THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Joe M. Crosby, Master-in-Equity

Appellate Case Number 2011-198986

Wachesaw Plantation East Community Services Association, Inc.,. . . . . Respondent,

v.

Todd C. Alexander,. . . . . Appellant.

RECORD ON APPEAL

Stephanie C. Trotter
McCabe, Trotter & Beverly, P.C.
Post Office Box 212069
Columbia, South Carolina 29221
(803) 724-5000
Attorney for Respondent

Charles T. Smith
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Appellant

Jack M. Scoville, Jr.
Post Office Drawer 1228
Georgetown, South Carolina 29442
(843) 546-1130
Attorney for William George

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INDEX

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ASSOCIATION LIEN

TO ALL WHOM IT MAY CONCERN:

TAKE NOTICE that pursuant to the terms of the Declaration of Covenants, Conditions and Restrictions for Wachesaw Plantation East recorded June 21,1995 in Deed Book 636 at Page 10, records of Georgetown County, the Wachesaw Plantation East Community Services Association, Inc. does claim an assessment Lien as follows:

OWNERS:	Todd C. Alexander	
PROPERTY DESCRIPTION:	Lot 225, Section III, Stage 3, Executive Village IV, Wachesaw Plantation East Subdivision (See Exhibit "A" for a complete description)	
AMOUNT DUE:	$ 761.00	Past due assessment and late fees
	$ 475.00	Attorney fees and costs
	$ 100.00	Cost Advance for titlework
TOTAL DELINQUENT ASSESSMENT AND FEES:	$1,336.00	

Together with all accruing assessments, both regular and special, any and all allowable interest, delinquent charges, as applicable, attorney's fees and costs until the date of payment.

1st Witness

2nd Witness

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

ACKNOWLEDGEMENT ON FOLLOWING PAGE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGMENT

I, Adrianne W. Lane, Notary Public for the State of South Carolina do hereby certify Wachesaw Plantation East Community Services Association, Inc. through its attorney, Hal L. "Chip" Beverly, Jr., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 4 day of February 2010.

Adrianne W. Lane
Notary Public for South Carolina
My Commission Expires: 1/7/2018

EXHIBIT A

ALL AND SINGULAR, that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Murrells Inlet Township, County of Georgetown, State of South Carolina, being shown and designated as Lot 225, Section 111, Stage 3, Executive Village IV, Wachesaw Plantation East Subdivision, being more particularly shown on the certain survey prepared for Wachesaw Development, LLC by Survey Technology, Inc., dated October 9, 1997, recorded May 5, 1999 in Plat Slide 308 at Page 5 and 6, Georgetown County records; said plat being incorporated herein by reference as part of this description.

Subject to Declaration of Covenants, Conditions and Restrictions for Wachesaw Plantation East, as amended, dated June 16, 1995, recorded June 21, 1995 in Deed Book 636 at Page 10, Georgetown County records.

This being the identical property conveyed to Todd C. Alexander by Deed recorded 1/2/01 in Deed Book 1145 at Page 159.

TMS #41-0182F-225

Instrument	Book	Page
201010000425	49	220

#93331 McCutchen MVOH

201010000425
Filed for Record in
GEORGETOWN SC
WANDA PREVATTE, REGISTER OF DEEDS
02-19-2010 At 04:04 pm.
CLAIM LIEN 5.00
Book 49 Page 217 - 220

Wanda J. Prevatte

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN)	CIVIL ACTION NO.: 2010-CP-22-1583
)	
Wachesaw Plantation East Community Services Association, Inc.,)	
)	
Plaintiff,)	**PROOF OF SERVICE as to Defendant Todd C. Alexander**
)	
vs.)	
)	
Todd C. Alexander,)	
)	
Defendant(s).)	

2010 DEC -2 PM 3:43
CLERK OF COURT

This is to serve as Proof of Service on Defendant, Todd C. Alexander, as evidenced by the attached PS Form 3811. Todd C. Alexander accepted service via Certified Return Receipt Restricted Delivery First Class Mail of the *Lis Pendens, Civil Action Coversheet, Summons* and *Complaint* on October 18, 2010.

McCutchen, Mumford, Vaught, O'Dea & Geddie, P.A.

Hal L. "Chip" Beverly, Jr.
South Carolina Bar # 70341
4610 Oleander Drive, Suite 203
Myrtle Beach, SC 29577
Phone: (843) 449-3411

SWORN to before me this
5 day of November, 2010.

Notary Public for South Carolina
My Commission expires: 1/7/2018

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Todd Alexander
PO Box 165
Carversville, PA
18913

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Todd C Alexander

C. Date of Delivery 10/18/[illegible]

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☑ Yes

2. Article Number (Transfer from service label) 7009 2250 0004 3081 8814

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

2010 DEC -2 PM 3:43
CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN Wachesaw Plantation East Community Services Association, Inc., Plaintiff, vs. Todd C. Alexander, Defendant(s).	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2010-CP-22-1583 **CERTIFICATE OF SERVICE**

Adrianne W. Lane certifies that she is a legal assistant with the law firm of McCutchen, Mumford, Vaught, O'Dea & Geddie, P.A. and that she has mailed the documents listed below in the above-entitled action to the addressee(s) below on April 1, 2011 and proper postage was attached thereto.

DOCUMENTS:
1. Affidavit of Default and Non-Military Service
1. Order of Default and Order of Reference
2. Notice of Hearing

ADDRESSEE(S): Todd Alexander
Post Office Box 165
Carversville, PA 18913

FILED
2011 APR 11 P 2:25
CLERK OF COURT

Adrianne W. Lane, HOA Litigation Legal Assistant

SWORN to before me this
1st day of April 2011.

