bond staying the sale pursuant to S.C. Code Ann. § 18-9-170. The Order Vacating Sale, from which Appellants' appealed, directed that the property be resold at foreclosure sale. The property was, in fact, sold at a subsequent judicial sale after an Amended Notice of Sale was published (R. at 3-4.), and Appellants had an opportunity to bid on and purchase the property. Accordingly, there is no property against which Appellants can enforce their alleged contract to purchase as the successful bidder at the first foreclosure sale.

As the appellate court is to decide actual controversies touching the rights of some party to the litigation, it is not the function to give opinions on abstract questions and issues which have become moot are not a proper subject for review. Byerly v. South Carolina Nat'l Bank Corp., 311 S.C. 127, 427 S.E.2d 715 (Ct. App. 1993), reh'g denied (Apr. 1, 1993) and aff'd, 313 S.C. 385, 438 S.E.2d 233 (1993).

Appellants as a result of their own conduct have no practical remedy at this time, because the property has been duly sold and deeded and Appellants took no action to preserve or to protect their interest, if any, therein other than to continue to pursue this appeal. Therefore, the controversy is moot, warranting a dismissal of this appeal.

II. IS THIS CONTROVERSY SUBJECT TO APPEAL UNDER RULE 201, SCACR INASMUCH AS APPELLANTS ARE NOT PARTIES AGGRIEVED BY THE ORDER VACATING SALE WHERE SAID ORDER IS NOT A FINAL JUDGMENT SUBJECT TO APPEAL? (APPELLANT'S ISSUE V)

The Order Vacating Sale provided that the foreclosure sale on February 7, 2010, be set aside by reason of a possible misunderstanding on the part of the bidders and so as to prevent injustice to the Appellants, to other bidders, and the parties. The Appellants clearly were not parties in the underlying foreclosure action. The Order Vacating Sale was not a final judgment, but merely required that an Amended Notice of Sale be republished and the foreclosure sale conducted at a future date. (R. at 1-2.) The Appellants and all interested persons and parties had the right to appear and to bid at the subsequent foreclosure sale.

Rule 201(a), SCACR allows appeal from any final judgment, appealable order, or decision. Respondent respectfully submits that the Order Vacating Sale of which the Appellants are complaining not a final judgment or an appealable order. It clearly does not fall within the exceptions allowing appeal from an interlocutory order pursuant to S.C. Code Ann. §14-3-330.

Further, Rule 201(b), SCACR provides that "only a party aggrieved by an order, judgment or a decision may appeal." Appellants clearly are not parties to the action being appealed. Nor did Appellants make any effort to intervene to

become parties to seek standing to maintain their appeal, as acknowledged by the Court of Appeals. (App. R. at 3-4, citing Ex parte Condon, 354 S.C. 634, 642, 583 S.E.2d 430, 434 (2003).)

Right to appellate review exists only in one who is aggrieved or prejudiced thereby, since appeals are ordinarily not allowed for the purpose of settling abstract questions, however, interesting or important to the public generally, but only to correct errors injuriously affecting the appellant. 5 Am. Jur. 2d Appellate Review § 557.

Appellants maintain that they had standing as a person aggrieved by the Master-in-Equity's order vacating the sale. However, the Court of Appeals held that Appellants lacked standing to appeal as they were not parties. (App. R. at 3-4.)

Respondents submit that the cases cited by Appellants support the Court of Appeals decision to dismiss the appeal based on the fact that the Appellants are not parties and therefore not entitled to pursue the appeal.

Merely being aggrieved does not give rise to standing. Appellants cite Kelly v. Bank of America, 379 S.C. 437, 665 S.E.2d 237 (Ct. App. 2008), for the proposition that a ***party*** is aggrieved by a judgment or decree for the purposes of determining whether a party can appeal. (Emphasis added). In Kelly, the Court of Appeals found the bank was neither a "party" to the action nor "aggrieved" and, therefore, lacked standing to appeal. Id., at 447, S.E.2d at 242.

Appellants also cited Shaw v. City of Charleston, 351 S.C. 32, 567 S.E.2d 530 (Ct. App. 2002), where the Court of Appeals found the City of Charleston entitled to appeal a grant of summary judgment in favor of a co-defendant as the City was an aggrieved ***party***. In contrast to the case presented, the City of

Charleston was an aggrieved party who based on the facts and circumstances was entitled to appeal. Here Appellants are not aggrieved parties to the litigation as contemplated by Rule 201(b), SCACR.

