THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Hon. Joseph M. Strickland, Master-in-Equity

Case No. 2015-001807

Winrose Homeowners' Association, Inc and Regime Solutions, LLC..... Respondents,

v.

Devery A. Hale and Tina T. Hale..... Appellants.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

This is an appeal from an Order Denying Defendants' Motion to Vacate Sale of a homeowner's association (HOA) foreclosure of lien. Appellants Devery and Tina Hale are the original owners and residents of the real property at issue. On February 24, 2014, Respondent Winrose Homeowner's Association, Inc. (Winrose) filed a Complaint for foreclosure of a Homeowner's Association lien on the Appellants' residence. The property was purchased by Respondent Regime Solutions, LLC (Regime Solutions) at public sale on August 4, 2014 for $3,036.00. The Hales filed a Motion to Vacate the Sale for the inadequacy of the successful bid. The Motion was heard on February 6, 2015 by the Honorable Joseph M. Strickland, Master in Equity for Richland County. On April 21, 2015, Judge Strickland filed an Order Denying the Motion to Vacate Sale. Appellants filed a timely Notice of Appeal on August 21, 2015.

FACTS

Appellants Devery and Tina Hale have lived in their home located at 25 Caddis Creek Court, Irmo, South Carolina, since they executed the original note and mortgage in 1998. (Complt. 1, Feb. 24, 2014; Def.s' Mot. to Vacate Sale 1, Nov. 4, 2014). In 2011, Appellants got behind on their HOA dues. (Compl. at 7). Respondent Winrose Homeowners'

Association, Inc. filed an action for foreclosure of the HOA lien. (*See* Complt.) The property was sold at public sale, and the successful bid by Respondent Regime Solutions, LLC was for $3,036.00. (Hearing Tr. 10:15-16, 6:24-25, Feb. 6, 2015.) Appellants offered Respondent Regime Solutions, LLC, $9,000 to repurchase the property, but their offer was not accepted. (Tr. 12:4-6, 12:11-12, Feb. 6, 2014). Appellants filed a Motion to Vacate Sale on November 4, 2014. (*See* Def.s' Mot. to Vacate Sale). The Motion was denied, and this appeal follows.

STANDARD OF REVIEW

"A mortgage foreclosure is an action in equity." *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 248, 715 S.E.2d 348, 352 (Ct. App. 2011). The South Carolina Court of Appeals "review[s] factual findings and legal conclusions in an equitable action de novo." *Id.* In addition, the interpretation of an order is a question of law subject to de novo review. *See Ex parte TLC Laser Eye Ctrs. (Piedmont/Atlanta), LLC*, 404 S.C. 385, 392, 745 S.E.2d 105, 109 (2013). "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012).

ARGUMENT

A man's house is his castle. A common phrase in modern literary works, the sentiment can be traced back to Roman times. The English phrase was coined in the 1600s by English barristers and commentators of law to mean that real property is, by maxim, sacredly tied to the landowner. *See* Robert J. Alberts, *Drug Testing Tenants: Does It Violate Rights of Privacy?* 38 Real Prop. Prob. & Tr. J. 479, 486 (2003). According to many

commentators, a violation of a man's home is akin to an assault on the body of the man himself. *Id.* The saying and the purpose of that saying "is still alive and taken seriously as a legal and moral exemplar." *Id.* The Hales have had their rights in their property violated, and this violation goes to the heart of their pride in being a homeowner. They are not asking to be relieved of their responsibility to pay HOA fees. They are asking that the HOA conduct their debt collection in a way that does not violate some of these Appellants' most important and meaningful rights.

The successful bid in the instant case both "shocks the conscience" of the court, and may also be set aside by the power of this court to decide that there are accompanying circumstances warranting the vacation of this sale. According to the *Poole* test, "[a] judicial sale will be set aside when either: (1) the sale price is so gross as to shock the conscience; or (2) the sale is accompanied by other circumstances warranting the interference of the court." *Wells Fargo Bank, N.A. v. Turner,* 378 S.C. 147, 151, 662 S.E.2d 424, 425 (Ct. App. 2008) (citing *Poole v. Jefferson Standard Life Ins. Co.,* 174 S.C. 150, 177 S.E. 24 (1943)); *see also BFP v. Resolution Trust Corp.*, 511 U.S. 531, 542, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994) ("[A] foreclosure sale might also be set aside under State foreclosure law if the price is so low as to 'shock the conscience or raise a presumption of fraud or unfairness.'"). Courts in South Carolina have been setting aside judicial sales based on "grossly inadequate" sales prices. *Turner*, 378 S.C. at 151, 662 S.E.2d at 425. South Carolina courts "have consistently held that when foreclosure sale prices amount to less than ten percent of the actual value of the property, the discrepancy shocks the conscience of the court." *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 71, 762 S.E.2d 729, 734 (Ct. App. 2014). However, it is evident that the court has not had the intention of