Notary Public for South Carolina
My Commission expires: 11/27/16

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN)	CIVIL ACTION NO.: 2010-CP-22-1583
)	
Wachesaw Plantation East Community)	
Services Association, Inc.,)	
)	
Plaintiff,)	
)	**MASTER'S REPORT AND JUDGMENT**
vs.)	**OF FORECLOSURE AND SALE**
)	
Todd C. Alexander,)	
)	
Defendant(s).)	

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause. Any appeal from this Order is to the Court of Appeals for South Carolina.

Pursuant to the Order of Default Judgment and Order of Reference filed in this matter, a hearing was held, attended by Hal L. "Chip" Beverly, Jr., Esquire, with the firm of McCutchen, Mumford, Vaught, O'Dea & Geddie, P.A., attorneys for the Plaintiff. The Defendant did not attend the hearing. Testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens, Summons and Complaint were filed on October 7, 2010.

2. Service was made upon the Defendant(s) named in this Report as is shown by the Proof of Service filed herein.

3. The Defendant(s) is in default as shown by the affidavit filed herein.

4. Defendant(s) in default and all attorneys of record and Defendant(s) *pro se* were notified of the time, date, and place of hearing in this matter.

5. This is an action for the foreclosure of a Condominium Lien for past due assessments, which was recorded on February 19, 2010, in Lien Book 49 at Pages 217-220, the Office of the Register of Deeds for Georgetown County, against Todd C. Alexander, the owner of record of Lot 225, Section III, Stage 3, Executive Village IV, Wachesaw Plantation East Subdivision, located in Georgetown County, South Carolina, said property being within the

jurisdiction of this Court.

6. The Developer of Wachesaw Plantation East caused to be recorded that certain Declaration of Covenants, Conditions and Restrictions for Wachesaw Plantation East, recorded June 21, 1995, in the Register of Deeds for Georgetown County, South Carolina in Deed Book 636 at Page 10, (and as amended by any subsequent Amendments). Lot 225, Section III, Stage 3, Executive village IV, Wachesaw Plantation East and the owners of said property are specifically subject to the Declaration of Covenants, Conditions and Restrictions for Wachesaw Plantation East as more fully set out above and the provisions of said Declaration of Covenants, Conditions and Restrictions and any and all amendments thereto are hereby incorporated herein by reference and made a part and parcel hereof, together with all the declarations, rules and regulations thereunder including, but not limited to, the obligation to make payment for all assessments and fees and other charges provided for therein.

7. The Defendant(s) acquired Lot 225, Section III, Stage 3, Executive Village IV of Wachesaw Plantation East, by virtue of that certain Title to Real Estate recorded January 2, 2001 in Deed Book 1145 at Page 159, records of Georgetown County, South Carolina.

8. Lot 225, Section III, Stage 3, Executive Village IV, of Wachesaw Plantation East is subject to the provisions of the said Declaration of Covenants, Conditions and Restrictions for Wachesaw Plantation East, together with all declarations, rules and regulations passed pursuant to the Declaration of Covenants, Conditions and Restrictions for Wachesaw Plantation East and the property has been subject to special and regular assessments and other charges as prescribed by Wachesaw Plantation East Community Services Association, Inc., and the Board of Directors thereof.

9. Although demand has been made for payment of the delinquent assessments, payment has not been made to the Association, and according to Beckie Abel, principal agent of K.A. Diehl & Associates, Inc., the management agent for the Plaintiff, the amount of dues and late fees presently due through the date of this hearing is Two Thousand Four Hundred Fifty-Nine and 00/100ths ($2,459.00) Dollars.

10. Under the terms of the Declaration of Covenants, Conditions and Restrictions for Wachesaw Plantation East, a delinquent owner is responsible for reasonable attorney's fees and costs incurred by the Association to collect any delinquency. According to the testimony of Hal L. "Chip" Beverly, Jr., Esquire, counsel for the Plaintiff, the Plaintiff incurred the following fees

and costs in the prosecution of this action:

	Attorney's Fees	$2,500.00
	Lien filing fee	$ 10.00
	Title abstract expense	$ 110.00
	Summons & Complaint filing fee	$ 150.00
	Motion filing fee	$ 25.00
	Master referral fee	$ 125.00
	Administrative fee	$ 105.00
	Courier cost (i.e., certified letters, etc.)	$ 25.00
+	Publication fee for Sale	$ 325.00
	Total amount of fees and costs	$3,575.00

Plaintiff's counsel requested attorney's fees and costs as stated above and an award of Two Thousand Five Hundred and No/100s ($2,500.00) Dollars for attorney fees and Eight Hundred Seventy-Five and 00/100s ($875.00) Dollars for costs is hereby granted as a reasonable attorney's fee, based upon the following:

(1.) nature, extent and difficulty of the legal services rendered, as noted by the Court;

(2.) time and labor devoted to the case, as noted in counsel's attorney fee affidavit with attached invoice;

(3.) professional standing of counsel, being an attorney in good standing who has practiced law in the state of South Carolina for five (5) years;

(4.) contingency of compensation;

(5.) fee requested in this action is in the general range of fees customarily charged in Georgetown County for similar services;

(6.) counsel has achieved the beneficial result of timely concluding the foreclosure case. Blumberg v. Nealco, Inc., 310 S. C. 492, S E 2d 659 (1993)

11. The amount due and owing under the Lien and other costs and expenses of collection, including attorney's fees, is as follows:

A. Past due assessments and fees, through April 19, 2011, in an amount of Two Thousand Four Hundred Fifty-Nine and 00/100ths ($2,459.00) Dollars;

B. Attorney's Fees in an amount of Two Thousand Five Hundred and No/100s

($2,500.00) Dollars;

C. Costs advanced through the date hereof in an amount of Eight Hundred Seventy-Five and No/100s ($875.00) Dollars and any future costs incurred.