In First Union Nat'l Bank of South Carolina v. Soden, 333 S.C. 554, 556, 511 S.E.2d 372, 378 (1988), as cited by Appellants, the Court of Appeals ruled that "[a] party cannot appeal from a decision which does not affect his interest". Appellants also cite Charleston County School Dist. v. Charleston County Election Comm'n, 336 S.C. 174, 181, 519 S.E.2d 567, 573 (1999), where the Supreme Court ruled the State Commission was able to appeal because it was a named party in the pleadings and in the circuit court order.

The appellate court decisions cited by Appellants serve to support the Court of Appeals ruling that Appellants are not parties within contemplation of Rule 201(b), SCACR, and therefore not entitled to appeal.

Further, the Court of Appeals determined that the Order Vacating Sale which provided that the property be re-advertised with the additional disclosures and re-sold was not a final order or decree in the case. (App. R. at 3-4.)

Certain decisions concerning judicial sales are not appealable because of lack of finality, for instance, a decree setting aside one sale and ordering another has been held not final for the purpose of appeal on the theory it was analogous to a judgment of reversal with directions for a new trial or new hearing and, therefore, not final. See generally, Butterfield v. Usher, 91 U.S. 246 (1875).

III. EVEN IF THE NON-PARTY APPELLANTS MAY HAVE A RIGHT TO APPEAL, ARE THEY AGGRIEVED UNDER RULE 201(B), SCACR BY THE ORDER VACATING SALE INASMUCH AS THE APPELLANTS ACTUALLY BENEFIT FROM THE DECISION?

Assuming, *arguendo*, Appellants had been parties or should the Court determine these non-parties have the right to appeal, it is respectfully submitted that the Appellants were not aggrieved by the Order Vacating Sale and not entitled to relief from this Court.

The Master's Order Vacating Sale provided for the release of the bids, vacation of the sale, republication of the notice of sale with an amended notice of sale specifically spelling out the senior liens to which the foreclosed properties would be subject, and that Appellants and all interested persons could bid on the property. (R. at 1-2.) The Order Vacating Sale stated that "[b]idders made bids on the parcels without regard to the general disclosure that the sale was subject to the senior liens..." (R. at 2.) Therefore, the purpose of vacating the sale was to assuage any misunderstanding or confusion concerning the senior mortgages to which the sold property was subject.

Bidders at foreclosure sales do not receive any warranty deeds, and bid on the property at their own risk. The Notice of Sale made provision that the sale of the property be subject to "other senior encumbrances." (R. at 6.) The prudent practice would be for all bidders to examine the title to be sure there are no senior liens or other encumbrances to which the buyer would be subject. Clifford P. Parson, et al., Prudent Bidding at a Foreclosure Sale 20 S.C. Lawyer 12 (Jan. 1995).

Even had the Notice of Sale not generally referred to priority liens, successful bidders and purchasers at foreclosure sales take the title as they receive it by master-in-equity's deed pursuant to Rule 71(b), SCRCP, and the Appellants would clearly be subject to the senior liens. Hudson v. Inman, 179 S.C. 399, 404, 184 S.E.2d 102, 104 (1936). As specified in the Amended Notice of Sale, Parcel II was

subject to a senior and first mortgage of $435,000.00, and Parcel III was subject to a senior and first mortgage of approximately $1,800,000.00. (R. at 4.)

After the foreclosure sale Appellants took the position that their purchase would be free and clear of those senior mortgages. (R. at 8-9.) The Master-in-Equity recognized that Appellants' position was clearly untenable and that if they complied with the bid, they would receive the property subject to senior mortgage liens in excess of $2,000,000.00. In Appellant Wilkes's Affidavit, he claims that because of the way the sale was conducted that he would not be subject to those liens. (R. at 8-9.)

The Master-in-Equity is given wide discretion in the manner in which they conduct judicial sales. Rule 71(b), SCRCP, Ex parte Moore v. Fairfield Real Estate Co., 352 S.C. 508, 575 S.E.2d 561 (2003). The Master-in-Equity, in an effort to protect all parties and bidders, and particularly Appellants, issued an Order that the sale be set aside and re-advertised and provided that the specific senior liens be clearly set out so that at a future sale there would be no such confusion and no claim, albeit without merit, that the buyer took title to the property free and clear.

