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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. ..... Plaintiff,

v.

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

David Conor Keys & Karen Keys,.....Appellants

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules and Other Authorities

OTHER JURISDICTIONS

QUESTIONS PRESENTED

I. Did the Master-In-Equity err in finding that the Third Party Purchasers, one of whom is a licensed attorney, did not act in good faith and integrity of dealing and could not be afforded the protections of a Bona Fide Purchaser for Value?

II. Did the Master-in-Equity err in declaring the Judgment and the Deed Void?

a. Did the Master-n-Equity err in applying a Gross Negligence standard of review of service of process to void the judgment of foreclosure and the sale under Rule 60(b)(4) of the South Carolina Rules of Civil Procedure?

b. Did the Master-in-Equity err in finding the clerk's erroneous issuance of the Order of Publication was a Structural Defect in the constitution of the trial?

c. Did the Master-in-Equity Err in finding that the Plaintiff Homeowner's Association violated S.C. Code § 15-9-740?

III. Does the record of the proceedings reflect alternate sustaining grounds under Rule 60(b) of the South Carolina Rules of Civil Procedure in support of the Master's ruling in favor of the Respondent?

STATEMENT OF FACTS

This case involves the foreclosure of lien by a Homeowner's Association (HOA) in an amount of $1,103.28. The home was otherwise unencumbered by mortgage liens or judgment liens. The HOA never served the homeowner. The HOA did not appeal that finding and is not a party to these proceedings. Instead, the Appellants include an attorney and his wife who were the successful bidders at the foreclosure sale and who ran to the courthouse to pay the remainder of the bid as soon as they learned that the homeowner would be moving for the sale to be set aside due to irregularities in the proceedings. The Lead Appellant is an attorney who practices in the area of foreclosure defense. The Master found that the Appellants were not Bona Fide Purchasers for Value. That finding was correct.

ARGUMENT

I. The Appellants are not Bona Fide Purchasers for Value.

On April 9th, 2015, in response to the Appellants' Motion for Reconsideration of February, 2015, the Master considered briefs, heard oral arguments, denied the Appellants' motion, and made a ruling that the Appellants were not Bona Fide Purchasers for Value. The Master had initially declined to rule on the issue of the Appellants' contested status as a Bona Fide Purchaser for Value. (R. pp. 187-188, lines 11-18). He reiterated this in his Amended Order of September February 5th, 2014, when he ruled that he did not find it necessary to reach this issue in light of his having ruled the judgment and sale void. (R. p. 50). He further explicitly agreed that he would reach the issue after further briefing (R. p. 50). The Master distinguished the facts of this case from those in *Bloody Point Property Home Owners Assn., Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (Ct. App. 2014). The *Ashton* opinion of this Court had been filed the same day as the Master's denial of Appellant's prior motion for relief on August 20th, 2014.

In his final order, the Master found that Appellants were not Bona Fide Purchasers for Value and could not be afforded protection under the S.C. Code Ann. § 15-39-870 as they "*did not in good faith and with integrity of dealing, acquire the deed.*" (R. p. 53).

The law on the issue is quite clear. It was properly applied by the Master, and the Master's decision is based on facts that are not in dispute. Pursuant to section 15-39-870 of the South Carolina Code:

> "[u]pon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction the proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not be subsequently confirmed by the court."

The Master relied on the same case law as the lower court in *Ashton* in support of his ruling that the Appellants are not Bona Fide Purchasers for Value.

> "A purchaser may assert a plea of a bona fide purchaser for value, without notice of defect in his title, by showing (1) he has actually paid the full purchase price (giving security for the payment is not sufficient, nor is past indebtedness a sufficient consideration); (2) he purchased and acquired the legal title, or the best right to it; and (3) he purchased bona fide, *i.e.*, in good faith and with integrity of dealing. The purchaser must show all three conditions – actual payment, acquiring of legal title, and bona fide purchase—occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property."

Robinson v. Estate of Harris, 378 S.C. 140, 146, 662 S.E.2d 420, 423 (2008) (citing *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-875 (2006); (R. p. 382); (R. p. 392). The Master determined that the Appellants met the first two prongs of *Robinson* in paying the purchase price and acquiring legal title (or the best right to it), but he also found that the third prong of the test was not met. (R. pp. 52-53).