D. In the course of this collection matter Three Hundred Twenty-Six and No/100s ($326.00) Dollars has been collected from the Defendant and applied toward attorneys fee and costs.

Total amount owed under the Master Deed, and secured by the Condominium Lien, including penalties, delinquent charges, attorney fees, costs and interest to date: Five Thousand Five Hundred Eight and 00/100s ($5,508.00) Dollars.

12. The following mortgage lien is superior to the lien of the Plaintiff:

No Liens Found

13. Plaintiff is seeking foreclosure of its condominium lien in order to satisfy the delinquent assessments owed relative to the subject property and has waived its right to a deficiency judgment.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of the Condominium Lien and the property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that

1. There is due to Plaintiff under the terms of the Master Deed and secured by the Condominium Lien as set forth hereinabove, the sum of Five Thousand Five Hundred Eight and 00/100s ($5,508.00) Dollars, representing the total debt due Plaintiff as set out in Paragraph Eleven (11) Supra., together with continuing assessments, both regular and special and late fees, until the date of payment.

2. The Defendant(s) shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

3. On default of payment at or before the time herein indicated, the liened premises described in the Complaint, as hereinafter set forth, shall be sold by the undersigned Master-In-Equity at public auction, at the Georgetown County Courthouse, Georgetown, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal

holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

a. FOR CASH: The undersigned Master will require a deposit of Five (5%) percent on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the bid shall be paid to the day of compliance at the rate of 9.75 Percent.

c. The sale shall be subject to taxes, existing easements, restrictions of record, and that certain lien or judgment as follows:

No liens found

d. Purchaser to pay for any statutory commission on sale from the proceeds of sale, deed preparation, cost of recording the deed and the statutory recording fee.

4. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master-In-Equity only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

5. In the event that an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from the sale and sold at the next available sales day upon the same terms and conditions.

6. The undersigned Master-In-Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, if upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the undersigned Master-In-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

7. The undersigned Master-In-Equity will apply the proceeds of sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of

Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus will be held pending further Order of this Court.

8. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendant(s)(s) in possession herein, and a Writ of Assistance is presented, the Sheriff of Georgetown County is ordered and directed to eject and remove from the premises the occupant(s) (a valid tenant shall have his/her rights protected) of the property sold, together with all personal property located thereon, and put the successful purchaser or his assigns in such peaceable possession.

9. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant(s) named herein and all persons whosoever claiming under him, them or it be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

10. IT IS FURTHER ORDERED that, pursuant to S.C. CODE Ann. Section 30-9-31 (Supp. 1987), the deed of conveyance made pursuant to this sale shall be indexed in the grantor index in the office of the Register of Deeds in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master-In-Equity, who executes such deed as grantor.

11. The undersigned Master-In-Equity will retain jurisdiction to do all the necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c), SCRCP.

12. Plaintiff has waived its right to a personal deficiency judgment so the bidding will be final on the day of sale.

13. Plaintiff may waive any of its rights, in accordance with Rule 71, South Carolina Rules of Civil Procedure, prior to sale.

14. The following is a description of the premises ordered to be sold:

ALL AND SINGULAR, that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Murrells Inlet Township, County of Georgetown, State of South Carolina, being shown and designated as Lot 225, Section 111, Stage 3, Executive Village IV, Wachesaw Plantation East Subdivision, being more particularly shown on the certain survey prepared for Wachesaw Development, LLC by Survey Technology, Inc., dated October 9, 1997, recorded May 5, 1999 in Plat Slide 308 at Page 5 and 6, Georgetown County

6/16

records; said plat being incorporated herein by reference as part of this description.

Subject to Declaration of Covenants, Conditions and Restrictions for Wachesaw Plantation East, as amended, dated June 16, 1995, recorded June 21, 1995 in Deed Book 636 at Page 10, Georgetown County records.

This being the identical property conveyed to Todd C. Alexander by Deed recorded 1/2/01 in Deed Book 1145 at Page 159.

TMS #41-0182F-225

Honorable Joe M. Crosby

19 April, 2011
Georgetown, South Carolina

FORM 4

STATE OF SOUTH CAROLINA **JUDGMENT IN A CIVIL CASE**

COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS CASE NO. 2010-CP-22-1583

Wachesaw Plantation East Community Services Association, Inc., Todd C. Alexander

PLAINTIFF(S) DEFENDANT(S)

FILED
2011 APR 29 A 8:52
CLERK OF COURT
GEORGETOWN COUNTY, S.C.

CHECK ONE:

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court.

Dated at Georgetown, South Carolina, this 19th day of Apr, 2011.

PRESIDING JUDGE

This judgment was entered on the 29th day of April 2011, and a copy mailed first class this 29th day of April, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Hal L. "Chip" Beverly, Jr.,
McCutchen Mumford Vaught O'Dea & Geddie, PA
4610 Oleander Drive Ste 203, Myrtle Beach, SC 29577
(843)449-3411
ATTORNEY(S) FOR PLAINTIFF

ATTORNEY(S) FOR DEFENDANT

Wanda J. Gibbs, Deputy
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2010-CP-22-1583
Wachesaw Plantation East Community Services Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**MOTION TO VACATE SALE**
	)	
Todd C. Alexander,	)	
	)	
Defendant.	)	
	)	

TO THE HONORABLE JOE M. CROSBY, MASTER IN EQUITY FOR GEORGETOWN COUNTY:

This is an action to collect an assessment on property owned by the Defendant at Wachesaw Plantation East. According to the Master's Report and Judgment of Foreclosure and Sale the amount due, including late penalties, through the date of the hearing was two thousand four hundred fifty-nine dollars ($2,459.00). According to the Georgetown County Assessor the fair market value of the property is three hundred sixteen thousand eight hundred dollars ($316,800.00).

