

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

---

**RECEIVED**

APR 08 2016

SC Court of Appeals

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

v.

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

---

BRIEF OF APPELLANT

---

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

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.

---

BRIEF OF APPELLANT

---

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

TABLE OF CONTENTS

Table of Authorities ..... ii

Statement of Issues on Appeal ..... 1

Statement of the Case ..... 2

Arguments

1. THE MASTER-IN-EQUITY ERRED IN NOT VACATING THE JUDICIAL SALE BECAUSE THE SALE PRICE WAS INADEQUATE AND THE SALE WAS ACCOMPANIED BY OTHER FACTS WARRANTING THE INTERFERENCE OF THE COURT ..... 5

2. THE MASTER-IN-EQUITY ERRED IN NOT VACATING THE JUDICIAL SALE BECAUSE THE SALE CONSTITUTED A FORFEITURE ..... 11

3. THE MASTER-IN-EQUITY ERRED IN NOT VACATING THE JUDICIAL SALE BECAUSE THE SALE CONSTITUTED AN UNJUST ENRICHMENT OF THE THIRD PARTY BIDDER ..... 12

4. THE MASTER-IN-EQUITY ERRED IN NOT VACATING THE JUDICIAL SALE BECAUSE TODD ALEXANDER TIMELY REDEEMED THE PROPERTY ..... 14

Conclusion ..... 17

TABLE OF AUTHORITIES

CASES

*Antrum v. Hartsville Production Credit Assn.*, 228 S.C. 201, 89 S.E.2d 376 (1955) . . . 16

*Bartles v. Livingston*, 282 S.C. 448, 319 S.E.2d 707 (Ct. App. 1984) . . . . . 14

*Bonham v. Cave*, 102 S.C. 308, 86 S.E. 681 (1915) . . . . . 5

*Brownlee v. Miller*, 208 S.C. 252, 37 S.E.2d 658 (1946) . . . . . 8

*Cody Discount, Inc. v. Merritt*, 368 S.C. 570, 629 S.E.2d 697 (Ct. App. 2006) . . . . . 11

*Cumbie v. Newberry*, 251 S.C. 33, 159 S.E.2d 915 (1968) . . . . . 15

*Farr v. Gilreath*, 232 S.C. 502 (1885) . . . . . 6

*Federal National Mortgage Association v. Brooks*, 304 S.C. 506, 405 S.E.2d 604  
(Ct. App. 1991) . . . . . 12

*Goethe v. Cleland*, 323 S.C. 50, 448 S.E.2d 574 (Ct. App. 1994) . . . . . 15

*Henry v. Blakely*, 216 S.C. 13, 56 S.E.2d 581 (1949) . . . . . 7, 10

*Investors Savings Bank v. Phelps*, 303 S.C. 15, 397 S.E.2d 780 (Ct. App. 1990) . . . . . 9

*Jones v. N. Y. Guar. & Indem. Co.*, 101 U.S. 622 (1879) . . . . . 11

*Lane v. N. Y. Life Ins. Co.*, 147 S.C. 333, 145 S.E. 196 (1928) . . . . . 11

*Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 177 S.E. 24 (1934) . . . . . 6

*Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348  
(Ct. App. 2011) . . . . . 11

*Saluda Land & Timber Co. v. Saluda Crushed Stone Co.*, 172 S.C. 544, 174 S.E.2d 592  
(1934) . . . . . 5

*Spillers v. Clay*, 233 S.C. 99, 103 S.E.2d 759 (1958) . . . . . 8, 10

*Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 662 S.E.2d 424 (Ct. App. 2008) . . . 9, 11

STATUTES

S.C. Code Ann. § 15-39-830 (1976) ..... 15

STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER-IN-EQUITY ERR IN NOT VACATING THE JUDICIAL SALE BECAUSE THE SALE PRICE WAS INADEQUATE AND THE SALE WAS ACCOMPANIED BY OTHER FACTORS WARRANTING THE INTERFERENCE OF THE COURT?
2. DID THE MASTER-IN-EQUITY ERR IN NOT VACATING THE JUDICIAL SALE BECAUSE THE SALE CONSTITUTED A FORFEITURE?
3. DID THE MASTER-IN-EQUITY ERR IN NOT VACATING THE JUDICIAL SALE BECAUSE THE SALE CONSTITUTED AN UNJUST ENRICHMENT OF THE THIRD PARTY BIDDER?
4. DID THE MASTER-IN-EQUITY ERR IN NOT VACATING THE JUDICIAL SALE BECAUSE TODD ALEXANDER TIMELY REDEEMED THE PROPERTY?