creating black letter law as to the equation to be used or the percentage that would decidedly "shock the conscience" of the court. *See E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 359, 644 S.E.2d 802, 807 (Ct. App. 2007) (stating "South Carolina has not established a bright line rule for what percentage the sale value must be with respect to the actual value in order to shock the conscience of the court.").

The South Carolina cases that apply to the instant situation have not specifically considered which equation should be used when deciding whether the amount of the bid shocks the conscience. In addition, none of these cases set out to determine what to do with senior liens in an HOA foreclosure and sale. In fact, Appellants argue that the courts have not clearly dictated what standard to apply in this situation. Appellants ask that the Court in this case: 1) divide the sale's price by the equity in the property to properly determine whether the successful bid at the sale shocks the conscience of the court, and 2) consider the circumstances of an HOA foreclosure and sale to be different than court-mandated sales of other types.

I. THE LOWER COURT ERRED IN REFUSING TO VACATE THE SALE WHEN IT USED AN IMPROPER CALCULATION TO DECIDE WHETHER THE BID SHOCKED THE CONSCIENCE OF THE COURT.

In each of the cases cited as precedent, it is evident that the court did not have the intention of creating precedent for the exact equation to be used or the exact percentage that would decidedly "shock the conscience" of the court. *See generally*, *Bloody Point Prop. Owners Ass'n, Inc.*, 410 S.C. 62, 762 S.E.2d 729; *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 732 S.E.2d 622 (2012); *Wells Fargo Bank, NA.*, 378 S.C. 147, 662 S.E.2d 424; *Investors Sav. Bank v. Phelps*, 303 S.C. 15, 397 S.E.2d 780 (Ct. App. 1990). However, a search of South Carolina jurisprudence reveals only when judicial sales are at least less

than ten percent of a property's actual value, our courts consistently held the discrepancy to shock conscience of the court." *Bloody Point Prop. Owners Ass'n, Inc.*, 410 S.C. 62, 71, 762 S.E.2d 729, 734.

a. South Carolina law is silent as to which calculation should be used to decide whether the percentage of the bid in this case shocks the conscience of the court.

The case law in South Carolina is silent as to the exact way to render the bid inadequate under the circumstances at hand, and the bid should be considered inadequate as to shock the conscience in this case.

The court in *Phelps* was primarily concerned with what the current fair market value (FMV) of the property should be because the defendants did not provide the court with a current appraisal. *See* 303 S.C. 15, 397 S.E.2d 780. The court affirmed that the sales price of $510 shocked the conscience because it was less than 1% the original note and mortgage ($48,340). *Id.* This court also distantly noted the amount of equity in making its decision when it considered that "[e]ven if the property was worth only a fourth of the amount loaned on it four and on-half years earlier, [the] bid would be only 4.2% of its value." *Id.* at 19, 397 S.E.2d 782.

The *Phelps* calculation is not precedent for the calculation in the instant case because it is unclear. The calculation that returned 4.2% is not stated and is likely different than the calculation used to determine that the bid was 1% of the value. *See id.* The court found that the 4.2% bid shocked the conscience of the court, although their calculation is not in the opinion. While Appellants agree with the Court in *Phelps,* the way that the court reached that mathematical conclusion is not clear.

In *Turner*, the court was again pressed with the primary question of deciding FMV, but the issue at hand was whether the note and mortgage presented at the initial hearing was sufficient notice to the purchaser of the value of the property. *See* 378 S.C. 147, 662 S.E.2d 424. The court decided that the sale should have been vacated because the bid was inadequate using the following calculation: Bid ($3,000) divided by the original note and mortgage ($86,025) equals 3.65%. *See id.*