The facts and history of the case support the Master's findings. Sadly, they demonstrate a persistent pattern of false and misleading pleadings and testimony by the lead Appellant.

The Respondent served a motion to vacate the foreclosure and set aside the sale on May 15th, which was filed on May 19th, 2014. At no point during the argument (written or oral) (R. p. 127-147, R. p. 321-334) of Respondent's motion did the lead Appellant disclose to the Master that he had learned of Respondent's intent to file the Motion to Vacate the foreclosure sale on May 15th, 2014 which was the day before he ran to the courthouse to pay the balance of the bid, approximately three weeks before it was due.[1]

In Appellants' August 1st, 2014 Motion to Reconsider the Master's Order to Vacate the Judgment and Set Aside the Sale, the lead Appellant is marginally more forthcoming. Relying exclusively on *Spence* in asserting his status as a Bona Fide Purchaser for Value (R. p. 102) (R. p.162, lines 17-18), Lead Appellant proceeds to narrate the following rendition of the facts:

> "...In this case, Third-Party Purchasers are Bona Fide Purchasers for Value, who purchased the property in good faith from the Court at judicial sale on May 6, 2014 paying the required five percent that day, and timely paying the remainder on May 16, 2014. At the time of the sale the Court instructed the Third-Party Purchasers that as the successful bidder Third-Party Purchasers had entered into an agreement with the Court whereby if they failed to timely tender the remainder of the purchase they could be liable for damages and would lose the five percent payment tendered to the Court the day of the sale. The Master conveyed the property to Third-Party Purchasers by Deed on Friday, May 16, 2014. Thereafter on May 16, 2014, Defendant's Attorney emailed the Third–Party Purchasers a copy of Defendant's Motion to Vacate, which was subsequently filed on May 19, 2014. The following Friday on May 23, 2014, the Master's Office contacted Third-Party Purchasers to inform them to they could now pick up the Deed from the Master's Office. On May 23, 2014, the Third-Party Purchaser recorded the Deed in the RMC Office. Third-Party Purchasers in recording Deed were of the opinion and belief that the Master's Deed Conveying the Property to the Third-Party Purchasers was valid enforceable and without defect because it was based upon the Master's Order of Foreclosure and Sale, a good faith purchase of the property at judicial sale on May 6, 2014, and payment in full by the Third-Party Purchasers. Further the deed was not delivered to the Third-Party Purchasers by the Court until after the Master had actual knowledge of the of the Defendant's Motion to Vacate."

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[1] The Appellant, in fact, argued his status as a BFP under the identical statute and case law. (R. pp. 324-325) (initial memo); (R. p. 138 pp. 5-9) (oral testimony).

(R. p. 84).

The Appellants' August 1st, 2014 Motion to Reconsider continues to fail to disclose his having had knowledge of the Respondent's claim on May 15th, 2014, and again asserts status as a Bona Fide Purchaser for Value. Lead Appellant does, however, then reveal that the Appellant retrieved, received, and accepted the deed a full week *after* he had received an emailed copy of the Respondent's motion to vacate the sale from the Respondent's counsel.

The Lead Appellant seems to be applying fantastical logic that "the Court made him do it" and the Court had "actual knowledge" superior to that of the Appellant as to the Respondent's claim. The Appellant, as an attorney practicing in Charleston, is accustomed to communicating with the court and the Master-in-Equity presiding over this case. Any actual perceived monetary or other damages he risked in non-performance of the bid could have been addressed directly with the court simply by emailing the Master or his clerk. The Respondent, by and through his counsel, asserts with a great degree of confidence that the Master would not have executed the deed three weeks early had he been aware of the circumstances let alone approved its release to the Appellant on May 23rd, 2015. Appellants, instead, chose to induce the Master to issue and release the deed under false pretenses.

After being served the Appellants' Motion to Reconsider of August 1st, 2014, Respondent's counsel confronted the lead Appellant in a telephone conversation on August 7th, 2014. It was at this point that Appellant acknowledged his having learned of the undersigned's

representation of Respondent on May 15th, 2014, the day before he tendered the balance of the bid on May 16th, 2014.[2] (R. pp. 335-336).

