

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )  
 )  
 Wachesaw Plantation East Community )  
 Services Association, Inc. )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Todd C. Alexander, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT  
 CASE NO.: 2010-CP-22-1583

COPY

ORDER DENYING MOTION

ALMA Y. WHITE  
 CLERK OF COURT

2011 AUG -9 PM 4:43

FILED  
 GEORGETOWN COUNTY, S.C.

This matter came before this Court on Defendant's Motion to Vacate Sale. This Court conducted a foreclosure sale of the subject property on June 6, 2011. The bidding was competitive resulting in a successful bid of \$181,000.00 being place by Jerry Calahan. The third party bidder paid the required deposit and has tendered the balance of the bid. This Court has not issued the deed to the third party bidder pending the outcome of this motion. A hearing was held on the motion on June 21, 2011, in the Georgetown County Judicial Center. Present were the Defendant's attorney, Charles T. Smith. Also present were the Plaintiff's attorney H. L. Beverly, Jr., and the successful bidder's attorney, Jack M. Scoville, Jr.

Affidavits in support of the motion were filed by Defendant and his attorney. The parties submitted memoranda and made oral arguments. After carefully considering the facts in light of the applicable law, this Court makes the following

*Handwritten signature*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Defendant was the owner of Lot 225 as described in the Complaint. Defendant was in arrears for his association fees and an action to foreclose same was filed in October, 2010. Defendant was served with a copy of the Summons, Complaint, and Lis Pendens by certified mail, restricted delivery. Defendant personally signed the certified mail receipt on October 18, 2010.
2. Defendant never answered the Complaint and defaulted. Notice of the hearing, affidavit of default, and the order of default were mailed to Defendant at the same address where he received the Summons and Complaint.
3. The foreclosure followed the usual course and the property was sold. The successful bidder was Jerry Callahan who bid \$181,000.00 .
4. The bidder has complied in all respects with the terms of the bid.
5. "A judicial sale should not be set aside except for cogent reasons. The purpose of the law and of the proceedings 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). "As has been said time and again in cases involving the setting aside of judicial sales, it is the policy of the Courts to uphold such sales when regularly made, and when it can be

2/1

done without violating principle or doing injustice....” *Henry v. Blakely*, 216 S.C. 13, 18, 56 S.E.2d 581, 583 (1949). Our courts zealously insure judicial sales be openly and freely conducted and nothing be allowed to chill the bidding. *Howell v. Gibson*, 208 S.C. 19, 31, 37 S.E.2d 271, 276 (1946). See also *Eastern Savings Bank, FSB v. Sanders*, 373 S.C. 349, 644 S.E.2d 802 (S.C.App.,2007).

6. 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, NA v. Turner*, 378 S.C. 147, 151, 662 S.E.2d 424, 426 (S.C.App., 2008).
7. A party does not have to prove excusable neglect if the judicial sale is found to shock the conscience. However, a showing of excusable neglect is required when a party is seeking to have a judicial sale set aside based on the second prong of the test. *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 152, 662 S.E.2d 424, 426 (S.C.App., 2008).
8. The record in this case shows that the Lis Pendens, Summons, and Complaint were served on the Defendant by certified mail, restricted delivery, pursuant to SCRCP 4(d)(8). The Defendant personally signed the receipt. Therefore service was valid on October 10, 2010,

per the receipt and rule. The record shows proper notice of the subsequent proceedings were sent to Defendant by mail, in accordance with the rules. The Defendant raises no issue of improper service, lack of notice or lack of jurisdiction.

9. In the affidavits filed by Defendant in support of this motion, no excusable neglect is asserted. No reason is given for Defendant's failure to send a check upon receipt of the Summons and Complaint. While Defendant indisputably has serious medical problems, no showing is made that such problems prevented him from making payment of the slightly more than \$5500.00 found to be due and owing by the Court in its final decree.
10. The sale was duly advertised. The bidding was competitive resulting in a winning bid of \$181,000.00. The fair market value of the property was thus established at \$181,000.00. The price paid for property at an actual, voluntary, and *bona fide* sale thereof is presumptive evidence of the property's value. *Rutledge v. St. Paul Fire and Marine Ins. Co.*, 286 S.C. 360, 368, 334 S.E.2d 131, 136 (S.C.App.,1985) Even if one takes the appraised value asserted by Defendant from the county tax assessor of \$316,800.00, the actual

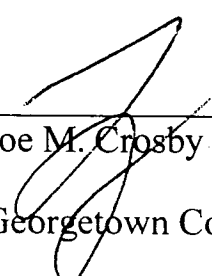
4/1

bid is in excess of 50% of same. Such a bid does not shock the conscience.

11. Defendant argues he has until the deed is actually issued by this Court to redeem his property. There is no statutory right of redemption in foreclosure sales. While Defendant undoubtedly had an equity of redemption inherent in his ownership of the property, such is not unlimited. The decree of foreclosure provided that Defendant's equity of redemption be barred. That decree was not appealed. The Notice of Sale provided that the Master would sell to the highest bidder. The Notice further provided the sale would be final since a deficiency was waived. No reservation of rights was made allowing the Defendant to upset the high bid. Defendant's equity of redemption was terminated upon the knocking down of the third party's bid at the sale on June 6. To hold otherwise would mean no successful bidder would ever be sure of his bid until he actually had the foreclosure deed in hand. This is contrary to the well established principle that nothing be allowed to chill the bidding in a judicial sale.

THEREFORE IT IS ORDERED, ADJUDGED AND  
DECREED that Defendant's Motion to Vacate be denied.





---

Joe M. Crosby

Georgetown County Master in Equity

Georgetown, S.C.

August 9<sup>th</sup>, 2011

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-22-1583

Wachesaw Plantation East Community )  
Services Association, Inc. )

Plaintiff, )

v. )

Todd C. Alexander, )

Defendant. )

**Certificate of Mailing**

The undersigned hereby certifies that she is an employee of the Law Office of Jack M. Scoville, Jr., and that she served a copy of the *Order Denying Motion* on the following counsel by mailing a copy thereof, depositing same in the United States mail, on the 12 day of August, 2011, first class postage prepaid, and addressed as follows:

Hal L. "Chip" Beverly, Jr., Esquire  
McCutchen, Mumford, Vaught,  
O'Dea & Geddie, P.A.  
4610 Oleander Drive, Suite 203  
Myrtle Beach, SC 29577

Charles T. Smith, Esquire  
Grimes & Smith  
1112 Highmarket Street  
Georgetown, SC 29440

Jack M. Scoville, Jr., PA

By:



Mira Watson