THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-002575

Roosevelt Simmons, ... Appellant,

v.

Mase and Company, LLC, J. Al Cannon, Jr.
Charleston County Sheriff's Office, Charleston County
Revenue Collections Department, and
Harry Long, ... Respondents.

FINAL BRIEF OF RESPONDENT MASE AND COMPANY, LLC

Wendy J. Keefer
S.C. Bar #16427
Keefer & Keefer, LLC
1643B Savannah Hwy, Suite 226
Charleston, South Carolina 29407
(843) 860-1534
wendykeefer@yahoo.com

ATTORNEY FOR RESPONDENT
MASE AND COMPANY, LLC

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II. DID THE CIRCUIT COURT ERR IN GRANTING DEFENDANTS SUMMARY JUDGMENT WHERE, IN ADDITION TO A LACK OF SUBJECT MATTER JURISDICTION, EVEN HAD JURISDICTION EXISTED NO GENUINE ISSUES OF MATERIAL FACT EXISTED UPON WHICH APPELLANT COULD SUCCEED ON ANY OF HIS CLAIMS?

III. AS A GOOD FAITH PURCHASER FOR VALUE OF THE RELEVANT PROPERTY, SHOULD RESPONDENT MASE AND COMPANY, LLC, WHICH ENTITY HAS BEEN THE OWNER OF THE PROPERTY SINCE 2009 AND HAS UNDERTAKEN ALL MAINTENANCE, TAXES AND OTHER COSTS ASSOCIATED WITH SUCH OWNERSHIP BE DISMISSED FROM THIS ACTION WITH ANY REMAINING DISPUTES TO BE DECIDED AS BETWEEN THE OTHER PARTIES?

STATEMENT OF THE CASE

Appellant originally filed the present action in February 2011, following the November 4, 2009 sale by the Charleston County Sheriff's Department of property owned by Appellant. (R. Vol. I, p. 298.) The action was removed to federal court but then subsequently remanded back to the Circuit Court for the Ninth Judicial Circuit, State of South Carolina. The case proceeded before

[1] Respondent Mase and Company, LLC has restated the issues in this matter rather than addressing each issue as set out by Appellant and does not include in this Initial Brief any response to Appellant's Issues 4 and 7, which issues relate solely to the other Respondents' immunity from suit and/or liability as government entities and employees.

the Ninth Circuit. The action included actions at law and in equity. (See R. Vol. I, pp. 59-84.)

After significant discovery, various motions for summary judgment, legal memoranda and supplemental pleadings related to requests of the parties for summary judgment, were filed. The motions were initially denied by the trial court, with the exception of the court's dismissing Defendant Long. The County Defendants moved to alter or amend that Order to the extent it denied those Defendants summary judgment on the remaining claims of Plaintiff/Appellant; Plaintiff/Appellant moved to alter or amend as to the dismissal of Long.

On June 17, 2013, upon reconsideration, the circuit court granted the County's motion and dismissed all of Plaintiff/Appellant's claims. (R. Vol. I, pp. 11-15.) Plaintiff/Appellant filed a motion to alter/amend that Order. A hearing was set for that motion for November 20, 2013, but did not go forward. Another hearing was noticed in or around January 2014 but also did not go forward. That motion was then left pending for a significant period of time with no real effort on the part of Plaintiff/Appellant to obtain a decision by the court until an email requesting the clerk reschedule a hearing. That emailed hearing request was sent by Plaintiff/Appellant August 28, 2014, more than a year after the relevant motion was filed. The court ruled on that motion on October 6, 2014, denying it; the same being filed with the court October 13. (R. Vol. I, p. 16.) Plaintiff then filed the Notice of Appeal in this matter on November 17, 2014. (See Appellant's Initial Brief, p. 15.)

STATEMENT OF THE BASIC FACTS

Respondent Mase and Company, LLC had no relationship with any of the other parties to this action prior to his purchase of the relevant land at a Sheriff's sale in 2009. Prior to that sale, documents demonstrate that several Magistrate Court judgments were obtained against Plaintiff/Appellant for failure to pay various fees to Charleston County. These judgments were entered beginning in 2000; the most recent judgment was in 2010. (See R. Vol. I, pp. 180, and pp. 126-138.)