The Defendant has been seriously ill and has been repeatedly hospitalized in recent months. Because of his illness he was not able to properly tend to his business affairs. The Defendant is ready, willing and able to pay in the full the judgment in this action and has offered such payment to the Plaintiff. The Defendant is also ready, willing and able to reimburse the high bidder at the foreclosure sale for all the reasonable expenses incurred by the bidder.

Therefore, the Defendant prays that the judicial sale in this action be vacated on such terms

and conditions as the Court deems to be fair and equitable.

Charles T. Smith

Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440
(843) 546-6131
Attorney for the Defendant

June 17, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2010-CP-22-1583

Wachesaw Plantation East Community Services Association, Inc.,	)	
Plaintiff,	)	
vs.	)	**AFFIDAVIT**
Todd C. Alexander,	)	
Defendant.	)	

FILED
2011 JUL -7 P 3:40
GEORGETOWN COUNTY, S.C.
ALICE [illegible]
CLERK OF COURT

Personally appeared before me Todd C. Alexander who being duly sworn, deposes and says as follows:

I am a citizen and resident of the State of Pennsylvania and have lived in Doylestown, Pennsylvania since 2006. I have never been a resident of the State of South Carolina. Other than this matter, I have never been involved in a foreclosure.

In 1998 I was diagnosed with dilated cardiomyopathy as a result of cardiac sarcoidosis. Cardiac sarcoidosis is an auto-immune, viral-like disease causing infection and inflammation of the heart. Causality of the disease is unknown and there exists no identified cure. The periodic active states of the disease have caused significant progressive permanent damage to my heart. At this time my condition is classified as IIIa on the New York Heart Association (NYHA) Functional Classification and as Stage C Heart Failure by the American College of Cardiology and American Heart Association (ACC/AHA) guidelines.

Since my initial diagnosis I have experienced periodic stable periods with increasingly frequent hospitalizations for related heart and organ failure and secondary illnesses. I am currently classified II(b) for a heart transplant when required, an eventuality which I have nearly faced on several occasions. I have undergone catheter ablations of the heart to treat refractory cardiac arrhythmias on eight occasions over the last seven years, the most recent in June of 2011. These procedures have resulted in extended hospitalizations and at-home recovery and rehabilitation on each occasion. The most recent procedure was preceded by a twelve week period of multiple tachycardias, uncontrollable by medication, which resulted in repeated emergency room visits and full time bed rest.

In the last fifteen months I have had three extended hospitalizations. The first of these hospitalizations was in March, 2010 for a two week period for treatment of acute renal failure related to heart function. The second hospitalization, in mid-December 2010 through mid-January 2011, was required for treatment of a staph infection which became septic. Treatment continued for six weeks of at-home nursing care following my discharge. My most recent hospitalization was from May 28 through June 10, during which time I underwent my eighth ablation surgery to correct chronic arrhythmias. This admission was preceded by two ER visits and a four week period of recurrent arrhythmias and increasing weakness. Since the beginning of the year I have been mostly homebound as a result of my illnesses.

My corporate career ended in 2002 when I was forced into early retirement due to total disability. To manage my personal affairs I have had to rely on non-financial assistance from others periodically during my extended periods of hospitalization and

rehabilitation.

In 2001 I purchased the house in Wachesaw Plantation East as a retirement home for my father. My father lived in the house and paid the regime fees through 2006. In June 2006, my father was hospitalized for extended period at Grand Strand Hospital in Myrtle Beach. When he was released from a second hospital outside the area he did not return to the Murrells Inlet house and the house has remained unoccupied since that time. Coastal Carolina Home Watch LLC, a property management company in Murrells Inlet, was contracted at that time to make inspections of the house on a bi-weekly basis and maintain the property and grounds, including weekly grass cutting and landscaping upkeep.

K. A. Diehl & Associates, the agent for Wachesaw Plantation East Community Services Association, Inc., sent me a letter dated December 15, 2009 regarding a $464.00 delinquency in assessments. The letter advised me that collection would be turned over to the Joye, Nappier and Risher law firm who would be contacting me regarding future payments. No one from that law firm ever contacted me. To the best of my knowledge neither I nor Coastal Carolina Home Watch received any other communication from Wachesaw Plantation East Community Services, Inc. or K. A. Diehl & Associates regarding a delinquent account or foreclosure proceedings.

I was made aware of a lien being placed against the house by a notice from McCutchen, Mumford, Vaught, O'Dea & Geddie, P.A. I believed that when my health returned to a more stable condition, allowing for better focus on my personal financial matters, I could easily resolve the matter, since my equity in the house far exceeded the lien and I have readily available funds to pay the accrued assessment. I paid the January and February 2011 assessments by a check dated February 13, 2011 and I paid the March

and April 2011 assessments through an online payment at the website on April 1, 2011. The online payment transaction was credited to the account, however the personal check had been returned to me uncashed, which I was not made aware until I received my mail on June 7, 2011.

I was not aware of a foreclosure decree or a sale of the property until I received a phone call on June 7, 2011 from Jack Luber, the owner of Coastal Carolina Home Watch. Mr. Luber informed me that a Coastal Carolina Home Watch employee had discovered a person changing the locks on the house on June 6. The person changing the locks claimed that he was working for the new owner of the house.

This news came as a great shock to me. I immediately contacted Renee Ambrosio who had periodically collected my mail at the post office. She brought the unopened letters to my hospital room. I had no prior knowledge of the foreclosure sale until June 7, 2011.

I am ready, willing and able to pay whatever money is owed Wachesaw Plantation East Community Services Association, Inc. I am also ready, willing and able to reimburse the high bidder at the foreclosure sale for whatever reasonable costs and expenses he may have incurred. The house is certainly worth in excess of $300,000. To lose the house because of a delinquent regime fee when neither I, nor the property maintenance company I hired to check on the house bi-weekly, knew of the foreclosure sale would be unjust and inequitable under these extenuating circumstances.

