

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

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Appeal from RICHLAND  
Court of Common Pleas

Joseph M. Strickland, Master in Equity

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**Appellant Case No. 2014-000140**

Bank of America, N.A. .... Respondent,

v.

Duce Staley, Felicia Woods a/k/a Felicia B. Woods, SCBT, N.A., South Carolina Department of Revenue, Palmetto Health, Manheim Automotive Financial Services, Inc., and Spring Valley Homeowners' Association, Defendants,

And Willie Zimmerman, Third Party Participant, ..... Appellant

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**PETITION FOR REHEARING OF APPELLANT WILLIE ZIMMERMAN**  
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## INTRODUCTION

Pursuant to Rule 240, SCACR the Appellant, Willie Zimmerman, respectfully petitions this Court for a rehearing of Unpublished Opinion No. 2015-UP-444, dated August 15, 2015. Rehearing is warranted when the Court has overlooked or misapprehended an argument. Kennedy v. S.C. Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001) When the Court fails to address some of the arguments raised in the appeal, “a prima facie case for rehearing has been made”. Covar v. Sallat, 22 S.C. 265, 272 (1885).

## STATEMENT OF ARGUMENT

The Court acknowledges the arguments Willie Zimmerman made on appeal that the master erred in vacating the sale because (1) Zimmerman did not contribute to Bank of America’s mistake and (2) the sale did not involve an inadequate price so gross as to shock the conscience or other circumstances warranting interference by the Court. As to Issue 1: *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). As to Issue 2: *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue...must have been raised to and ruled upon by the [circuit court] to be preserved for appellate review.”)

The Court’s Opinion overlooks and misapprehends arguments because it lacks legal analysis and interpretation of the question which this case presents. It is established that if, neither the officer making the sale, nor the purchaser contributed to the mistake, nor the sale was fair and regularly conducted, the sale shall not be set aside. The Court does not address the issue on its face and makes its ruling proclaiming the ruling as the law of the case.

The Court further does not address the established law presented by the appellant on Issue 2 ruling the issue must have been raised to and ruled upon by the [circuit court] to be preserved for appellate review. In so ruling, the Court overlooks the established standard that all legal options must be exercised prior to appeal. The appellant was exercising all options to comply with the sale and appealed when there were no other legal options available.

The Court’s Opinion overlooks the far-reaching consequences that will inevitable result from this ruling. Appellant, Willie Zimmerman, was the successful bidder on a foreclosed residential property (25 Sunturf Circle). The law is well established that the policy of the Courts to uphold judicial sales when regularly made, and when it can be done without violating principle or doing injustice. A judicial sale will not be set aside except for cogent reasons. The purpose of the law and of proceeding in which a sale has been decreed is that it shall be final. Spillers v. Clay. 233 S.C. 99, 104, 103 S.E. 2d 759, 761-62 (1958).

Even though this is an unpublished opinion that has no precedential value, this opinion is counter to well establish law that if neither the officer making the sale nor the purchaser contributed to the mistake and the sale was fair and regularly conducted the sale shall not be set aside. Subsequently, this opinion could lead to Courts misconstruing the law on this issue. Therefore, this opinion, could lead to confusion and ambiguity.

## CONCLUSION

WHEREFORE, the Appellant, Willie Zimmerman, seeks an Order granting Rehearing, and concluding that the Court erred in setting aside the sale because of a mistake of the Respondent, Bank of America. The voiding of the sale by the Master-in-Equity should be reversed.

Respectfully submitted



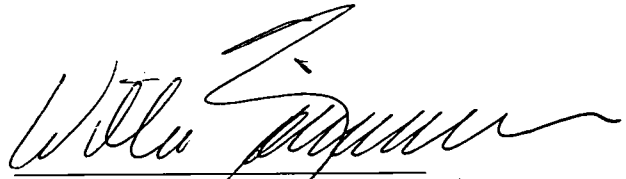
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September 8, 2015

## CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Petition for Rehearing complies with Rule 240, SCACR.

September 8, 2015



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**PROOF OF SERVICE**

I, Willie Zimmerman, served upon the Respondent this PETITION FOR REHEARING by placing the same in the United States Mail, first class postage prepaid, addressed to the following as shown this 8<sup>th</sup> day of September, 2015.



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