Therefore, it is clearly apparent that the Appellants, whether a party or not, were not ***aggrieved*** by the Master-in-Equity's Order Vacating Sale. In fact, as set forth above, the Order served to protect Appellants from purchasing the property at a substantial price which would nevertheless be subject to senior mortgage liens in excess of $2,000,000.00.

IV. DID THE COURT OF APPEALS ERR IN AFFIRMING THE LOWER COURT'S ORDER AND DISMISSING THE APPEAL WHERE APPELLANTS SHOULD HAVE INTERVENED IN THE LOWER COURT? (APPELLANT'S ISSUE II)

The Court of Appeals ruled that among other grounds because "Wilkes never moved to intervene to become a named party, this appeal is dismissed." (App. R. 3.)

Appellants never made any attempt to intervene in this case, to otherwise be recognized, or to adequately protect their interests in the subject property, if any. Appellants failed to avail themselves of the remedies available to them under the law, and equity aids the vigilant and not those who slumber on their rights.

Although Rule 24, SCRCP provides that a motion to intervene should be made upon timely application, the Appellants never made such motion or attempted to intervene prior to filing the appeal. Rule 24, SCRCP allows intervention upon timely application and does not prohibit a motion after the order vacating the sale was entered. Although Respondent disputes the claim that Appellants acquired a property interest, Rule 24(a)(2), SCRCP sets forth the right of persons with an interest in property to intervene in an action. Appellants could have moved before the Master-in-Equity to intervene or to alter or amend the order pursuant to Rules 24, 59 or 60, SCRCP.

The state rule substantially follows the Rule 24, FRCP. Wright & Miller, Federal Practice and Procedure: Civil §1916 addresses the issue of timeliness of a motion to intervene. Typically, this requirement affects everyone and must necessarily be left to the sound discretion of the court. Although intervention after final judgment does require higher a standard to be met than one earlier in the process, Respondent maintains, along with the Court of Appeals, that the setting aside of the sale and the ordering of a new sale does not amount to a final judgment subject to appeal. Notwithstanding the interlocutory determination, if allowing intervention does not prejudice the rights of the existing parties or

substantially interfere with the orderly processes of the court, the timing of the motion to intervene should not, by itself, require the application for intervention to be denied. For a significant number of cases, intervention has been allowed even after judgment. One reason for allowing this is so that the intervener can prosecute an appeal that the existing party has determined not to take. See, Wright & Miller, Federal Practice and Procedure: Civil §1916.

Appellants argue that the Court of Appeals erred by determining they should have intervened, because it was not possible for them to do so and the filing of an appeal was the only option. (App. Br. 4.) Appellants cite nothing in the record to support that intervention, if requested, would have been denied. In fact, Appellants never attempted to intervene, and their argument is based solely on speculation and lacks merit.

Had Appellants moved to intervene and been allowed to do so, an appeal would not have been unnecessary. Inasmuch as Appellants failed to even attempt to intervene, their alleged grievances should not be heard by the Court.

Appellants maintain that they did not have time to file a motion for reconsideration of the Master-in-Equity's Order Vacating Sale, and accordingly did not file said motion. (App. Br. 9.) Again, Appellants failed to exercise the procedural rights available to them and improperly filed the appeal without first having sought full redress in the lower court.

During the pendency of this appeal, Appellants never moved to post a bond pursuant to S.C. Code Ann. § 18-9-190, and, in fact, never posted any bond. Additionally, Appellants never moved for an order imposing supersedeas. Having slumbered on their rights, the subject property was sold at a properly noticed public sale conducted by the Master-in-Equity.

Rule 241, SCACR, sets forth the general rule that civil matters are automatically stayed upon service of the notice of appeal; however, Rule 241(b)(4), SCACR enumerates an exception to the stay where the sale of real property is directed under S.C. Code Ann. § 18-9-170. The judicial sale of the subject property fell within the exception to the automatic stay per Rule 241(b)(4), SCACR. Thus, the sale of the property occurred and has been duly conveyed to the successful bidder who complied with the terms of the foreclosure sale.

Appellants also failed to move for an order imposing a supersedeas as allowed by Rule 241(c)(1), SCACR. An order imposing a supersedeas would have effectively halted the judicial sale of the subject property until the appeal was decided. However, Appellants elected not to move for such an order.