The 2000 judgment was sent to the Sheriff's Office for levy and execution. (R. Vol. I, p. 284.) Plaintiff/Appellant was sent several letters, dated March 3, 2009, April 1, 2009, May 11, 2009, and June 18, 2009,[2] informing him of the relevant judgment and attempting to collect the amounts owed. (See R. Vol. I, pp. 182, 184, 186, 188, and 190.) Plaintiff/Appellant admits he just threw the notices in the trash as junk mail. (R. Vol. II, p. 631.) At no time did Plaintiff/Appellant attempt to appeal the Magistrate Court judgments or to pay the amounts adjudged owed or otherwise take actions to prevent the sale of his property or to redeem it immediately after the sale.

The County then served notices on Plaintiff/Appellant informing him of the intent to sell certain property owned by Plaintiff/Appellant to satisfy the judgments. This notice was personally served on Plaintiff/Appellant by Respondent Long. (R. Vol. I, p. 295 (Long Dep. p. 74, lines 12-25); R. Vol. I,

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[2] Defendant Long also spoke with Plaintiff/Appellant by phone in April 2009; Plaintiff was uncooperative. (R. Vol. I, p. 286.)

pp. 190-193.) The first sale was conducted October 5, 2009, but with no bidders. (R. Vol. I, p. 298 (Long Dep. p. 94, lines 8-17.))

A second sale occurred November 4, 2009. (R. Vol. I, p. 298.) Respondent Mase and Company, LLC attended that sale and was the successful bidder on the relevant property, with at least one other bidder making a bid on that property. (R. Vol. I, p. 298.)

Respondent Mase and Company, LLC has been the titled owner of this property since that 2009 sale, paying all taxes, fees, maintenance and other costs of the property.

ARGUMENT

As a preliminary matter, Respondent Mase and Company, LLC ("Mase") hereby adopts and incorporates herein all arguments and legal authority relied upon by the County Defendants/Respondents ("County Respondents") to support their actions in connection with all attempts to collect fees from Plaintiff/Appellant, obtaining judgments on the issue of those fees, and all actions related to the sale of the property now at issue, which property was purchased by Mase.

I. THE CIRCUIT COURT CORRECTLY DETERMINED THAT IT LACKED SUBJECT MATTER JURISDICTION TO INVALIDATE PRIOR DECISIONS OF THE MAGISTRATE COURT DATED FROM AS FAR BACK AS 2000, WHICH DECISIONS APPELLANT NEITHER APPEALED NOR OTHERWISE TIMELY CHALLENGED.

Plaintiff/Appellant's own recitation of the history of this matter makes it clear that he cannot now be permitted to challenge default judgments dating back more than 10 years. The sale of Plaintiff/Appellant's property to Mase

occurred as the result of Plaintiff/Appellant's failure to pay fees when due, failure to participate in the actions filed to enforce those fees in the magistrate's court, and his failure to take any action to satisfy the judgment when notified of the intended sale.

Plaintiff/Appellant's own testimony makes it clear he simply did not want to pay the user fee and had no intent to pay it. He mistakenly believed that if he did not get trash pick-up services at the particular property, he did not owe the fee. (R. Vol. II, p. 630.) He also did not pay the Storm Water Fee "[b]ecause I don't feel that I have to pay for an act of God, stop it from raining." He explained his position that "a user fee, business license fee, storm water bill, none of that pertained to me. So if it don't pertain to me, why should I pay for it." (R. Vol. II, p. 630.)

The evidence demonstrates clearly that throughout the years of efforts on the part of the County to collect the fees owed, Plaintiff/Appellant simply ignored and refused to deal with this issue. He cannot be permitted to ignore the problem for years, not taking any action to put forward any defenses he believed he had to the imposition of the relevant fees, and then a decade after the first judgment now challenge that court decision.

This action is a collateral attack on the validity of the Magistrate's Court judgments. Following entry of those judgments, Plaintiff/Appellant did not file any motions with that court to reconsider the decisions; nor did he file any appeal of those decisions. Post-trial motions are to be filed in Magistrates Courts within five (5) days of the judgment. S.C. Code Ann. § 22-3-1000; se

also Rule 19(b), SCRMC. And, appeals shall be filed with the circuit court within thirty (30) days following written notice of the judgment. S.C. Code Ann. § 22-3-1000; see also Rule 18(a), SCRMC.