## STATEMENT OF THE CASE

Todd Alexander lives in the State of Pennsylvania. He has never lived in the State of South Carolina. (Alexander Affidavit, R. p. 19) He purchased the house in Wachesaw Plantation East in Murrells Inlet, South Carolina, as a retirement home for his father. (Alexander Affidavit, R. p. 21)

When Todd Alexander received papers from the attorneys for the homeowners association concerning a lien for a delinquent regime fee, 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. (Alexander Affidavit, R. p. 21) The \$761.00 in past due assessments and late fees claimed by the homeowners association was trivial compared to his equity in the house. (Association Lien, R. p. 2) He continued to pay the monthly regime fees to the homeowners association. (Alexander Affidavit, R. pp. 21-22)

Todd Alexander suffers from dilated cardiomyopathy as a result of cardiac sarcoidosis. Cardiac sarcoidosis is an auto-immune, viral-like disease causing infection and inflammation of the heart. The disease has caused progressive permanent damage to his heart. (Alexander Affidavit, R. p. 19) Since his initial diagnosis, Todd Alexander has experienced periodic stable periods with increasingly frequent hospitalizations for heart and organ failure and secondary illnesses. He underwent catheter ablations of the heart to treat refractory cardiac arrhythmias on eight occasions over the seven years preceding his hospitalization in May of 2011. The hospitalization was preceded by a twelve week period of multiple tachycardias, uncontrollable by medication, which necessitated repeated emergency room visits and full time bed rest. (Alexander Affidavit, R. p. 20)

In the fifteen months immediately preceding the judicial sale of Todd Alexander's house, he experienced three extended hospitalizations. The first hospitalizations was in March of 2010 for a two weeks for treatment of acute renal failure. The second hospitalization was from mid-December, 2010 through mid-January, 2011 for treatment of a staff infection which had become septic. The third hospitalization was from May 28, 2011 through June 10, 2011 for his eighth ablation surgery to correct chronic arrhythmias. That admission was preceded by two ER visits and a four week period of recurrent arrhythmias and increasing weakness. From the beginning of 2011 through the date of the judicial sale Todd Alexander was mostly homebound or hospitalized as a result of his illnesses. (Alexander Affidavit, R. p. 20)

Todd Alexander did not know that this matter had been referred to the Master in Equity nor that a hearing had been scheduled because the order and notice of hearing were mailed to his post office box. He did not know that a foreclosure decree had been issued or that the property had been set for sale because no notice of the decree was sent to him and no notice of the sale was sent to him. (Form 4, R. p. 16) On June 7, 2011, one day after the judicial sale, he received a telephone call informing him that someone claiming to work for the new owner of the house was changing the locks on the doors. (Alexander Affidavit, R. p. 22)

This news came as a great shock to Todd Alexander. He immediately contacted a friend who periodically collected his mail from the post office. She brought the unopened letter to his hospital room. He had no knowledge of the judicial sale until June 7, 2011, the day after the sale. (Alexander Affidavit, R. p. 22)

Todd Alexander tendered payment in full to the attorney for the homeowners association on June 16, 2011. (Smith Affidavit, R. p. 24) The attorney for the homeowners association refused the payment. (Smith Affidavit, R. p. 24) A motion to vacate the sale was filed and served June 17, 2011. The motion reaffirmed that Todd Alexander was ready, willing and able to pay in full the money claimed by the homeowners association. (Motion to Vacate Sale, R. p. 17) The high bidder at the judicial sale did not comply with his bid until June 24, 2011, seven days after the motion to vacate the sale was filed and served. (Smith Affidavit, R. p. 24)

The high bid at the judicial sale was \$135,000.00 less than the county tax assessors' valuation of the house. (Order Denying Motion, R. pp. 47-48) The third part bidder opposed the motion to vacate the sale. The Master denied the motion to vacate the sale and issued a deed to William George.

## ARGUMENTS

1. THE MASTER-IN-EQUITY ERRED IN NOT VACATING THE JUDICIAL SALE BECAUSE THE SALE PRICE WAS INADEQUATE AND THE SALE WAS ACCOMPANIED BY OTHER FACTS WARRANTING THE INTERFERENCE OF THE COURT.