Appellants failed to avail themselves of any of the appropriate procedural avenues to postpone the sale, protect their property interest, if any, or to otherwise protect their rights, accordingly, this issue is now moot and not properly before the Court.

V. DID THE COURT OF APPEALS ERR AFFIRMING THE LOWER COURT'S ORDER WITHOUT HOLDING THE MASTER-IN-EQUITY DEPRIVED APPELLANTS OF DUE PROCESS? (APPELLANT'S ISSUE III)

The Court of Appeals correctly did not reach Appellants' due process argument that a non-party is entitled to due process in this case inasmuch as Appellants did not satisfy the threshold question that the issue raised by Appellants was subject to the right of appeal under Rule 201, SCACR as argued hereinabove. Rule 220(c), SCACR, provides that the "appellate court may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the

Record on Appeal." Therefore, the Court of Appeals did not err in affirming the Order Vacating Sale without addressing all issues raised by Appellants.

The master-in-equity has the authority to set aside a judicial sale and vacate it if circumstances warrant judicial interference. Poole v. Jefferson Standard Life Ins. Co., 174 S.C. 150, 157, 177 S.E 14, 27 (S.C. 1934). After being informed of the defective notice of sale, the Master-in-Equity issued the order vacating the sale in an effort to protect the litigants and potential bidders, which provide circumstances sufficient to warrant judicial interference and which does not violate the due process rights of the Appellants, if any.

VI. DID THE COURT OF APPEALS ERR BY AFFIRMING THE LOWER COURT'S ORDER WITHOUT ADDRESSING THE METHOD OF HANDLING PUBLIC SALES AND THE RIGHTS OF SUCCESSFUL BIDDERS? (APPELLANT'S ISSUE IV)

Appellants argue the Court of Appeals had the duty to address the method of handling public sales and the rights of successful bidders. (App. Br. 8.) Respondents respectfully submit it is not the function of the appellate courts, like that generally of courts, to give advisory opinions on abstract or theoretical matters where the Appellants apparently seek to have the Court lay down rules for the bench and bar related to the conduct of sales by the Master-in-Equity and procedures related to bidders' rights. It is respectfully submitted that this is not a case where the Appellants are entitled to such an advisory opinion.

It is well settled by rule, statute, and case law that the conduct of a judicial sale should be left to sound discretion of the trial court. Rule 71, SCRCP, S.C. Code Ann. § 15-39-10 to -900; Ex parte Moore v. Fairfield Real Estate Co., 352

S.C. 508, 510, 575 S.E.2d 561, 562 (2003); Ex parte Keller v. Hutto, 185 S.C. 283, 292-93, 194 S.E.2d 15, 18 (1937).

Moreover, the Master-in-Equity's decision to vacate the judicial sale was also within her discretion. Investors Sav. Bank v. Phelps, 303 S.C. 15, 397 S.E.2d 780 (S.C. Ct. App. 1990). While the policy of the courts is to uphold a judicial sale, it is only to do so when it does not violate principles of justice. Cumbie v. Newberry, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968). Nothing in the record supports the position that the Master-in-Equity abused her discretion or that she failed to exercise her discretionary authority. In fact, based on Appellants' misunderstanding as to the senior liens they would take subject to, the Master-in-Equity's failure to vacate the sale would violate the principles of justice and would prove inequitable to Appellants.

Assuming, *arguendo*, that the trial court should have scheduled a hearing, notified Appellants, and allowed Appellants to argue, such an error would constitute a harmless error where the facts reflect the court's setting aside of the sale was within its sound discretion and was equitable to all parties involved, particularly the Appellants.

Appellants further rely upon Wells Fargo Bank, N.A. v. Turner, 378 S.C. 147, 662 S.E.2d 424 (S.C. Ct. App. 2008) where in a sale was vacated for a grossly inadequate sales price. Gross inadequacy of the sales price is one prong under the test set forth in Poole v. Jefferson Standard Life Ins. Co., 174 S.C. 150, 157, 177 S.E 14, 27 (S.C. 1934). If the Court in the case *sub judice* finds that Appellants were deprived of due process for failure to give notice of the Order Vacating the Sale, then the first prong of the test set forth in Poole is not applicable. The Court should apply the second prong which allows a sale to be set

aside and vacated if there exist "circumstances warranting court interference." Poole, at 157, S.E at 27. The facts in this case indicate that even if the Master-in-Equity were to have held a hearing, she could not equitably uphold a sale that either conveyed property not subject to the existing senior mortgages or compelled successful bidders to comply with the bids on property they mistakenly believed would be conveyed free and clear.