In *Arrow Bonding Co.*, the court did not adopt the appellants' request to ignore the senior liens when considering whether the bid shocked the conscience. *See* 399 S.C. 603, 732 S.E.2d 622 (2012). However, the reason that the Supreme Court of South Carolina affirmed the Master's decision to allow a bid amount of $2,500 was because "the record is devoid of evidence of the true value of the property," and as such the appellants did not meet their burden to reverse the Master's decision. *Id.* The facts in *Arrow Bonding* are distinct from the facts in the instant case because the appellants in *Arrow Bonding* did not provide sufficient evidence of the encumbrances on the property. *Id.* The appellants in *Arrow Bonding* also neglected to argue that the court consider the equity in the property. *Id.* This is not the case here, because the Hales brought sufficient evidence of the senior liens on the property, have acquired an accurate and recent appraisal to determine the fair market value of the house, and requested that the below-mentioned calculation be applied in their case. (Order Denying Def.s' Mot. to Vacate Sale, 2, April 21, 2015; Def.s' Mot. to Vacate Sale, 1, Exh. 1) In addition, the court in *Arrow Bonding* does not do the calculation for itself, citing only that *Phelps* used a percentage of 1.5%[1] and that the Master concluded

[1] This is unclear because the court in *Phelps* found that the bid was 1% or 4.2%, but did not have a finding of 1.5%.

that the bid amount was 39% of the assessed value. *Id.* at 607, 732 S.E.2d 624. For these reasons, the court should not attempt to adopt the procedure used in *Arrow Bonding* to decide whether the bid is inadequate in this case.

The main issue regarding the inadequacy of the bid in *Bloody Point* was which appraisal presented by the parties should be used for the property's actual value. *See* 410 S.C. 62, 762 S.E.2d 729. This is distinct from the issues in the instant case because the value of the property is evidenced by the Appellants' appraisal and has not been disputed.

It should also be noted that *Bloody Point* is the most recent South Carolina case, and it does not apply any specific calculation, stating only that "the Property would have to be worth more than $115,930 for the foreclosure sales price to be less than 10% of the actual value." 410 S.C. 62, 70-71, 762 S.E.2d 729, 734. The court's unwillingness to state exactly what the Master should have done signifies that there is no precedent for this calculation. For the reasons stated above, *Bloody Point*, and the cases on point that precede it, invite the court in the instant case to use the equity in the property to more accurately consider whether the bid "shocks the conscience" of the court.

b. The calculation in this case should not include the senior mortgage.

Neither *Phelps* nor *Turner* considered senior mortgages in deciding whether the bid amount shocked the conscience of the court. *See* 303 S.C. 15, 397 S.E.2d 780; 378 S.C. 147, 662 S.E.2d 424. In the most recent South Carolina case, *Bloody Point*, the court did not consider the senior liens on the property when it decided that the sale price did not "shock the conscience." *See* 410 S.C. 62, 762 S.E.2d 729. Importantly, *Bloody Point*, like the instant case, is an HOA foreclosure, whereas the other cases are not. *Id.* The nature of an HOA lien is that of a second lien to the mortgage, but the court did not consider senior

liens in its calculation. The court in *Bloody Point* decided that the bid ($11,593) should be multiplied by 10, and then would only shock the conscience if there was evidence in the record of an accurate appraisal greater than $115,932. *Id.* Because *Bloody Point* is the most recent case, the calculation should be applied as closely as can be drawn from that case.

Additionally, at the time that the Master in this case denied the Motion to Vacate the Sale, it added the encumbrances to the amount that Regime Solutions "pays" for the property. To have considered the amount already paid is an error of fact. The bidder in a HOA foreclosure action is required to take the property subject to the senior mortgages. However, it is not required to *assume* those mortgages. It was an error for the Master to include the senior mortgage in its calculation because the bidder is not personally liable, the evicted defendants are the ones personally liable.

Applying the *Bloody Point* calculation, the successful bid by Regime Solutions in this case ($3,036) multiplied by 10 is $30,360. This is much less than the appraisal amount of $128,000 presented by the Appellants. Without evidence that the property is worth less than $30,360 the decision by the Master to deny the Motion to Vacate Sale should be reversed. Stated another way, the bid amount ($3,036) divided by the appraisal amount ($128,000) renders the bid in this case 2.3% of the value. Therefore, the Master committed an error of law when it applied the senior mortgages to the bid amount and decided the sale price did not shock the conscience.

c. In the alternative, the calculation should use the equity in the home to determine whether the bid shocks the conscience of the court.