The Appellant learned of the Respondent's claim from his employer. This was a result of a telephone consult that Respondent's counsel initiated with the employer. Appellant's employer is an attorney experienced in the area of foreclosure defense amongst other areas of law. Respondent's counsel (the undersigned) called that attorney seeking advice as to the merits of the Respondent's claims. That attorney, upon recognizing the extraordinary fact pattern, informed the undersigned that a gentleman in her office had been the successful bidder. The undersigned confirmed the subject case Parties and the course of the conversation was changed. (R. pp. 335-336).

Appellant claims that Respondent was obligated to dispute his status as a Bona Fide Purchaser for Value at the initial hearing of the Motion to Vacate and, by failing to do so, that the claim was not preserved. This "catch me if you can" logic is absurd. Respondent's counsel would be loathed to anticipate, believe, or assert that a fellow member of the South Carolina Bar, schooled in the area of foreclosure defense, would conduct himself in such a manner. Respondent's counsel, in fact, struggled with suspicions as a result of the timing but was compelled to give the Appellants the benefit of any doubt. Respondent's counsel, relying on the presumably genuine assertions under the law contained in the Appellants' pleadings and oral

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[2] Appellants object to the Master's refusal to strike Opposing Affidavits under Rule 59 (c) of Respondent's counsel and other affiants. What the lead Appellant fails to observe is that to the extent his Motion for Reconsideration reflected changed allegations of fact, that changed fact pattern constituted an affidavit served with his Motion. The Respondent timely served opposing affidavits under Rule 59 (c), SCRCP. Furthermore, "The Court may admit reply affidavits." *Id.* By representing himself, he is both counsel and lead Appellant.

arguments[3], could only conclude that the timing was coincidental, that the Appellants did not have knowledge of the claim by way of the employer, and that the Appellants must have tendered the balance of the bid by mail at some point prior to the execution of the Master's deed of May 16th. Certainly any remaining doubt was dispelled when the Appellants, pursuant to the initial Order of July 22nd, 2014 retained rents that they had collected from the property and accepted a disbursement for additional "damages." (R. pp. 20-21).

Had the lead Appellant been forthcoming with the facts at the initial hearing in regards to the circumstances under which the Appellants had acquired title to Respondent's property, the Respondent would have then been afforded the opportunity to object to their status and the Master would have ruled on that objection. The sole reason this case required multiple hearings and Orders is that the Appellant failed his duty to be candid with the court and the facts were disclosed in piecemeal fashion.

The situation did not become clear to the Master until the final hearing, which occurred on April 9th, 2015. The Master made a direct inquiry of the Appellant as to "*what and when he had first gotten notice of the claim from the (Respondent) that he didn't think the procedure was valid.*" (R. p. 194, lines 12-14). The Appellant responded "*.....On May 15th, Ms. Reece contacted (lead Appellant's attorney employer), and I learned that they were going to file a motion...*"[4] (R. p. 194, lines 12-14).

It is with this admission and acknowledgement that he knew of the claim, he knew the content of the claim, and he came about that knowledge through his attorney employer, finally

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[3] The lead Appellant argued he and his wife's status as a BFP under the identical standard of review verbatim that the Master did. (R. pp. 324-325) and (R. p. 138).

[4] In oral testimony at the hearing of August 18th, 2014, the Appellant stated that "(He) had knowledge on May 15th," but the record is not specific as to his knowledge of the nature of the motion. (R. pp. 162, lines 12-14).

made by the lead Appellant, subsequent to nine months of motions, hearings, briefs and appeals, the Judge was finally able to discern the facts and to make an informed ruling. The Judge ruled that the Appellants are not Bona Fide Purchasers for Value as they had not met the third prong of the test in *Ashton, Robinson, and Spence* as they "*did not acquire the deed in good faith and with integrity of dealing without notice of a lien or defect.*" (R. p. 53). The Master continued...

> "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. ....
>
> (R. p. 53).

"*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.*" (R. p. 53) (citing to *Ashton,* citing to *Cumbie v. Newberry,* 251 S.C. 33, 37 159 S.E.2d 915, 917 (1968).

II. THE MASTER DID NOT ERR IN VOIDING THE JUDGMENT AND THE DEED.

The Master properly Voided the Judgment under Rule 60 (b)(4), SCRCP, for want of Personal Jurisdiction.

a. Application of a standard of Gross Negligence for due process violations.

