

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Case No.: 2009-CP-18-2200
EDGAR W. DICKSON

Howard W. Charpia and Jody E. Charpia.....Appellants

Rene McMasters Ronaghan.....Respondent

RESPONDENT'S INITIAL BRIEF

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SC Court of Appeals

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STATEMENT OF THE CASE

The Respondent filed this action in the Court of Common Pleas for Dorchester County on August 10, 2009, wherein the Respondent sought the foreclosure of a judgment lien that the Respondent obtained against the Appellant, Howard W. Charpia (Complaint).

The Respondent filed a Motion for Compulsory Order of Reference on September 24, 2009 ("Motion for Compulsory Order of Reference). By Order dated April 27, 2010, Judge Edgar Warren Dickson granted the Respondent's Motion for Compulsory Order of Reference (Order Granting Compulsory Order of Reference). The Appellant then appealed Judge Dickson's Order Granting Compulsory Order of Reference to the Court of Appeals. The Court of Appeals affirmed Judge Dickson's Order Granting Compulsory Order of Reference in an Unpublished Opinion filed on October 11, 2011 (Unpublished Opinion number 2011-UP-445).

By Order dated April 10, 2012, the then sitting Master, Maite' Murphy, issued an Order of Recusal and Remand to the Circuit Court (Order of Judge Maite' Murphy dated April 10, 2012).

On July 30, 2012, the case came before Judge Dickson for trial. By Order dated October 29, 2012, Judge Dickson issued an Order of Foreclosure and Sale (Order of Foreclosure and Sale).

On October 19, 2012, the Appellant filed a Motion to Void and Vacate the Order of Compulsory Order of Reference issued by Judge Edgar Warren Dickson dated April 27, 2010. (Motion to Void and Vacate Order filed on October 19, 2012).

On December 3, 2012 the Appellant filed a Motion to Reconsider Judge Dickson's Order of Foreclosure and Sale dated October 29, 2012. (Motion to Reconsider filed December 3, 2012).

The Appellant's Motion to Void and Vacate Judge Dickson's Order of Compulsory Order dated April 27, 2010 and the Appellant's Motion to Reconsider Judge Dickson's Order of Foreclosure and Sale dated October 29, 2012 came before Judge Dickson on January 9, 2013 for hearing. (Email from Judge Dickson's law clerk dated January 10, 2013). The Appellant did not attend the hearing. The Appellant contends that he was not notified of the hearing. (Email from Judge Dickson's law clerk dated January 10, 2013).

Judge Dickson's law clerk then advised Respondent's counsel and the Appellant that the Court wished to make a ruling on the Appellant's two motions without any further argument and directed Respondent's counsel to prepare an Order denying both motions. (Email from Judge Dickson's law clerk dated January 10, 2013).

Judge Dickson issued an Order Denying Appellant's Motion to Void Order on June 26, 2013 on the basis that his Order Granting Compulsory Order of Reference dated April 27, 2010 was affirmed by the Court of Appeals in an Unpublished Opinion number 2011-UP-445 filed on October 11, 2011. (Order Denying Motion to Void Order). Judge Dickson also issued an Order Denying Appellant's Motion to Reconsider by Order dated June 26, 2013 on the basis that the Motion to Reconsider did not raise any grounds to alter or set aside the judgment. (Order Denying Motion to Reconsider dated June 26, 2013).

STATEMENT OF THE FACTS

Appellant's Motion to Void and Vacate the Compulsory Order of Reference signed by Judge Edgar W. Dickson on April 27, 2010 was filed in the Clerk's office for Dorchester County on October 19, 2012. (Motion to Void and Vacate Order). The Respondent's Order Granting a Compulsory Order of Reference had already been affirmed by the Court of Appeals on October

11, 2011 by an Unpublished Opinion number 2011-UP-445. The Appellant's Motion to Void and Vacate the Order of Reference was filed more than a year after the Order was affirmed by the Court of Appeals.