Todd C. Alexander

SWORN to before me this
6 day of July, 2011

Notary Public

My Commission Expires: May 24, 2015

NOTARIAL SEAL
JEFFREY SHERMAN
Notary Public
DOYLESTOWN TWP., BUCKS COUNTY
My Commission Expires May 24, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2010-CP-22-1583
Wachesaw Plantation East Community Services Association, Inc.,	)	
Plaintiff,	)	
vs.	)	**AFFIDAVIT**
Todd C. Alexander,	)	
Defendant.	)	

FILED
2011 JUL -7 P 3:40
ALICE [illegible]
CLERK OF COURT
[illegible] COUNTY, S.C.

Personally appeared before me Charles T. Smith who being duly sworn, deposes and says as follows:

1. I am the attorney for Todd C. Alexander in this action.

2. On June 16, 2011 I called Wachesaw Plantation East Community Services Association, Inc.'s attorney of record. On behalf of Todd C. Alexander, I offered payment of the full amount of the Plaintiff's judgment in exchange for a dismissal of the foreclosure action.

3. On June 17, 2011 Wachesaw Plantation East Community Services Association, Inc.'s attorney called me and informed me that the offer of payment was rejected due to the competing interest of a third party bidder.

4. On June 17, 2011 I filed and served a Motion to Vacate Sale reaffirming that Todd C. Alexander is ready, willing and able to pay in full the judgment in this action.

5. I am informed and believe that the high bidder at the foreclosure sale did not comply with his bid until June 24, 2011.

6. I am informed and believe that, as of this date, a deed has not been issued to the high bidder.

Charles T. Smith

Charles T. Smith

SWORN to before me this
7th day of July, 2011

Betty Joan Marlowe

Notary Public

My Commission Expires: 04/17/2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO.: 2010-CP-22-1583
Wachesaw Plantation East Community Services Association, Inc.,	)	
Plaintiff,	)	
vs.	)	**MEMORANDUM IN SUPPORT OF MOTION TO VACATE SALE**
Todd C. Alexander,	)	
Defendant.	)	

STATEMENT OF FACTS

In 2001 Todd Alexander paid $163,500.00 for the house in Wachesaw Plantation East. The house was purchased as a retirement home for his father. The house has been unoccupied since June 2006. Todd Alexander hired Coastal Home Watch LLC, a property management company, to inspect the house bi-weekly and to maintain the property and grounds. The present market value of the house is $316,800.00 according to the Georgetown County Tax Assessor.

When Todd Alexander was notified by the homeowners association's attorneys that a lien had been placed against the house, he believed that he could easily resolve the matter when his health returned to a more stable condition and he was better able to focus on financial matters. The amount claimed by the homeowners association was trivial compared to his equity in the house because there was no mortgage. He continued to pay regime fees to the homeowners association. Todd Alexander did not know that a foreclosure decree or a notice of sale had been issued until the day after the sale when the notices were brought to his hospital room.

The high bidder at the sale was Jerry Callahan in the sum of $181,000.00. The high bid was $135,000.00 less than the tax valuation of the house.

Before the sale was complete Todd Alexander tendered payment in full to the homeowners association. The homeowners association's attorneys declined the tender because of concern about potential liability to the high bidder. A motion to vacate the sale was then filed and served reaffirming that Todd Alexander is ready, willing and able to pay in full the judgment in this action and to reimburse the high bidder for all reasonable expenses he incurred.

ARGUMENTS

1. ***The sale should be vacated because the sale price was inadequate and the sale was accompanied by other facts warranting the interference of the court.***

There is a substantial body of case law in South Carolina concerning vacating judicial sales.

In *Bonham v. Cave*, 102 S.C. 308, 86 S.E. 681 (1915) Bonham foreclosed a mortgage given by Cave. Bonham's attorney was unable to attend the foreclosure sale and asked his law partner to bid up to the amount secured by the mortgage. The law partner stopped bidding at $1,300.00 and a third party bid $2,500.00. After the sale Bonham's attorney learned that his law partner had mistakenly allowed the property to be sold for less than the amount secured by the mortgage and moved to set aside the sale. The trial court denied the request. The Supreme Court reversed and vacated the sale.

In *Saluda Land & Timber Co. v. Saluda Crushed Stone Co.*, 172 S.C. 544, 174 S.E.2d 592 (1934) a foreclosure sale was ordered with the bidding to remain open for thirty days. On the last

day for bidding there was confusion as to where the bids would be received. Two bidders went to different locations and both bidders asked that their bid be declared the only valid bid. The Circuit Court ordered that the sale be set aside and the property reoffered for sale. The Supreme Court affirmed.

In *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 177 S.E. 24 (1934) the insurance company foreclosed a mortgage from Standard Bldg. Co. A deficiency judgment was requested so the bidding remained open for thirty days. On the last day for bids, Poole went to the Master's office and placed a bid of $500.00 which was entered on the sales book. The same morning the insurance company's attorney went to the Master's office. The attorney spoke with the Master's clerk as the Master was temporarily absent. The bidding closed at noon and the Master notified Poole that he was the high bidder. When the Master returned from lunch about 3:00 PM he found a letter on his desk from the insurance company's attorney offering a bid of $4,000.00. The Master notified both parties that he would not issue a deed to either party until the matter was resolved.

The Circuit Court issued an order confirming the bid of the insurance company and directing the Master to issue a deed. The Supreme Court did not affirm the Circuit Court's order since the insurance company had not made a proper bid.