Because there is no precedent in South Carolina as to how the percentage should be determined to decide whether the bid shocks the conscience of the court, the court in

this case should adopt the calculation used by United States Bankruptcy Court of the Southern District of New York. *See In re 824 South East Boulevard, Inc. (In re 824)*, No. 12-01028, 2012 WL 3561981 (S.D.N.Y. Aug. 17, 2012). Like South Carolina law, *In re 824* notes that "sales below 10% of the FMV are unconscionable, while sales at or above 50% of fair market value have been consistently upheld." *Id.* The court examined whether it should void the foreclosure in light of evidence that the senior liens on the property were $3,000,000[1] and the property value was $5,510,000. *Id.* The court determined that the successful bidder "may have purchased the Premises with equity of approximately $2,510,000 for only $116,910.32. . . . Assuming this figure is accurate, it would represent a sale price of about 4.7% of the value of the Premises after subtraction of the two senior mortgages." *Id.* The court in *In re 824* properly concluded that the sale price was unconscionable because the value ($5,510,000) minus the encumbrances ($3,000,000) left equity of ($2,510,000), and the successful bid ($116,910.32) divided by the equity ($2,510,000) was a mere 4.7% of the value. *Id.* This is a reasonable way to decide whether the sale price shocks the conscience when there are senior liens to consider, especially in cases when an HOA lien will usually be subject to a senior mortgage.

The equation from *In re 824* should be used in this case, and in all HOA foreclosures, to determine whether a sale bid shocks the conscience. This calculation begins by finding the equity in the property. This is because, even when applying the senior liens, the successful bidder will acquire the equity that is already in the property from the

[1] There were possible judgment liens in addition to the $3,000,000 in mortgage liens that the court also considered. It noted that if those liens were included, the Premises was subject to encumbrances in excess of its value. However, if those liens were found to be junior, then the above calculation rendered the bid unconscionable, as it is well below 10 percent.

foreclosure sale. This can be found by adding the bid amount to the senior liens, and then subtracting that from a recent appraisal that reflects the fair market value. This results in the amount of equity that will be acquired by the purchaser for free. In other words, the equity in the property at the time of sale is what the successful bidder acquires, and therefore should be the most important amount in considering whether the bid shocks the conscience. Appellants argue that the bid amount should thereafter be divided by the equity that the purchaser has acquired "for free." This percentage should be considered for whether the sale price should be vacated for inadequacy.

In the instant case, the following calculation would result: Regime Solution's successful bid amount ($3,036) added to the amount of senior mortgages on the property ($66,000), subtracted from the appraisal or FMV of the property ($128,000). Regime Solutions essentially purchased $59,000 in equity for $3,036. Their bid of $3,036 divided by $59,000 of equity renders the successful bid in this case 5%, which is well below the 10 percent that has consistently shocked the conscience of the court.

d. The HOA should be responsible for conducting a brief investigation into the equity on each of its foreclosed properties.

On a separate issue in *Arrow Bonding*, the court discusses that it is not the Master's responsibility to conduct a title search, discover liens, determine the true value of property, and subsequently devise an appropriate sale price. 399 S.C. 603, 732 S.E.2d 622. Appellants in this case run into a similar issue: who is responsible for conducting an investigation into the equity of the property in an HOA foreclosure sale? For the court to properly institute the above-proposed calculation, it must dictate that the HOA is responsible for the calculation in cases of HOA foreclosures.

The HOA is in the best position to determine a sale price that does not shock the conscience, and it has an interest in the sale not being vacated. HOA foreclosures are an epidemic that cannot be dealt with using the current black letter law, and require additional safeguards to make sure that the circumstances will not warrant interference. The HOA is in the best position to determine if the sale will be overturned because it has access to the amount of its lien, and to the public record accounting for all senior liens. It also has access to the tax records or the amount of the original note and mortgage to determine the FMV of the property. Appellants believe this is the only way to satisfy concerns of fairness and ensure that HOA foreclosures in South Carolina do not remain the problem that they are in this case.

II. THE CIRCUMSTANCES OF THIS HOA FORECLOSURE DEMAND THAT THE SALE BE VACATED IN EQUITY.

When the lower court did not weigh the equitable maxims and principles that are essential in ruling on the Motion to Vacate Sale, it abused its discretion. "A mortgage foreclosure is an action in equity." *Regions Bank*, 394 S.C. 241, 248, 715 S.E.2d 348, 352. "Equitable principles are not binding legal precedent but represent notions and concepts of equity in various situations." *Id.* "The judicial process is the continuous effort on the part of the courts to state accurately these general rules, with their proper and necessary limitations and exceptions." *Id.* That said, in actions for equity, the courts have "the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983).

