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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case Number: 2013-CP-10-04248
Appellate Case Number: 2014-002018

Belle Hall Plantation Homeowner's Association, Inc., Plaintiffs,

v.

John A. Murray, Trustee of the John E. Murray & Gloria C. Murray Family Trust, Respondents,

David Conor Keys & Karen Keys, Appellants.

MOTION FOR EXTENSION UNDER EXTRAORDINARY CIRCUMSTANCES

Pursuant to Rule 240, SCACR, the Respondent requests a final 30-day extension of the deadline for filing and serving his brief. Respondent's counsel offers the following as extraordinary circumstances for this final extension.

I am a sole-practitioner, and my computer system experienced a hard-drive failure the week preceding July 4th, 2015. At the time of this failure, my IT manager was out of town on vacation, and the various problems with my office technology system took time to diagnose upon his return. Due to the resulting limited capacity of my computer system, I purchased an additional computer to bolster functionality to the extent feasible. My IT Manager completed the restoration and reformatting of my system from the on-line cloud backup system as of August 3rd, 2015. Fixing this consumed a substantial amount of his time and my time.

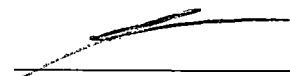
Additionally, my paralegal and only employee of better than two years tendered notice on July 21st, 2015, with her last day being August 7th, 2015. I immediately (and fortunately) was able to locate and hire a new and experienced paralegal who began working on July 24th, 2015. I carry a large case load, and training my new assistant remains extremely time consuming.

The file in this case is both extensive and voluminous. There were multiple contested lower court hearings, orders, and rulings on several motions. The appellants filed four notices of appeal and designations of matter to date, and they were further granted leave to file an amended brief. This case requires a substantial amount of attorney work in order to present it to the Court in a posture that will assist the Court's review. I am committed to performing this work in a timely fashion.

For these reasons, I respectfully request a final 30 day extension to file my client's brief which is currently due August 21st, 2015. I request an extended due date of September 20th, 2015, and if the circumstances require, I will associate additional counsel to ensure this deadline is met.

Respectfully Submitted,

August 9th, 2015


Amanda M. Reece, SC Bar #81252
Reece Law Firm, LLC
217 Lucas Street
Unit J
Mt. Pleasant, SC 29464

Attorney for Respondent John A. Murray
Trustee of the John E. Murray and Gloria C.
Murray Family Trust

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
)
Belle Hall Plaintations Homeowner's)
Association, Inc.)

Plaintiffs,)

vs.)

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

Defendants.)

David Conor Keys & Karen Keys)

Third Party – Purchasers)

IN THE COURT OF COMMON PLEAS)
NINTH JUDICIAL CIRCUIT)


CASE NO. 2013-CP-10-4248)

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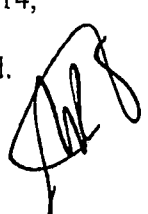
**ORDER DENYING MOTION TO
RECONSIDER**

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY 

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.



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.

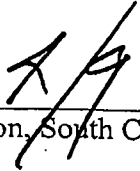
However, the Court finds, upon further inquiry that the Keys do not meet the third (3) prong of the test to qualify as a BFP because they did not “in good faith and with integrity of dealing, without notice of a lien or defect,” acquire the deed.

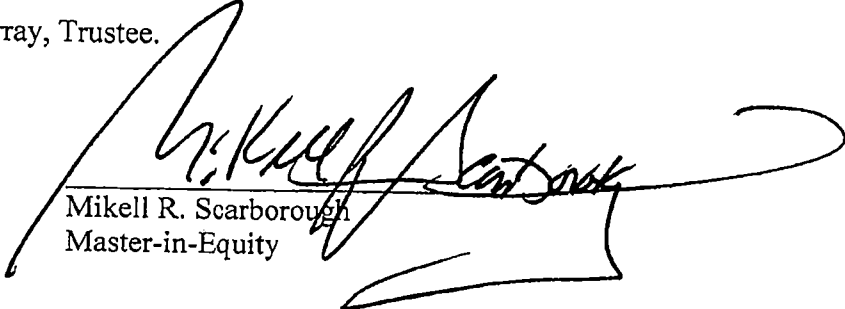
The record establishes that the Purchasers, with notice of a potential claim from the defaulting owner, rushed to the court to pay the balance due and then, after service of the Motion to Vacate the Sale, had the deed recorded at the RMC Office. Therefore, the Court finds the Keys did not act in good 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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case Number: 2013-CP-10-04248

Belle Hall Plantation Homeowner's Association, Inc., Respondent,

v.

John A. Murray, Trustee of the John E. Murray & Gloria C. Murray Family Trust, Defendants,

Of whom David Conor Keys & Karen Keys are the Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellant and the Respondent, with a copy of the *Motion for Extension* by mailing copies of the same by United States Mail with first class postage pre-paid to the following addresses:

David Conor Keys, Esq.
843 Robert E. Lee Boulevard
Charleston, SC 29412
Attorney for Himself and Karen Keys

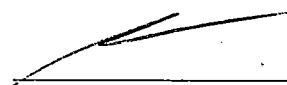
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SC Court of Appeals

Stephanie Trotter, Esq.
McCabe Trotter & Beverly, PC
P.O. Box 212069
Columbia, SC 29221-3200
Attorney for Belle Hall Plantation Homeowners Association, Inc.

August 4th, 2015



Amanda Reece, Esq.
Reece Law Firm, LLC
Bar No. 81252

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SC Court of Appeals

August 4, 2015

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

Re:

Belle Hall Plantation Homeowner's Association v. John A. Murray, Trustee of the John E. Murray and Gloria C. Murray Family Trust, Respondent, David Conor Keys & Karen Keys, Appellants

Appellate Case Number: 2014-002018

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of a *Motion for Extension under Extraordinary Circumstances* in reference to the above matter. I have also enclosed a proof of service of this document on counsel for Appellant and Respondent and a \$25.00 check for the filing of this motion. Please return the additional filed copy in the enclosed self-addressed, stamped envelope.

Please note in the pleadings that I have modified the caption to reflect and mirror that of Judge Scarborough's final Order of April 9th, 2015 which is attached hereto. The rationale behind this is to more clearly identify the parties to the action. As you are aware, the Plaintiff is not participating in this appeal and has expressed no objection to the lower court's ruling.

Please advise if this caption is not acceptable.

Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

Warm Regards,



Amanda M. Reece, Esq.

Cc: Stephanie C. Trotter, Esq.
David Conor Keys, Esq.

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NT, SC 29464

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The Honorable Jenny Abbott Kitchings
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