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APR 17 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-4248

Belle Hall Plaintation Homeowner's)
Association, Inc.)

Plaintiffs,)

**ORDER DENYING MOTION TO
RECONSIDER**

vs.)

John A. Murray, Trustee of John E.)
Murray Gloria C. Murray)
Family Trust,,)

Defendants.)

FILED
2015 APR -9 PM 3:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY [Signature]

David Conor Keys & Karen Keys)

Third Party – Purchasers)

This case has a somewhat tortured history but is before me today on Defendant Third Party Purchasers' Motion to determine its status as a "Bona Fide Purchaser For Value," as that term is defined in S C. Code Ann. § 15-39-870.

This court has previously determined that the Defendant Murray in this case did not receive Due Process notice by way of service of the Summons and Complaint in this matter. That issue is currently on appeal.

Today's question before the court arises from the case of Bloody Point v. Ashton, 410 S.C. 62; 762 S.E.2d 729 (Ct. App. 2014). The Court of Appeals opinion confirmed an HOA foreclosure sale in Beaufort County, challenged by the defaulting homeowner on virtually the same basis as the case before me today. The Ashton decision came down on August 20, 2014, the same day this Court's order denying the Third Party Purchaser's motion for relief was filed.

[Handwritten Signature]

In Ashton, the Beaufort Master-in-Equity found the Defendants had been given Due Process and that the purchaser's status as a bona fide purchaser for value ("BFP") entitled them to purchase the property. The Master confirmed the propriety of the judicial sale.

Ashton discussed several issues relevant to this court's decision including:

- 1) The public policy requiring the validity of judicial sales be upheld if, in reason and justice, it can be done.
- 2) The Standard of Review to determine whether to set aside a foreclosure sale is within the discretion of the trial court.

As an abuse of discretion standard, the issue for review is whether the trial court was controlled by an error of law or based its decision upon unsupported factual conclusions. Under this standard, each case is distinguished based upon the particular facts and circumstances which arise. The trial court has a range of discretion to determine how the issue should be decided.

In Ashton, the defaulting owners were from Pennsylvania, and despite four attempts to serve them at their home address by their local Sheriff, the trial court determined that they were to be served by publication. Here, the Plaintiff attempted service at three of the five addresses it had available to it before they pursued Service by Publication on the local Charleston County owner. This was a significant factor in this Court's determination, under Rule 60, that the judgment was Void for lack of service, despite the Clerk of Court's entry of default.

Purchasers claim their status as a BFP provides that, regardless of irregularities in the process, they should be entitled to rely upon the judicial sale as being effective despite any irregularities in the process.

This Court finds that the Purchasers met the first two tests of a BFP:

- 1) they actually paid the purchase price; and



2) they acquired legal title to the property – by payment of the bid price to the Master-in-Equity of the amount owed and receipt of a Master’s Deed to the property.

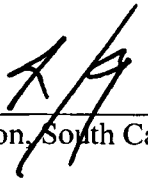
However, the Court finds, upon further inquiry that the Keys do not meet the third (3) prong of the test to qualify as a BFP because they did not “in good faith and with integrity of dealing, without notice of a lien or defect,” acquire the deed.

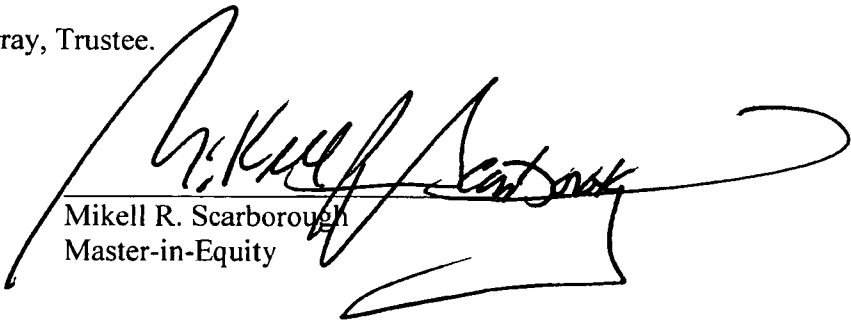
The record establishes that the Purchasers, with notice of a potential claim from the defaulting owner, rushed to the court to pay the balance due and then, after service of the Motion to Vacate the Sale, had the deed recorded at the RMC Office. Therefore, the Court finds the Keys did not act in good faith and with integrity of dealing, without notice of a lien or defect. In fact, the Keys had notice of a defect in the proceedings prior to paying the purchase price and acquiring legal title to the property. This is not the type of action which, in reason and justice, this court finds the public policy requiring the validity of judicial sales be upheld.

Keys argues that the sales date – not the deed issuance date - determines when the notice of a defect should be known; however, this court finds, based upon its experience that no fixed date can determine when the interests of justice dictate a sale should be overturned.

The Court finds the Keys are not a BFP for Value as defined by statute and so are not entitled to the protections afforded them under § 15-39-870 as bona fide purchasers for value. Accordingly, the court affirms its decision to overturn the judicial sale and return legal title to the real property to Defendant John A Murray, Trustee.

AND IT IS SO ORDERED!


_____, 2015
Charleston, South Carolina


Mikell R. Scarborough
Master-in-Equity

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April 13, 2015

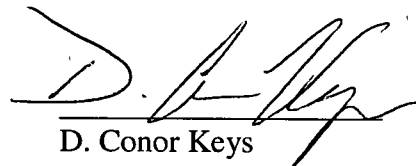
The Office of Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201

**RE: Belle Hall Plantation Homeowner's Association, Inc. v. John A. Murray, Trustee of John E. Murray Gloria C. Murray Family Trust
Case: 2013-CP-10-4248**

The Office of Court Administration:

Please find enclosed, with regard to the above referenced matter, Appellants, David Conor Keys and Karen Keys' request for a transcript dated April 9, 2015.

With kind regards,



D. Conor Keys

Enclosures:
(as stated)
CC:
Amanda Reece
Stephanie Trotter

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April 9, 2015

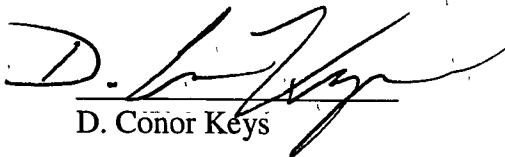
Christine A. Smith
100 Broad Street, Suite 266
Charleston, SC 29401

**RE: Belle Hall Plantation Homeowner's Association, Inc. v. John A. Murray, Trustee of John E. Murray Gloria C. Murray Family Trust
Case: 2013-CP-10-4248**

Ms. Smith:

On April 9, 2014, a hearing was held with regard to the above case before the Honorable Mikell R. Scarborough, Master In Equity, Charleston County. The Court Records indicate that you were the court reporter for this hearing. I kindly request that you provide me with a copy of the transcript for the hearing. If you have no record or transcript for the hearing, please advise me of the same in writing. I agree to pay the per page charge for the transcript as provided by Rule 607, SCACR.

With kind regards,


D. Conor Keys

Enclosures:
(as stated)