The Master's findings of facts are certainly not in dispute by the actual plaintiff to the foreclosure suit. The HOA has not appeared in this appeal and is not participating. The Master's ruling is contested solely by the Appellants, who were Third Party Plaintiffs. The Appellants do not appear to dispute the lower court's findings of fact.

A review of the record clearly reflects that the Master's ruling in favor of the Respondent is well grounded in facts which are not in dispute. The facts are contained in the Judge's Order and the relevant facts to the issue of can be summarized as follows;

The HOA obtained an Order of Publication from the Clerk of Court. (R. pp.2-3). This was based on an Affidavit of Due Diligence that was supported and exhibited by a Westlaw search for the address of a prior title holder who is not a party to this action. (R. p. 217).

The prior title holder was the Respondent's deceased father by the name of John **E.** Murray (as opposed to the principal Respondent, John **A.** Murray). (R. p. 44). The Exhibit "A" attached to the Affidavit of Due Diligence of a Westlaw search of John E. Murray reflected the year of birth as 1923. (R. p. 217).

The Westlaw Search revealed five possible addresses to be served. The HOA attempted and did not effectuate service at the first three of those addresses. Service was not attempted at the fourth or fifth available addresses. (R. p. 45). The Fourth address was, at all times relevant to this action, the residential address of the Defendant. (R. p.44).

The Master further made a finding of fact based upon the credibility of a sworn affidavit of the Charleston County Auditor that tax mailing address of the subject property was the Fourth address (Respondent's address) and available in the public record at www.charlestoncounty.org from "exactly" March 15th, 2013, which was before the filing of the Lis Pendens, and through the date of the Master's deed to Appellants in May of 2014. (R. pp. 264-265); (R. p.44).

The Master did not find credible the evidence of a title search that the HOA offered into evidence as proof of their title search. The HOA relied upon and produced the same snapshot of a website search that the Appellants had offered as their due diligence. (R. pp. 333-334). The

HOA's search was conducted through an area of the Charleston County Website that clearly disclosed it had not been updated since 2011. (R. p. 144).

The screen shot relied upon by the HOA of the outdated web site was offered as the HOA's proof of due diligence in searching title. It is the same evidence that the Appellants offered as their proof of due diligence. It did, indeed, reflect an address where service had been attempted, but did not reflect the Respondent as the record owner. It reflected his Mother and Father as the record owners. This had not been the case since before Mr. Murray had taken title from his parents on October 26th of 2011. (R. pp. 333-334).

The HOA did not search probate court records despite the fact that the person they were attempting to serve would have been Ninety years of age. (R. p. 45). This is despite the fact that two of the three addresses at which service was attempted were assisted living facilities. (R. pp. 218-219). The Probate Court Records reflected John A. Murray as his father's Personal Representative and disclosed his correct address, which (again) was the Fourth address on the HOA's list of possible addresses. (R. p. 47).

It was further established that upon discovering that a hearing had been held, Mr. Murray emailed the HOA's counsel to inquire as to the nature of the claim [5] and to pay any amounts to be due under any claim. (R. pp. 258-260); (R. pp. 46-47). He received no response to that email. (R. 258-260). The Master confirmed with Plaintiff's counsel that the email address was correct. He further phoned the HOA's counsel on two occasions, however, the recording would not accept messages. (R. pp. 258-260). The Master confirmed with Plaintiff's counsel at the hearing that this was, in fact, her address. (R. p. 146, lines 2-14).

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[5] By way of clarification the "Rebuttal Affidavit" was mislabeled by counsel and should have been labeled as it was offered, a "Corrective Affidavit to the Defendant's 6/30/2014 Affidavit".

In making his finding of Gross Negligence in consideration of the above facts and ruling that service was defective the Master found....