The Master mistakenly concluded that, "In the affidavits, filed by Defendant in support of this motion, no excusable neglect is asserted." (Order Denying Motion, R. p. 47) The undisputed facts are that Todd Alexander did not know of the foreclosure hearing, did not know of the foreclosure decree and did not know of the judicial sale until the day after the sale. Todd Alexander's failure to bid at the judicial sale to protect his interests in the property was excusable neglect under the substantial South Carolina case law 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 Building Company. 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. Gilreath*, 23 S.C. 502 (1885): "It is the policy of the law to sustain judicial sales when it can be done *without violating principle or doing injustice.*" (emphasis in original) *Poole*, 174 S.C. at 156, 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 (1915). *Poole*, 174 S.C. at 157, 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 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's tender of \$82.50 to the third party 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 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 of the bidding and the possibility of haste in conducting the auction were held sufficient to vacate 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. A third party bid \$510.00 on the thirtieth day. 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.

In *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 662 S.E.2d 424 (Ct. App. 2008), the bank failed to bid at the mortgage foreclosure sale to protect its interest in the property. A third party submitted the high bid of \$3,000.00. The Court of Appeals held that the record contained sufficient evidence of the value of the property to support vacating the sale 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 third party bid 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 the present case there are other factors warranting 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 small homeowners association lien.

(Alexander Affidavit, R. p. 19) His medical conditions caused him to experience periods of extended hospitalization, repeated emergency room visits, confinement and rehabilitation.

(Alexander Affidavit, R. p. 20) He believed he could easily resolve the matter once his health returned to a stable condition and he could focus on the issue. (Alexander Affidavit,

R. p. 21) He believed that if there was a serious issue concerning his house, the homeowners association or his property management company would call him. (Alexander Affidavit, R.

p. 22) On the day of the sale Todd Alexander was hospitalized in Pennsylvania. (Alexander Affidavit, R. p. 20)

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 differences are that Todd Alexander is not an attorney, he is not experienced in foreclosures, he is not a resident of South Carolina and he is in very fragile health.

The \$135,000.00 difference between the value of Todd Alexander's house and the amount bid at the judicial sale and the other circumstances warrant setting aside the judicial sale.

2. THE MASTER-IN-EQUITY ERRED IN NOT VACATING THE JUDICIAL SALE BECAUSE THE SALE CONSTITUTED A FORFEITURE.

The Master mistakenly concluded that because the high bid at the judicial sale was \$181,000.00, “[t]he fair market value of the property was thus established at \$181,000.00.” (Order Denying Motion, R. p. 47) A foreclosure is not a voluntary sale and does not establish the fair market value of the property. “Fair market value is the amount at which property would change hands between a willing buyer and willing seller, *Black’s Law Dictionary*, 597 (6<sup>th</sup> Ed. 1990).” *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 151, 662 S.E.2d 424, 426 (Ct. App. 2008).

“The involuntary sale of Todd’s property for \$135,000.00 less than the tax valuation of the property is a forfeiture and a harsh penalty. “The courts of South Carolina have long held that forfeitures or penalties are not favored in either law or equity.” *Cody Discount, Inc. v. Merritt*, 629 S.E.2d 697, 700, 368 S.C. 570, 575 (S.C. App. 2006).

“ ‘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. Wingard Properties, Inc.*, 394 S.C. 241, 256, 715 S.E.2d 348, 356 (Ct. App. 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 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 576, 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 \$761.00 homeowners association lien. He was and is ready, willing and able to pay the full amount owed to the homeowners association. The sale should be vacated to allow the homeowners association to accept his payment and prevent the forfeiture.

3. THE MASTER-IN-EQUITY ERRED IN NOT VACATING THE JUDICIAL SALE BECAUSE THE SALE CONSTITUTED AN 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 to protect FNMA's interest in the property. A third party was the high bidder. FNMA moved to set aside the sale.

The Court of Appeals did not find the high bid to be grossly inadequate and did not reach the issue of excusable neglect because it found the 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

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 in the hospital on sales day. These extenuating circumstances prevented parties to foreclosures who were ready, willing and financially able from bidding to protect their interests in the sales. The third party bidder should not be unjustly enriched at Todd Alexander's expense.

4. THE MASTER-IN-EQUITY ERRED IN NOT VACATING THE JUDICIAL SALE BECAUSE TODD ALEXANDER TIMELY REDEEMED THE PROPERTY.

The Master mistakenly concluded that, “Defendant’s equity of redemption was terminated upon the knocking down of the third party’s bid at the sale on June 6.” (Order Denying Motion, R. p. 48) The case law, the statutes and the decree in this action do not support the Master’s conclusion. A property owner’s equity of redemption is not terminated until the judicial sale is completed by compliance with the bid and delivery of the deed.

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.