Appellant's Motion to Reconsider sets forth grounds for Judge Dickson to review. (Motion to Reconsider filed December 3, 2012). Judge Dickson, in his discretion, decided to rule on the Appellant's two (2) motions without any further argument. Judge Dickson consulted the court file, written submissions, and his notes from the prior hearing. (Email from Judge Dickson's law clerk dated January 10, 2013).

ARGUMENT

I. The trial Court did not err in ruling on the Appellant's Motion to Void and Vacate the Court's Compulsory Order of Reference dated April 27, 2010 without a hearing.

The Appellant sought to void and vacate the Compulsory Order of Reference signed by Judge Edgar W. Dickson on April 27, 2010. The Appellant, however, had previously appealed Judge Dickson's Compulsory Order of Reference to the Court of Appeals. By Unpublished Opinion filed October 11, 2011, the Court of Appeals affirmed Judge Dickson's Compulsory Order of Reference. (Unpublished Opinion number 2011-UP-445).

Since the Court of Appeals had already affirmed Judge Dickson's Compulsory Order of Reference, the Appellant had no legal basis to request that Judge Dickson's void or vacate his Order Granting Compulsory Order.

II. The trial court did not err in ruling on the Appellant's Motion to Reconsider the Order of Foreclosure and Sale dated October 29, 2012 without further

argument.

Rule 59(f) SCRPC provides that a motion to alter or amend "may in the discretion of the Court be determined on briefs filed by the parties without oral argument (Rule 59(f) SCRPC).

The Appellant set forth the grounds for his argument in his motion to reconsider. Since the Appellant's motion set forth the grounds for his arguments, the trial court was not required to hold oral argument.

In Pollard v. County of Florence, 314, S.C., 397, 402, 444 S.E.2d 534, 536 Ct. App. (1994), the Court of Appeals held the trial court did not err in declining to entertain oral argument on a motion to alter or amend as the arguments were raised in the motion.

CONCLUSION

Based upon the foregoing it is respectfully requested that the Order of Foreclosure and Sale dated October 29, 2012; the trial court's Order Denying Motion to Void Order dated June 26, 2013; and the trial court's Order Denying Motion to Reconsider dated June 26, 2013 be affirmed.

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This 9th day of August, 2014
Mt. Pleasant, SC

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EDGAR W. DICKSON


Case No.:2009-CP-18-2200

Howard W. Charpia and Jody E. Charpia.....Appellants

Rene McMasters Ronaghan.....Respondent

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Designation of Matter to be Included in the Record on Appeal and the Respondent's Initial Brief by United States Mail, postage prepaid, on August 8, 2014, addressed to the Appellants, H. Wayne Charpia a/k/a Howard W. Charpia and Jody E. Charpia at 1450 Jahnz Avenue, Summerville, SC 29485



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August 8th, 2014.

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August 8, 2014

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Rene' McMasters, now known as Rene McMasters Ronaghan.v. H. Wayne
Charpia,et.al

Our file: 09-084/Appeal
Appeal No.: 2013-002311

Dear Madam Clerk:

Enclosed is the original and one (1) copy of the Respondents' Initial Brief and Designation of Matter to be Included in the Record on Appeal together with my Proof of Service. I would appreciate you filing the original and returning one (1) filed copy to me in the self-addressed stamped envelope provided.

With kindest regards, I am

Very truly yours,



Frank M. Cisa

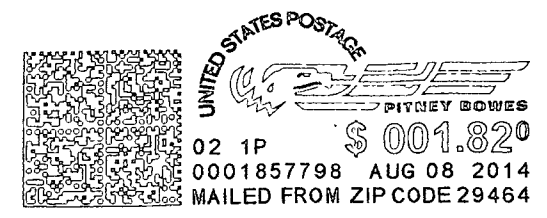
FMC/alp
Enclosures

cc: H. Wayne Charpia (w/enc.)
Jody E. Charpia (w/enc.)

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