> ".....the actions and inactions of the [HOA] so lacking as to rise to gross negligence in breaching its duty to provide adequate notice to [Mr. Murray] of the foreclosure action filed against him. This Court finds gross negligence in the [HOA's] failure to exercise the requisite degree of care. "A (party) is guilty of gross negligence if (they are) so indifferent as to the consequences of (their) actions as not to give slight care to what (they are) doing." *Hamilton v. Charleston County Sheriff's Department* 399 S.C. 252, 731 S.E.2d 727 (Ct. App. 2012) (citing to *Jackson v. The South Carolina Department of Corrections* 301 S.C. 125, 126, 390 S.E.2d 467, 468 (1989) (citing to *Anderson v. Ballenger* 166 S.C. 44, 164 S.E. 313 (1932)). [The HOA's] lack of attention demonstrated a "want of even slight care and diligence (and) a greater want of care then to be understood by the term 'ordinary care'." *Frankel v. Kurtz* 239 F. Supp. 713, 718 (W.D.S.C. 1965) (citing to *Thackston v. Port Royal & W.C.Ry. Co.*, 40 S.C. 80, 18 S.E. 177 (year omitted). [The HOA's] actions and inactions with regards to its duty to provide adequate notice to [Mr. Murray] are only generously described as indifferent to their consequences and lacking in even slight care and diligence."
>
> (R. p. 48-49).

While the Master, at his discretion, relied on a totality of the facts in making his ruling that service was defective, what he found most persuasive was the fact that the Plaintiff did not attempt service at the fourth and fifth addresses, the party they were attempting to serve was revealed to have been born in 1923, and two of the first three addresses had been discovered to be assisted living facilities. (R. pp. 44-46). In applying his discretion to the factual findings, the Master concluded that attempting service at three of the five addresses was insufficient in the attendant circumstances of this case.

The Master's sound ruling that the Plaintiff was grossly negligent in breaching the duty owed the Respondent to provide adequate notice in the attendant circumstances certainly cannot be disputed.

b. <u>The Master did not err in finding the Clerk of Courts' issuance of the Order of Publication was in error and constituted a structural defect.</u>

The court took of notice the more common standard of not overturning an Order of Publication absent fraud or collusion;

> "The Court is mindful of the standard set forth in *Yates v. Gridley*, 16 S.C. 496, 500 (1882) and subsequent cases regarding the finality of the finding of due diligence of the Officer issuing the Order of Publication in the absence of fraud or collusion. *Yarborough v. Collins,* 293 S.C. 290, 293, 360 S.E.2d 300 (1987); *Montgomery v. Mullins,* 325 S.C. 500, 506, 480 S.E. 2d 467 (Ct. App 1997). The Court is also mindful of the volume of Motions for Orders of Publication that the Clerk of Court reviews and makes note of the similarity of the Defendant's name and the name of his father, the party exhibited in the Westlaw address search which was incorporated into Plaintiff's Affidavit to obtain that Order of Publication. The Court further finds that such indifference and gross negligence on the part of the Plaintiff is not normally contemplated and therefore remained virtually indiscernible to our Honorable Clerk of Court prior to the evidentiary hearing of the matter.
>
> To the extent that the Clerk of Court might have and did not discover the grossly negligent efforts to effectuate service, the Court views this as a "structural defect in the constitution of the trial, (defying) analysis by harmless error standards." *State v. Mouzon* 326 S.C. 199, 204, 485 S.E. 2d 918 (1997) (citing to *Arizona v. Fulimante,* 499 U.S. 279, 309, 111 S. Ct. 1246, 1265, 113 L.E 2d 302, 331 (1991)). See also *LaSalle Bank v. Davidson*, 386 S.C. 276, 280, 688 S.E. 2d 121 (2009). This defect "effected the trial from beginning to end" (*Id* at 280) and resulted in a default judgment of foreclosure."
>
> (R. p. 49).

There can be no doubt that the Respondent has been exponentially harmed in this case. He is at risk of losing an estimated amount of two hundred thousand dollars in equity which represents his retirement funds. He has incurred multiple thousands of dollars of attorney's fees. He stands to lose his birthright inheritance which is now his home, and he continues to be emotionally taxed.

La Salle is also an action in foreclosure in which it was the opinion of the South Carolina Supreme Court that issuance of a final judgment of foreclosure in which the Judge was not present at the hearing amounted to a structural defect that deprived the Defendant of the opportunity to be heard before an impartial tribunal, procedural due process, and the court

therefore lacked jurisdiction to enter the judgment. In this instance, the Clerk of Court's issuance of an Order of Publication that was supported by an attached exhibit of an address search of a prior title holder (R. p. 217) cannot be subject to a harmless error analysis. This breakdown effected the constitution of the trial mechanism and lead directly to a default judgment against the Respondent. This case is even more compelling in that the structural defect arguably caused Respondent's default, as opposed to the *La Salle* case in which the defendant had already defaulted before the defect occurred.

c. The Plaintiff failed to strictly comply with the Order of Publication and violated the South Carolina Code § 15-9-740.