The Supreme Court began its analysis by quoting from *Farr v. Gilbreath*, 23 S.C. 502: "It is the policy of the law to sustain judicial sales when it can be done *without violating principle or doing injustice*." *Poole*, 177 S.E. at 26.

The Supreme Court stated: "It is true that the rule is well settled that mere inadequacy of price is not sufficient ground for setting aside a judicial sale, but inadequacy of price, coupled with other incidents affecting the sale, may be sufficient ground." citing *Bonham v. Cave*, 102 S.C. 308,

86 S.E. 681. *Poole*, 177 S.E. at 27. The Supreme Court found the failure of the Master's clerk to inform the Master of the attorney's visit was an incident warranting setting aside the judicial sale. The Supreme Court noted the discrepancy between Poole's bid of $500.00 and the insurance company's bid of $4,000.00 and ordered that the mortgaged property be resold.

In *Henry v. Blakely*, 216 S.C. 13, 56 S.E. 2d 581 (1949) Henry foreclosed a chattel mortgage on an automobile. The notice of sale provided the sale would take place at the Chester County Courthouse. Henry and his attorney were at the front of the courthouse at the hour and on the day sales (real estate by the Clerk of Court and chattels by the Sheriff) were advertised to be made. When the sale of real estate was completed and the Sheriff did not make an appearance, Henry and his attorney went to the Sheriff's office. There they learned that, according to custom, the chattel sale had been held in the rear of the courthouse while real estate was being sold in the front of the courthouse and that the automobile had been sold to a third party for $82.50. Henry tendered $82.50 to the third party which was refused.

Henry petitioned to set aside the sale on the grounds of excusable neglect and the inadequacy of the sale price. The Circuit Court declared the sale valid and that the third party bidder was entitled to possession of the automobile. The Supreme Court reversed stating:

> "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 done without violating principle or doing injustice; and that mere inadequacy of price, unaccompanied by other circumstances which would invoke the exercise of the Court's discretion is not sufficient, unless, perhaps, it is so great as to raise a presumption of fraud or to shock the conscience of the Court."
>
> 216 S.C. at 18, 56 S.E.2d at 583

The Supreme Court concluded that there was a misunderstanding between the Sheriff's office and Henry's attorney as to the place at the courthouse where the sale would occur and that it would work on injustice to declare the sale valid. Therefore a resale of the automobile was ordered.

Spillers v. Clay, 233 S.C. 99, 103 S.E.2d 759 (1958) arose from an action for the partition and sale of real estate. The sale was held in the court room at the Greenville County Courthouse. A large crowd was present. Clay, the attorney for several of the defendants in the partition action, thought that he had the high bid at $2,400.00. The auctioneer announced that Spillers, a third party bidder, was the high bidder at $2,500.00. Clay had not heard Spillers' bid.

Clay petitioned the Circuit Court to vacate the sale and readvertise the property. The Circuit Court issued an order setting aside the sale. The Supreme Court began by observing that the cause was equitable in nature, that the petition was addressed to the discretion of the Court and that the Circuit Court had found that Clay was, at the time of Spillers' last bid, under an excusable misapprehension of the facts. 233 S.C. at 102, 103 S.E.2d at 760.

Next the Supreme Court noted that evidence in the record suggested that the property was worth more than Spillers' high bid and said:

> As stated in *Brownlee v. Miller*, 208 S.C. 252, 37 S.E.2d 658, the rule is well settled that inadequacy of price, unless so gross as to shock the conscience of the court, or accompanied by other circumstances warranting the interference of the court, will not justify the setting aside of a judicial sale. But it does not follow that the disparity between the accepted bid and the claimed value of the property may not be considered in light of the other circumstances. On the contrary, the rule as before stated clearly contemplates that where there are other circumstances tending to show that the sale should, in good conscience, be set aside, disparity between the accepted bid and the fair value of the property as disclosed by the evidence is a property factor to be considered by the court in arriving at its decision."
>
> 233 S.C. at 104, 103 S.E.2d at 761

The disparity between the accepted bid and the claimed value of the property combined with Clay's misapprehension and the possibility of haste in conducting the auction were held sufficient to sustain the Circuit Court's order vacating the sale.

In *Investors Savings Bank v. Phelps*, 303 S.C. 15, 397 S.E.2d 780 (Ct. App. 1990) the bank foreclosed a mortgage on which a balance of $52,369.80 was due. The bank bid $500.00 at the sale. Because a deficiency judgment was sought, the bidding remained open for thirty days. On the thirtieth day, a third party bid $510.00. The bank moved to set aside the sale and the Master granted the motion on the ground that the successful bid was so grossly inadequate as to shock the conscience. The Supreme Court agreed and affirmed.

The most recent case concerning setting aside a judicial sale was *Wells Fargo Bank, N.A. v. Turner*, 378 S.C. 147, 662 S.E.2d 424 (Ct. App. 2008). The bank failed to bid at the mortgage foreclosure sale. A third party submitted the high bid of $3,000.00. The bank's motion to set aside and vacate the sale was granted by the special referee. Chief Justice Hearne writing for the Court of Appeals observed that, ". . . the determination of whether a judicial sale should be set aside is a matter left to the sound discretion of the trial court." Id. 378 S.C. at 150, 662 S.E.2d 425. She held that the record contained sufficient evidence of the value of the property to support the special referee's decision and proof of excusable negligence was not required.

In the present case the difference between the fair market value of Todd Alexander's house and the amount bid at the sale is $135,000.00. This difference is substantial in both absolute terms and in relative terms. In absolute terms the difference is greater than any of the cases previously discussed. In relative terms the difference is similar to the difference in *Spillers v. Clay*, 233 S.C. 99, 103 S.E.2d 759 (1958).