While the Notice of Sale met the minimum requirements set forth in South Carolina Code Ann. §15-39-660, the Master-in-Equity, using its sound discretion, can make the determination to set aside and vacate a sale. Investors Sav. Bank v. Phelps, 303 S.C. 15, 17, 397 S.E.2d 780, 781 (S.C. Ct. App. 1990). In the case *sub judice,* the Master determined in its sound discretion that given the facts and circumstances in this case, the sale should be vacated.

VII. DID THE COURT OF APPEALS ERR IN AFFIRMING THE DISPOSITIVE ORDER SIGNED BY ONE JUDGE THAT AFFIRMED THE LOWER COURT'S ORDER AND DISMISSED THE APPEAL? (APPELLANT'S ISSUE VI)

Appellants' erroneously contend that a single Court of Appeals judge lacked authority under the court rules, case law, or any statutory or constitutional provision to execute the order dismissing the appeal and affirming the Order Vacating Sale of the Master-in-Equity.

The Court of Appeals' order was signed by one judge, and following the procedure in Rule 240(j), Appellant petitioned for a rehearing and a hearing en banc, both of which were denied. Thereafter, the Court of Appeals in accordance with Rule 220, SCACR issued an opinion that the matter had been thoroughly reviewed, and the appeal was accordingly denied, such opinion having been

signed by three of the judges. Even assuming the initial order was issued in error, signatures by three judges on the Order Denying Appellants' Motion for Rehearing ratified the prior ruling and corrected the error, if any. Ex Parte Coastal Designs, Inc., S.C. Ct. App. Order filed August 29, 2012. (App. R. at 2.)

Appellants do not cite any authority supporting the contention that one judge cannot sign an order upholding an order of a lower court. The authority cited deals with situations involving a panel hearing on the merits, to which the Appellants were not entitled. Rule 220, SCACR, provides that appellate court decisions shall be in writing by either published opinions or memorandum opinions, and memoranda opinions are not to be published in the official reports. There is no mention as to the number of signatures required on said orders.

Rule 240(j), SCACR provides that "[a]ny review of an order issued by an individual judge or justice shall be by petition for rehearing." The language in the rule contemplates that a single judge or justice is authorized to make a ruling on a dispositive motion or petition, except when a concurrence is required. It follows that a single judge may issue a dispositive order on an appeal.

Appellants erroneously rely on S.C. Const. Art. V, § 7 to support its contention that the Court of Appeals must sit as a three member panel and issue a decision signed by the three panel judges. Such a reading unduly constrains the authority of the members of the Court of Appeals.

The Court of Appeals should not be burdened with considering matters not properly before the appellate court, and a full panel of judges certainly should not be required to sign dispositive orders affirming lower court rulings, orders, decisions or judgments. To require such would impose an undue administrative burden on the Court of Appeals judges.

Appellants cite no authority establishing or recognizing that all dispositive orders must be signed by at least three members of the Court of Appeals. A plain reading of Rule 220, SCACR indicates that all rulings must be in writing, but the validity of the order does not hinge on the number of judges who sign the decision upholding the decision of the lower court or dismissing the appeal.

While no statute or rule appears to specifically govern the issuance of memorandum opinions by a single Court of Appeals judge, a review of related authorities provides guidance.

Three judges constitute a quorum on a panel, and the concurrence of a majority of the judges is necessary for the reversal of the judgment below. S.C. Code Ann. § 14-8-80(d). There is no mention of the requirements to affirm a lower court decision, or to dismiss an appeal.