In violation of the Order of Publication and the South Carolina Code, Plaintiff did not mail the Summons and Complaint to the last known address of the Respondent. Plaintiff, instead, mailed a copy of the Summons and Complaint to an address at which they had not even attempted service. Plaintiff did not strictly comply with South Carolina Code § 15-9-740 as required by law, *Caldwell v. Wiquist,* 402 S.C. 565, 741, S.E. 2d 583 (Ct. App. 2013).

III. The record of the proceedings reflects alternate sustaining grounds under Rule 60 (b) of the South Carolina Rules of Civil Procedure in support of the Master's ruling in favor of the Respondent.

Should this Court decide that the Appellants are not Bona Fide Purchasers for Value but disagree with the Master's findings that it lacked jurisdiction over the Respondent as service was defective, the Respondent should be relieved from Judgment under Rule 60 (b)(1), (b)(3) of the b(5) South Carolina Rules of Civil Procedure. The Master specifically reserved his jurisdiction to do so in his Order of February 5th, 2015. (R. p. 50).

The South Carolina Rules of Civil Procedure

a. Sustainable under Rule 60 (b) (1), SCRCP.

The Respondent met the burden of proof for relief from judgment due to mistake, inadvertence, surprise, or excusable neglect under Rule 60(b)(1). In making this determination the following factors are relevant; "(t)he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of (a) meritorious defense, and the prejudice to the other party.", *Hill v. Dotts,* S.E. 2d 894, 345, S.C. 304, 308 (2001). The HOA was awarded a default judgment on March 18th, 2014 and Respondent's motion was served on May 15th, 2014. Respondent had no knowledge of the judgment against him until on or about March 26th. The passing of the Respondent's parents and the attendant probating of the estate was a hectic time of stress due to their slow decline. (R. p. 351);(R. p. 145, lines 12-19). The Respondent, upon discovery of the action, immediately attempted by phone and email to contact the HOA's counsel to discuss the nature of the action and to pay any amounts he owed. The Respondent had the ability to pay the debt. (R. p. 46).

The Respondent asserts perhaps the most salient of facts in the record remains that a search of the docket at the time of initial consultation with any and all such attorney's revealed that no sale was to take place prior to May 20th, 2014, after actual service on the Appellants. Any and all attorneys that the Respondent consulted with would have viewed that in the docket. The Court took judicial notice of its own customary procedure of not setting sale dates until the second month post judgment. Of record is the Judge's acknowledgment thereto at the hearing of July 3rd, 2014. (R. p. 144, lines 24-25, p. 145, line 1).

Upon receiving no response to his inquiry after a reasonable time, Respondent began to consult with attorneys and filed the motion within a reasonable time thereafter given the nature of the case.

Due to the facts of the case, the Respondent is not privy to all of the HOA's collection

efforts prior to the filing of the action. As such, it is not possible for the Respondent to be fully aware of available meritorious defenses, and he cannot know without further development of the record. The Respondent asserts that this prong is moot to the extent he would have paid any bona fide amount owed. The record reflects he had the means to do exercise his equitable right of redemption. (R. p. 46) (R. p. 263).

On information and belief, the Respondent had meritorious defenses amongst which were Plaintiff's failure to mitigate damages, violations of collection statutes, and payment. The "other party in the action" being the Plaintiff has not been prejudiced as they have been paid the full value of their claim and they do not appear in this appeal.

The Respondent is entitled to relief from judgment under Rule 60 (b)(1).

CONCLUSION

The Respondent respectfully requests that this Honorable Court affirm the rulings of the lower court in that the lower court made no error in its application of the law as it relied on equitable principals, controlling statutory authority, legal precedence, its own discretion, and undisputed factual findings.

November 30th, 2015

Respectfully Submitted,

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CERTIFICATE OF COUNSEL

The below-signed counsel certifies that this brief complies with Rule 211 (b), SCACR.

Respectfully submitted,

By: _____
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November ~~25~~ 30, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

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

David Conor Keys & Karen Keys, 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 *Brief of Respondent* and overnight mail copies of the same by Federal Express to the following addresses:

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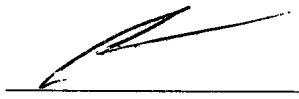
November 30, 2015



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