In the present case there are other factors warranting the Court vacating the sale. This is an action to enforce a homeowners association lien for $761.00 in assessments and late fees. Todd Alexander, a resident of Pennsylvania with no experience in foreclosures, did not recognize that he could lose the house because of a $761.00 homeowners association lien. His medical conditions cause him to experience periods of extended hospitalization, repeated emergency room visits, confinement and rehabilitation. He believed he could easily resolve the matter once his health returned to a stable condition and he could focus on the issue. He believed that if there was a serious issue concerning his house the homeowners association or his property management company would call him.

In the present case there was a communications failure between Todd Alexander and the homeowners' association much like the communications failure between the insurance company's attorney and the Master's secretary in *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 177 S.E. 24 (1934), between Henry's attorney and the Sheriff's office in *Henry v. Blakely*, 216 S.C. 13, 56 S.E. 2d 581 (1949) , and between Clay and the auctioneer in *Spillers v. Clay*, 233 S.C. 99, 103 S.E. 759 (1958). The difference is that Todd Alexander is not an attorney, is not experienced in foreclosures, is not in South Carolina and is in very fragile health.

The $135,000.00 difference between the fair market value of Todd Alexander's house and the amount bid at the foreclosure sale and the other circumstances require that the sale be set aside.

2. The sale should be vacated to avoid a forfeiture.

"The courts of South Carolina have long held that forfeitures or penalties are not favored in either law or equity." *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 172, 568 S.E.2d at 361, 363 (2002).

"A court of equity abhors forfeitures, and will not lend its aid to enforce them.' *Jones v. N. Y. Guar. & Indem. Co.*, 101 U.S. 622, 628 (1879). 'Equity does not favor forfeitures or penalties and will relieve against them when practicable in the interest of justice.' *Lane v. N. Y. Life Ins. Co.*, 147 S.C. 333, 374, 145 S.E. 196, 209 (1928)." *Regions Bank v. Winguard Properties, Inc.*, S.C. Ct. of Appeals opinion number 4846 (June 22, 2011).

In *Cody Discount, Inc. V. Merritt*, 368 S.C. 570, 629 S.E.2d 697 (Ct. App. 2006) Merritt entered an installment contract to purchase a mobile home and lot for $44,500.00. The contract provided that failure to comply with the terms and conditions would entitle the vendor to repossess the premises and retain all payments as rent. Cody Discount brought an action to have Merritt evicted based on her payment history. When the action began Merritt had paid all but about $1,000.00 owed on the contract. On appeal Merritt argued that the Master had erred in holding that it was fair and equitable that her right in the real property should be forfeited and the Court of Appeals agreed.

> "Although it is true that Merritt has made late payments on and off since the inception of the land sale contract, it is also true that all the property owners, including Cody Discount, continued to accept the payments without declaring her in default. It was only when Merritt was within approximately $1,000.00 of paying off an original contract price of $44,500.00 that Cody Discount decided it would no longer be advantageous for them to transfer the property and thus they brought the current action."
>
> 368 S.C at ___, 629 S.E.2d at 700

The Court of Appeals affirmed the Master's decision to relieve Merritt from forfeiture of the mobile home and reversed the Master's decision to permit forfeiture of the real property. The action was remanded for a determination of the amount Merritt owed to redeem the property.

In the present action Todd Alexander is threatened with forfeiture of $135,000.00 of equity in his house because of a trivial homeowners' association lien. He was and is ready, willing and able to pay the full amount now owed to the homeowners association. The sale should be vacated to allow him to redeem the house and prevent the forfeiture.

3. The sale should be vacated to avoid unjust enrichment of the third party bidder.

In *Federal National Mortgage Association v. Brooks*, 304 S.C. 506, 405 S.E.2d 604 (Ct. App. 1991) the plaintiff, FNMA, foreclosed a second mortgage and waived the right to a deficiency judgment. On the morning of the foreclosure sale, FNMA's attorney's son fell ill and he was unable to attend the sale. The attorney called his law partner to bid on the property. Due to a miscommunication, the law partner failed to enter a bid. A third party was the high bidder. FNMA moved to set aside the sale. The special referee set aside the sale on the grounds that the high bid was grossly inadequate, the failure of FNMA to bid was the result of excusable neglect and the third party bidder had failed to pay the balance of the bid within the time required by the decree.

The Court of Appeals did not find the high bid to be grossly inadequate and did not reach the issue of excusable neglect because they found inadequacy of the bid price combined with other circumstances to be a sufficient basis for setting aside the foreclosure sale. The Court of Appeals concluded:

"In our consideration of the order under appeal, we are mindful of the fact this matter is equitable in nature and FNMA's petition was addressed to the discretion of the court. *Spillers*, 233 S.C. 99, 103 S.E.2d 759. We agree with the referee it would be most inequitable under the facts of this case to allow Brooks to be unjustly enriched at the expense of FNMA. It is apparent FNMA waived deficiency judgment on the premises it would either obtain the property at the judicial sale or be paid by a third party who was willing to bid more than FNMA. We conclude no abuse of discretion has been shown and the order of the special referee should be affirmed."

304 S.C. at 512, 405 S.E.2d at 607

Todd Alexander's motion is also addressed to the discretion of the Court. It would be most inequitable under the facts of this case to allow the third party bidder to be unjustly enriched at the expense of Todd Alexander. FNMA's attorney's son was ill on sales day resulting in FNMA not placing a bid. Todd Alexander was himself in the hospital on sales day. These extenuating circumstances prevented parties to foreclosures who were ready, willing and financially able to bid from protecting their interests in the sales. The third party bidder should not be unjustly enriched by Todd Alexander's misfortune.

4. The sale should be vacated because Todd Alexander timely redeemed the property.

The Declaration of Covenants, Conditions and Restrictions for Wachesaw Plantation East provide for assessment liens and that a lien may be foreclosed in the same manner as a mortgage. In accordance with these provisions the homeowners association filed a lien and commenced this foreclosure action.