This case involves the consideration and balancing of several equitable maxims: equity will not suffer a wrong to be without a remedy; equity disfavors forfeitures; equity regards substance rather than form; equity looks to the intent rather than the form; and one who seeks equity must do equity. Case law in South Carolina also states that "there is no inconsistency in . . . pursuing two remedies. If one produces satisfaction that is a bar to the other." *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 36, 647 S.E.2d 214, 217-18 (2007). The lower court did not properly consider and weigh these principles in equity, and therefore its decision should be reversed.

a. The lower court erred in denying the Motion to Vacate the Sale because the sale violates principles of equity.

i. The court must weigh circumstances when considering the equitable maxims that equity will not suffer a wrong without a remedy and equity disfavors forfeitures.

The lower court denied the Hales' Motion to Vacate because it did not weigh the equity argument in its findings. Although counsel for the Hales made an equitable argument at the hearing, there is no record of an equitable consideration by the court, or mention of the principles that the court considered in the Order. (Hearing Tr. 19:8-10; 19:25-20:1, Feb. 6, 2015; *See* Order Denying Def.s' Mot. to Vacate Sale).

In deciding whether the sale should be set aside, courts are confronted with the principles that equity will not suffer a wrong to be without a remedy and that equity disfavors forfeitures. *See Regions Bank*, 394 S.C. 241, 715 S.E.2d 348. The most important factor in balancing the equities in this matter is which party suffered a loss under the Master's decision without an available remedy.

If the sale is allowed, the Hales will be evicted from the home they have lived in for 17 years. They will no longer be property owners, forfeiting their "castle," and violating

one of the most important age-old bond – the bond between citizens and their real property. In addition, they will lose $59,000 of the equity that they have worked hard to put into the home. The Hales will also lose any value of improvements that they have made to the property. The HOA will retain the amount that satisfied their lien. Regime Solutions will be enriched by the $59,000 of equity that it purchased for $3,036.

On the other hand, if the Master's decision is overruled, the Hales will be made to pay the amount due on the HOA lien that they owe. At that time, the HOA will be satisfied. Regime Solutions will be returned the money that it paid to satisfy the judgment, and they will suffer no loss.

The HOA suffers no loss if the sale is vacated, and no harm if the sale is upheld. If the sale is allowed, Regime Solutions's windfall and the Hale's forfeiture will frustrate the principles of equity, which disfavors forfeiture.

In addition, it is important to consider that the decision to uphold the Master's Order will render the Hales without a remedy for a grave wrong. As stated above, the Hales will have forfeited $59,000 without any available way to reclaim that amount of money. Also, the Hales are the only party that is personally liable for the existing senior mortgages on the property, and they may still have to pay $66,000 in senior mortgages. If the sale is allowed, the Hales stand to lose $125,000 as well as their home, and will have no remedy at law with which to correct the issue. This is a violation of equitable maxim that equity will not suffer a wrong without a remedy. Therefore, the denial of the Motion to Vacate Sale should be reversed because it violates the principle of equity.

ii. The court must weigh circumstances when considering the equitable maxims that one who seeks equity must do equity.

The Hales are requesting that the Master's decision to deny the Motion to Vacate the Sale be reversed in equity. In good faith, the Hales offered to negotiate with Regime Solutions to buy their house back. Regime Solutions has not acted in equity because it refused Appellants' offer of $9,000. (Tr. 12:4-6, 12:11-12, Feb. 6, 2015). In response, Regime Solutions's offer was around $35,000. (Tr. 8:10, 8:23-24, Feb. 6, 2015). The Hales offered the successful bidder $9,000, which is approximately a 300% profit from the bid amount that they paid. *Id.* When the Master asked Regime Solutions whether they had considered coming to mutual agreement, attorney for Regime Solutions stated "my client is not being what I consider reasonable in their expectations." (Hearing Tr. 4:10-11, Jan. 16, 2015). He also stated that, "my client recognized that the property had equity in it, and they declined their offer." (Tr. 8:1-4, Jan. 16, 2015). The refusal to accept the 300% profit that the Hales offered is not coming to the court in equity. Thus, in equity, Regime Solutions cannot request that the court uphold the decision by the Master.

In addition, when Regime Solutions offered a bid amount around $3,000 it was not acting in equity. Regime Solutions was the successful bidder at the foreclosure sale, paying $3,036 for the property. Regime Solutions also has stated that it looked into the equity in the property, and also was aware of the senior mortgage. (Tr. 8:1-4, Feb. 6, 2015). Firstly, if Regime Solutions was aware of the equity in the home at the time they made the bid, then it was aware that it was purchasing $59,000 of equity in someone's home for $3,036. This demonstrates that Regime Solutions was not acting in equity.

