

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

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James E. Reeves, Special Referee

JUL 21 2014

SC Court of Appeals

Appellant Case No. 2013-000965

SCBT, NA,..... Respondent

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of Revenue; Baird Transport, Inc,.....Defendants

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is theAppellant

**APPELLANT’S MEMORANDUM IN OPPOSITION TO
RESPONDENT’S MOTION TO CANCEL LIS PENDENS OR IN THE
ALTERNATIVE, REFER TO SPECIAL REFEREE FOR EXPEDITED
HEARING**

The Respondent has filed a Motion to Cancel Lis Pendens or in the Alternative, Refer to Special Referee for Expedited Hearing. This is the third Motion the Respondent has filed during this Appeal. The Appellant responds as follows:

The Appellant is elderly, legally blind and in poor health, and claims that the Respondent SCBT, NA wrongfully foreclosed on his family farm, and that he was denied due process by the banks overly aggressive tactics, and improper conduct during the foreclosure procedure.

The Special Referee in this case ordered a foreclosure sale, which took place, with the Respondent SCBT, NA being the highest bidder and the purchaser at the foreclosure sale. The Appellant did not have enough money to post a bond to stop the sale. Because the foreclosure sale did not result in the property being sold to an innocent third party, the Appellant in this matter has a remedy, the actual return of his property, since SCBT actually holds title to the property, and thus has the ability to transfer it back.

Should the case be remanded, it could be determined that the Appellants property was sold pursuant to an improper foreclosure. Thus, the Court could in fact void the sale of the property. *LeConte v. Irwin 19 S.C. 554(1883)* *Eason v. Witcofskey 29 S.C.239, 244(1888)*. Various courts have addressed when a judgment is to be deemed voidable, as opposed to void. See *E.G., City Bank v. Saje Ventures II 7 Haw. App. 130,*

133(Haw.ct.app.1988); Leisure Campground and Country Club Limited Partnership v. Leisure Estates 280 MD. 220, 223, 372 A 2d 595, 598 (1977); City Bank NA. v. Data Lease Fin. Corp.645, F 2d 333, 336 (5th Circuit 1981).

Since there is no innocent third party purchase, the sale could be voided, providing the Appellant with his remedy. Therefore, since the Respondent was the purchaser at the foreclosure sale, its title is at risk, and therefore the Lis Pendens is proper. The Respondent apparently wants to sell the property without disclosing the pendency of this Appeal.

The Respondent previously filed a Motion to Dismiss the Appeal on the grounds of Mootness for this same issue. That Motion was denied.

The cases cited by the Respondent involved innocent purchaser. Since the Respondent holds title to the property, and is not an innocent purchaser, the title of the property is at issue. Therefore, there is a pending action regarding the title to the property.

The common law rule protecting bona fide purchasers at judicial sales limit the protection to third party purchasers. By implication, where the purchaser is the mortgagee, or other party to the action, the purchaser's title is at risk in the event of reversal on appeal. This view is discussed with implicit approval in dicta in *LeConte v. Irwin*, 19 S.C. 554 (1883) One treatise, for example, states that" [T]he rule that the title of the purchaser

will be protected has been held not to apply where the purchaser was a party to the suit in which the sale was ordered”. 50A C.J.S. Judicial Sales § 65; *accord*, 47 Am. Jur. 2d Judicial Sales § 41. (see Susan E. Driscoll and Mark S. Sharpe Hot Topics and Current Issues in Mortgage Foreclosures S.C. Bar Convention 2010)

To qualify as a bona fide purchaser a party must show (1) actual payment of the purchase price, (2) acquisition of legal title to the property, and (3) a purchase in good faith without notice of a lien or defects. *Robinson v. Estate of Harris*, 378 S.C. 140 at 146, 662 S.E.2d 420, at 423. (2008) As a party participant, the Respondent did not purchase the property at the foreclosure sale in good faith without notice of lien or defects.

CONCLUSION

Based on the above, the Respondents Motion to Cancel Lis Pendens should be denied, and this case should proceed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark W. Hardee', written over a horizontal line.

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Attorney for Appellant

July 21st, 2014

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF ORANGEBURG)

Case No. 12-CP-38-0030
Appellant Case #: 2013-000965

SCBT, NA,)

Appellant,)

vs.)

CERTIFICATE OF SERVICE

Shelton Hoffman a/k/a Shelton L.)

Hoffman, South Carolina Department)

Of Revenue, and Baird Transport, Inc.)

Respondent.)

I hereby certify that on the 21st day of July, 2014, I served, via first class mail, at the address below, a copy of the Appellant's Memorandum in Opposition to Respondent's Motion to Cancel Lis Pendens or in the Alternative, Refer to Special Referee For Expedited Hearing pertaining to the above-referenced action.

Harriet Pollitt Wallace, Esq.
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Greenville, SC 29601
Attorney for the Respondent

Columbia, South Carolina

Date: 7-21-14


Vicky McCarter
Legal Assistant