

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS

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SO SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from RICHLAND COUNTY
Joseph M. Strickland, Master in Equity
Court of Common Pleas

Case No. 2011-CP-40-08074
Appellate Case No. 2014-000140
Opinion No. 2015-UP-444

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

**MOTION FOR RECONSIDERATION OF
PETITION FOR A WRIT OF CERTIORARI**

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FACTS

Appellant, Willie Zimmerman, was the successful bidder on a foreclosed residential property (25 Sunturf Circle, Columbia, South Carolina 29223) at the Richland County Courthouse (the bid) on April 1, 2013. Appellant also remitted the required 5% deposit of \$17,600.00. Appellant and Movement Mortgage, LLC (Lender) received an electronic copy of the signed purchase agreement (the contract) from Bernstein Law Firm (Closing Attorney). On or about April 16, 2013, the Lender requested from Bernstein Law Firm an extension of time to comply with the bid. Amber Gee (Bernstein Law Firm) contacted Korn Law Firm (Respondent) and made the request on the Lender's behalf. Korn Law Firm gave verbal and/or written approval to extend the compliance deadline to May 15, 2013.

On May 09, 2013, the Appellant called Earle Reese (Paralegal/Post Sale Manager at Korn Law Firm) to give a status report and to inquire if Bank of America NA would accept \$10,800.00 less than the \$352,000.00 bid price. Knowing that the compliance deadline was six days away, Appellant was looking at "all available options" in an effort to close by May 15, 2013. Earle Reese instructed the Appellant to attach a formal letter to an e-mail, requesting an adjustment.

Appellant waited a total of 40 days to hear from Respondent on whether the May 10 request had been accepted. Appellant logged more than ten calls and five e-mails requesting updates. On June 18, 2013, Earle Reese sent Appellant an e-mail marked "Approved" with the adjusted price of \$341,200.00.

1. BECAUSE APPELLANT IN NO WAY CONTRIBUTED TO THE MISTAKE MADE BY THE RESPONDENT, THE COURT ERRED IN SETTING ASIDE THE APRIL 1, 2013, FORECLOSER SALE.....2

2. BECAUSE THE JUDICIAL SALE NEITHER INVOLVED AN INADEQUATE PRICE SO GROSS AS TO SHOCK THE CONSCIENCE, NOR WERE THERE OTHER CIRCUMSTANCES THAT WARRANTED INTERFERECNE FOR THE COURT, THE COURT ERRED IN SETTING ASIDE THE APIRL 1, 2013, FORECLOSER SALE.....2

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Certificate of Counsel

The undersigned hereby certifies that this Writ of Certiorari complies with Rule 211(b), SCACR.

Petitioner, Pro Se certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on October 23, 2015.

ISSUES FOR RECONSIDERATION

Appeals generally consider issues reserved for appeal at the trial court. It is the contention of the Appellee that the issue under appeal was not preserved at appeal. The appellant contends that the issue under appeal was reserved for appeal by virtue that appeal results from a hearing and not a trial court decision. The hearing involve an agreement between the appellant and the appellee. Appeal of an agreement does not require a reservation of error for an appeal to proceed.

The appellant is appealing the denial by the trial judge of an agreement between the appellant and the appellee. Therefore, the trial court erred in canceling an agreement when the mistake was not on the part of the bidder/appellee. The issue is automatically eligible for appeal because the error was the result of misapplication of the law as to an agreement. The appellant dutifully accepted the decision of the trial court because, the appellant was not aware of the trial court's misapplication of the law.

While an appellant court retain the discretion to consider an issue raised for the first time on appeal, such discretion is rarely exercised. The issues raised in this appeal, merits such discretion from the appellant court.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in upholding the Trial Court's vacation of sale?
2. Did the Court of Appeals err in not reversing the Trial Court's setting aside of the sale, when the sale did involve an inadequate price so as to shock the consent.

STATEMENT OF THE CASE

Appellant, Willie Zimmerman, was the successful bidder on a foreclosed residential property (25 Sunturf Circle, Columbia, South Carolina 29223) at the Richland County Courthouse (the bid). On June 21, 2013, Appellant was contacted by Susan Goldston (Manager, Master-in-Equity) to give notice that the Master wanted to hold a status conference at the courthouse to discuss the loan proceedings.

On July 30, 2013, the Master signed the Order to Vacate Sale and later returned the 5% Deposit to the Appellant.

ARGUMENT

The law is well established that the policy of the Courts to uphold judicial sales when regularly made, and when it can be done with 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)

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 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.

Respondent argues that Appellant did not make a timely objection to the July 30, 2013 Court order vacating the sale. Respondent concedes that there was no mistake on the part of the Appellant. Respondent further argues that a contemporaneous objection is required to preserve an issue for appellate, review. Respondent cites Hill v. S.C. Department of Health & Environmental Control, 389 S.C. 1, 23, 698 S.E. 2d 612, 624 (2010). Respondent cites the cases as authority, rather than the fact that those were arguments made in the case on appeal.

The court clearly ruled that the assertion made by the Respondent assertion in that case, which is the same assertion of the Respondent, in this case, is without merit. The failure to preserve and issue for appeal does not deprive an Appellate in Appellate Court of jurisdiction to hear the appeal. To deprive the Appellant, the right to appeal an erroneous ruling would represent a denial of Appellant right to procedural and substantive due process. The Appellant has a right to be heard and certainly should not be deprived of property rights with due process of law. Appellant followed the correct procedures in the bidding process and the sale was validated because of an error that was of no fault of the Appellant.

Similarly, the respondent argues that this appeal was filed more than thirty days after the execution of the order and subsequent to the second order vacating a second sale issue on December 17, 2013. Respondents appear to have overlapped the concepts of issues of preservation and timely notice of appeal. The respondent's argument is clearly without merit and was clearly rejected in Hill vs. S.C. Department of Health & Environmental Control, 389 S.C. 1, 23, 698 S.E. 2d 612, 624 (2010).

CONCLUSION

For the reasons stated, petitioner ask the Court to grant the petition for a writ of certiorari.

A handwritten signature in black ink, appearing to read 'Willie Zimmerman', written over a horizontal line.

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And Willie Zimmerman, Third Party Participant,Appellant

PROOF OF SERVICE

I, Willie Zimmerman, served upon the Respondent this **MOTION FOR RECONSIDERATION OF PETITION FOR A WRIT OF CERTIORARI** by placing the same in the United States Mail, first class postage prepaid, addressed to the following as shown this 7th day of March, 2016.



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