Secondly, if Regime Solutions did not know how much of the principal had been paid, it was public record that there was a mortgage on the property in the original amount

of $99,037. (Order at 1). The bid of $3,036 is noticeably lower than $99,037. Bidding 3.1% of a property value according to the publicly recorded note and mortgage is not acting in equity.

According to the equitable maxim "those who seek equity must do equity," and as evidenced by the offers by the Hales and by Regime Solutions, this bidder cannot ask that the court do equity. However, the Hales have come to this court seeking equity and doing equity. Therefore, the denial of the Motion to Vacate Sale should be reversed because the Hales have come to the court doing equity.

iii. The court must weigh circumstances when considering the equitable maxims that equity regards substance over form and equity looks to the intent rather than the form.

The Master applied a calculation that ignores the substantive effect on the parties and is not the purpose for which he applied the calculation. "[W]here a substantive right exists, an equitable remedy may be fashioned to give effect to that right. *E. Tenn. Natural Gas Co. v. Sage,* 361 F.3d 808, 823 (4th Cir. 2004). As stated above, Appellants in this case argue that the calculation applied by the Master was incorrect as an error of law. However, if this is found to be the correct calculation,[1] the Master applied form over substance. The calculation to find whether the bid amount shocks the conscience of the court is meant to find the fairness of the bid amount. The Master applied a calculation that does not seek to find the fairness of the bid, but instead adds encumbrances that are not the legal responsibility of the bidder. The calculation also does not access the fairness of the amount because it gives the bidder $59,000 of equity for $3,036. In applying the calculation

[1] The calculation Appellants are referring to is the one applied in the Master's Order Denying the Motion to Vacate the Sale. (Order at 2) ([Bid amount + senior lien] / appraisal value).

in its Order, the Master violated the equitable consideration that equity regards substance over form and equity looks to the intent rather than the form.

b. The lower court erred when it did not consider the equitable arguments brought forth by the parties

There is no evidence in this record that indicates the Master exercised his discretion. "It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly." *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 155, 399 S.E.2d 439, 441 (Ct. App. 1990).

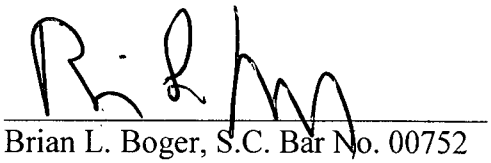
In this case, the Master did not exercise his discretion. In the pertinent case law, the courts carefully considered the circumstances when making their ruling. *See generally, Bloody Point Prop. Owners Ass'n, Inc.*, 410 S.C. 62, 762 S.E.2d 729; *Arrow Bonding Co.*, 399 S.C. 603, 732 S.E.2d 622; *Wells Fargo Bank, NA.*, 378 S.C. 147, 662 S.E.2d 424; *Investors Sav. Bank*, 303 S.C. 15, 397 S.E.2d 780. There is no evidence that the Master considered the circumstances specific to this case, such as the large amount of equity in the home and the Appellants' presentation of all necessary values. In addition, there is no evidence that the equitable argument brought forth by the Hales was considered at all. The Master incorrectly assumed that it was required to accept the equation in *Arrow Bonding*. (Order at 2). Thus, the Master applied the law because he thought he had no basis with which to accept the Appellants' equation. As stated above, this is in error. By not exercising his discretion, the Master erred and the decision to deny the Motion to Vacate should be reversed.

CONCLUSION

The lower court erred when it denied the Appellants' Motion to Vacate the Sale because the sale price shocks the conscience, and because equity demands that the decision

be overturned. Therefore, the Master's decision should be overturned and the sale should be vacated.

Respectfully submitted,



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PROOF OF SERVICE
For The
APPELLANTS' INITIAL BRIEF

I, Erin O'Donnell, hereby certify that on 26 October 2015, I served a copy of the Appellants' Initial Brief, Designation of Matter, and Record on Appeal submitted by the Appellants Devery A. Hale and Tina T. Hale, on counsel for the Respondents via United States Mail, postage pre-paid, addressed as follows:

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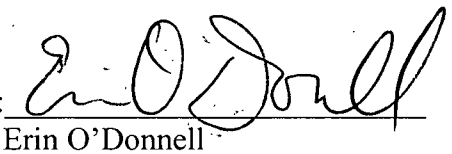
Signed: 

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