At 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.” (internal citations omitted)  
*Bartles v. Livingston*, 282 S.C. 448, 455, 319 S.E.2d 707, 711 (Ct. App. 1984)

The mortgagor’s right to redeem was an equitable interest in the land. It was assignable, descendable, and devisable. Its release to the mortgagee operated to convey title. (internal citations omitted)  
*Id.*, 282 S.C. at 455, 319 S.E.2d at 711

In 1791 the common law was modified by statute and strict foreclosure in a court of equity was replaced with foreclosure by sale in a court of law. Today the South Carolina Code provides: “Upon a judicial sale being made and the terms complied with the officer

making the sale must execute a conveyance to the purchaser which shall be effectual to pass the rights and interests adjudged to be sold.” *S. C. Code* §15-39-830. A property owner’s rights and interests, including the equitable right to redeem the property, pass to the purchaser upon the purchaser complying with the terms of sale and the conveyance being executed.

In *Goethe v. Cleland*, 323 S.C. 50, 448 S.E.2d 574 (Ct. App. 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 may 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 because of the inconsistency in the decree. The property was then readvertised, with notice that the bidding would remain open, and resold. On appeal Cleland argued the first sale was valid 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 tendering payment in full to the homeowners association’s attorney before the judicial sale was completed. When the equity of redemption was exercised, the third party bidder had not complied with his bid and the judicial sale was still subject to attack. No deed had been issued conveying Todd

Alexander's rights and interests in the property. In fact no deed could have been issued because the high bidder had not complied with the terms of the sale.

The foreclosure decree in this action is consistent with the pertinent statutes and case law. Paragraph three of the decree provides that the sale shall be:

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.

(Decree, R. p. 13)

The decree does not say that the property owner's rights and interests immediately pass to the high bidder upon the knocking down of the property on salesday. A sale is not complete upon the knocking down of the property on salesday. Only upon completion of the sale by compliance with the bid does the high bidder acquire the property owner's right, title, interest and equity of redemption in the property.

In *Antrum v. Hartsville Production Credit Association*, 228 S.C. 201, 89 S.E.2d 376 (1955), Antrum was the high bidder at a foreclosure sale. Antrum did not timely comply with the terms of sale. The property was resold and a deed was issued to the high bidder at the second sale. Antrum was unsuccessfully in claiming that he was entitled to possession of the property.

The sale of Todd Alexander's property was not complete and his equity of redemption was not barred immediately upon the knocking down of the third party's bid. The property was redeemed by Todd Alexander before the sale was completed. Therefore, the judicial 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 is worth at least \$316,800.00. The high bid at the judicial sale was only \$181,000.00. Todd Alexander, notwithstanding his debilitating illness, timely exercised his right to redeem the property.

The judicial sale should be set aside thereby permitting the homeowners association to accept payment in full from Todd Alexander

*Charles T. Smith*

Charles T. Smith (S.C. Bar No. 5070)  
608 Cypress Street  
Georgetown, South Carolina 29440  
(843) 545-6578  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

**RECEIVED**

APR 08 2016

Joe M. Crosby, Master-in-Equity

---

**SC Court of Appeals**

Appellate Case Number 2011-198986

---

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

v.

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

---

CERTIFICATE OF COMPLIANCE

---

The undersigned counsel for Appellant certifies that Appellant's final briefs comply with Rule 211(b), SCACR.

*Charles T. Smith*

Charles T. Smith (S.C. Bar No. 5070)  
608 Cypress Street  
Georgetown, South Carolina 29440  
(843) 545-6578  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

**RECEIVED**

Joe M. Crosby, Master-in-Equity

APR 08 2016

**SC Court of Appeals**

Appellate Case Number 2011-198986

---

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

v.

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

---

PROOF OF SERVICE

---

I certify that I served the Brief of Appellant and the Reply Brief on Wachesaw Plantation East Community Services Association, Inc. by depositing copies in the United States Mail, postage prepaid, on April 7, 2016, addressed to its attorney of record, Stephanie C. Trotter, McCabe, Trotter & Beverly, P.C., Post Office Box 212069, Columbia, South Carolina 29221, and on William George by depositing copies in the United States Mail, postage prepaid, on April 7, 2016 addressed to Jack M. Scoville, Jr., Post Office Drawer 1228, Georgetown, South Carolina 29442.

Charles T. Smith

Charles T. Smith (S.C. Bar No. 5070)  
608 Cypress Street  
Georgetown, South Carolina 29440  
(843) 545-6578  
Attorney for Appellant

April 7, 2016