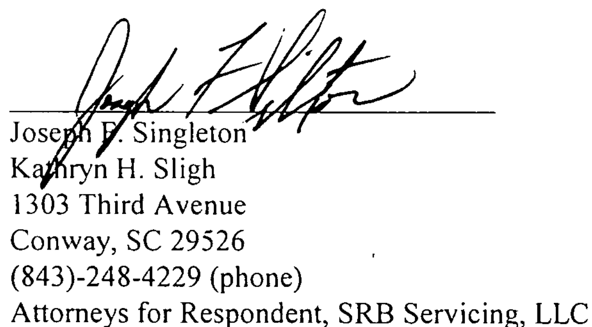
Rule 240(j), SCACR provides that an individual judge may grant or deny any motion or petition on behalf of the court, except where a concurrence is required by the rules. Any review of an order issued by an individual judge shall be petition for rehearing. Rule 240(j), SCACR. A rehearing *en banc*, as requested by Appellant, requires an affirmative vote of six judges. Rule 219(a), SCACR. A writ of certiorari to review a final decision of the Court of Appeals may be issued by two justices or by the Supreme Court. Rule 242, SCACR. Where procedural rules and statutes specify the number of judges or justices required to issue specific types of decisions and remain silent as to other types of decisions, it is reasonable to conclude that an individual judge is within his authority to sign a dispositive order affirming the order of the lower court.

CONCLUSION

This appeal was properly dismissed and should not be further heard inasmuch as the controversy is not justiciable by reason of mootness, that the Appellant is not an aggrieved party entitled to appeal, that the case does not involve a final judgment, nor an appealable interlocutory judgment, and that no reasonable remedy or relief can be given by the Court at this time, and that the Appellant is simply seeking an advisory opinion.

Respectfully submitted,

SINGLETON, BURROUGHS & YOUNG, P.A.

BY: 

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29th day of April, 2014.

Conway, SC

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe,
Master-in-Equity for Horry County

Order (S.C. Ct. App. filed June 6, 2012)

Ex Parte Coastal Designs, Inc. and Tim Wilkes..Appellants

In Re:

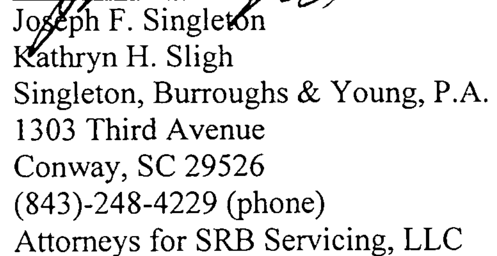
SRB Servicing, LLC, successor by assignment
To Synovus Bank, formerly known as Columbus
Bank and Trust Company, as successor in interest
through name change and by merger with the
National Bank of South Carolina..Respondent,

vs.

Myrtle Beach Grande Hotel, LLC, Harvey L. Jones,
Wendy Jones (J.) Bellamy, Billy Joe(J.) Bellamy,
Kersi S. Shroff, Mozingo + Wallace Architects, LLC,
Harvey Levon Jones and Wendy Beth Jones
Bellamy as personal representatives of The Estate of Ann L. Jones,
and as Trustee of The Restated and Amended Trust Agreement
of Ann L. Jones, dated October 30, 2006...Respondents.

CERTIFICATE OF COUNSEL

The undersigned counsel for Respondent, SRB Servicing, LLC certifies that its Brief complies with Rule 211(b), SCACR.



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Apr. 29, 2014
Conway, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe, Master-in-Equity for Horry County

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CASE NO. 2009-CP-26-5395

Ex Parte Coastal Designs, Inc. and Tim Wilkes .... Appellants

IN RE:

SRB Servicing, LLC, successor by assignment to Synovus Bank, formerly known as Columbus Bank and Trust Company, as successor in interest through name change and by merger with the National Bank of South Carolina .... Respondent

vs.

Myrtle Beach Grande Hotel, LLC, Harvey L. Jones, Wendy Jones (J.) Bellamy, Billy Joe (J.) Bellamy, Kersi S. Schroff, Mozingo & Wallace Architects, LLC, Harvey Levon Jones and Wendy Beth Jones Bellamy as Personal Representatives of the Estate of Ann L. Jones, and as Trustee of the Restated and Amended Trust Agreement of Ann L. Jones, dated October 30, 2006....Respondents

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PROOF OF SERVICE

I, Kathryn H. Sligh, do hereby certify that I am an employee of the Law Firm of Singleton, Burroughs & Young, P.A., Attorneys at Law, Conway, South Carolina, and that I have this date mailed a copy of the **Brief of Respondent, SRB Servicing, LLC, and Certificate of Counsel** on behalf of Respondent, SRB Servicing, LLC in the United States Mail, postage prepaid, addressed as follows:

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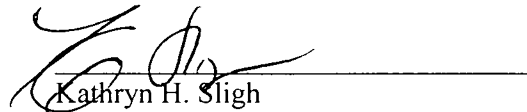
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29th day of April, 2014.