Under the common law a mortgage was a conveyance of real property, subject to defeasance upon payment of the debt by the due date.

"Equity, however, looked to the substance of the mortgage, not its form. Even if the debt was past due, equity compelled the mortgagee to reconvey the property to the mortgagor upon payment of the principal with interest and costs. In

other words, the mortgagor was given an equitable right to redeem the property in defiance of the terms of the mortgage." (citations omitted) *Bartles v. Livingston*, 282 S.C. 448, 455, 319 S.E.2d 707, 711 (1984).

A property owner's rights and interest pass to the purchaser at a judicial sale when the officer making the sale executes a conveyance to the purchaser. *S. C. Code* §15-39-830. "Upon 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 judi39cata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court." *S. C. Code* §15-39-870.

In *Goethe v. Cleland*, 323 S.C. 50, 448 S.E.2d 574 (1994) the foreclosure decree awarded a deficiency judgment but also provided "bidding will not remain open after the date of sale, but compliance with the bid made be made immediately." The Clerk of Court advertised and sold the property in accordance with the decree. After the sale the Clerk of Court decided to return the successful bidder's funds. The property was then readvertised, with notice that the bidding would remain open, and resold. On appeal Cleland argued that the purchaser at the first sale was a bona fide purchaser for value, so the sale should not have been upset citing *Cumbie v. Newberry*, 251 S.C. 33, 159 S.E.2d 915 (1968). The Court of Appeals disagreed stating:

> "Cumbie is easily distinguished. In the case before us, the Clerk discovered the error in the order prior to Housey's compliance with the bid and, consequently, never issued a deed to Housey. Thus the judicial sale was never completed and the proceedings were still subject to attack. See S. C. Code Ann. §15-39-870 (1976)"
>
> 323 S.C. at 55, 448 S.E.2d at 576

Todd Alexander exercised his equity of redemption by tending payment in full to the homeowners' association's attorney on June 16, 2011. At that time no deed had been issued

conveying Todd Alexander's rights and interests in the property. In fact no deed could have been issued at that time because the high bidder had not complied with the terms of his bid.

The decree issued in this action is consistent with the pertinent statutes and case law. Paragraph 9 of the decree provides: "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each Defendant(s) named herein and all persons whosoever claiming under him, them or it be forever barred and foreclosed of all right, title, interest, and equity of redemption in said mortgaged premises so sold, or any part thereof." The decree recognizes that high bidders do not always comply with the terms of the sale and provides that should compliance not be made within thirty (30) days after the date of sale, then the Master-in-Equity may advertise the premises for sale on some subsequent salesday, at the risk of the highest bidder, from time to time thereafter until full compliance shall be secured. There is no suggestion in the decree that a high bidder receives any right to the property until he complies with his bid and receives a deed.

The sale of Todd Alexander's property was not complete and his equity of redemption was not barred when he exercised the right and equity of redemption on June 16, 2011. Therefore the sale should be vacated.

CONCLUSION

This is an action to foreclose a homeowners association lien for $761.00 in assessments and late fees. The property ordered sold has a fair market value of $316,800.00. The high bid at the foreclosure sale was only $181,000.00. Todd Alexander, not withstanding his debilitating medical condition, timely exercised his right to redeem the property from the foreclosure.

The determination of whether a judicial sale should be set aside is a matter addressed to the sound discretion of the Court. The equitable resolution of this matter is to vacate the sale thereby permitting the homeowners association to accept Todd Alexander's payment in full of his debt.

Respectfully submitted.

Charles T. Smith

Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440
(843) 546-6131
Attorney for the Defendant

July 19, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CASE NO.: 2010-CP-22-1583
Wachesaw Plantation East Community Services Association, Inc.	)	
Plaintiff,	)	MEMORANDUM OF THIRD PARTY BIDDER
v.	)	
Todd C. Alexander,	)	
Defendant.	)	

Jerry Calahan , third party bidder, submits this memorandum in opposition to the Defendant's Motion to Vacate Sale.

STATEMENT OF THE CASE

This matter is before the Court on Defendant's Motion to Vacate Sale.

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.**

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. The foreclosure

followed the usual course and the property was sold. The successful bidder was Jerry Callahan who bid $181,000.00 .

The bidder has complied in all respects with the terms of the bid. Before a deed was issued to him or his assignee, this motion was filed.

APPLICABLE LAW

I. PROCEDURE

SCRCP 60 (b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

II. SETTING ASIDE JUDICIAL SALE

"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 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, 355, 644 S.E.2d 802, 806 (S.C.App.,2007). 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).

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).

III. FACTS OF THIS CASE

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.

In the affidavits filed by Defendant in support of this motion, no excusable neglect is asserted, much less proven. 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.

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 bid is in excess of 50% of

same. Defendant does not assert the sales price shocks the conscience because it is well established that a bid of 50% or more cannot.

Defendant has simply failed to make any showing of reason to set the sale aside.

By: _____

Jack M. Scoville, Jr.
Attorney for Successful Bidder
P.O. Box 1228
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Telephone: (843) 546-1130
Facsimile: (843) 546-0726

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CASE NO.: 2010-CP-22-1583
Wachesaw Plantation East Community Services Association, Inc.	)	
Plaintiff,	)	ORDER DENYING MOTION
v.	)	
Todd C. Alexander,	)	
Defendant.	)	

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

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

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

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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 9th, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Joe M. Crosby, Master-in-Equity

Appellate Case Number 2011-198986

Wachesaw Plantation East Community Services Association, Inc.,. . . . . Respondent,

v.

Todd C. Alexander,. . . . . Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellant certifies that the Record on Appeal contains all material proposed to be include by any of the parties and not any other material.

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