Even if Plaintiff/Appellant did not actually receive notice of the Magistrate's Court judgments until the sale of his property in 2009, he still has never filed any post-trial motions or appeals of any of those judgments in that court. It is clear that this delay and Plaintiff/Appellant's decision not to challenge those decisions directly but rather to file this collateral action is inappropriate and that the circuit court did not have subject matter jurisdiction to reconsider the decisions of that other court. See Town of Hilton Head Island v. Godwin, 370 S.C. 221, 634 S.E.2d 59 (Ct. App. 2006) (concluding the circuit court lacked subject matter jurisdiction over an appeal from a municipal court decision eight years after the fact where no timely post-trial motion or appeal was filed with the municipal court when plaintiff finally received notice of that court's decision).

"A party who fails to timely appeal or take any other timely action necessary to correct an error is procedurally barred from contesting the validity of the [judgment]." Id. at 224. Admittedly, the courts have recognized that if notice of a judgment is delayed to a party, that party's time to file any motions or to appeal the judgment may not begin to run. See Brewer v. South Carolina Highway Dept, 261 S.C. 52, 198 S.E.2d 256 (1973) ("time to appeal from a judgment in a magistrate's court or move for a new trial therein does not begin until he has notice of the judgment against him").

While we do not know exactly when Plaintiff/Appellant received notice of the 2000 Magistrate's Court judgment, it was no later than 2009 when he received written communication from the County seeking to collect the judgment amount, when he received the writ of execution, and when his property was sold. Nonetheless, Plaintiff/Appellant has still never properly filed any post-trial motion or appeal of that or any of the other Magistrate Court judgments. Instead, in February 2011 he filed this collateral attack on those judgments. He is procedurally barred from now challenging these judgments. "[T]he only remedy of a party against whom a judgment is rendered is either to appeal, or make a motion for new trial, and appeal in case such motion is refused." O'Rourke v. Atlantic Paint Co., 74 S.E. 930, 932 (1912).

Having not appealed the judgments, the Magistrate Court's decisions are now the law of the case. See Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009). This case must be considered in the light of these unchallenged decisions that Plaintiff/Appellant owed the various funds to the County.

The reason time limits exist within which a party must file post-trial motions or appeals is to provide finality and certainty to the various parties relying on the court's decisions. "Principles of finality, certainty, and the proper administration of justice suggest that a decision once rendered should stand unless some compelling countervailing consideration necessitates relitigation." Hossler v. Barry, 403 A.2d 762, 769 (Me. 1979) (quoted by Beall v. Doe, 315 S.E.2d 186 (Ct. App. 1984)).

Indeed, Rule 60 specifically provides the mechanism to attack a final judgment as void. SCRCP 60(b). Plaintiff/Appellant attempts to rely on this rule as the basis for this action; that reliance is misplaced.

Plaintiff/Appellant could only be relying upon Rule 60(b)(4) where the claim is that the challenged judgment is "void." The other reasons supporting a Rule 60 motion only support such motion if it is filed within one (1) year of the judgment's entry, see SCRCP 60(b)(1)-(3), or where the judgment has been satisfied, see SCRCP 60(b)(5). As this action was not filed within a year of the entry of any of the 2000-2009 judgments occurred (or the 2010 judgment), it would not be a timely Rule 60(b) motion for any claims of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, or fraud, misrepresentation, or other misconduct of an adverse party. SCRCP 60(b).

Aside from the fact that, as more thoroughly set out in the Initial Brief of the County Respondents, the Magistrate Court decisions were properly entered and are not void, a closer look at Rule 60 makes it clear that this action was not a timely or proper collateral attack on the Magistrate Court judgments. For most of the cases relied upon by Plaintiff/Appellant, the Rule 60(b) motion or action was filed in the same court in which the questioned decision was rendered. This is consistent with the expectation that a court has the opportunity to correct its own errors before a higher court considers the matter. See, e.g., Mr. T. v. Ms. T., 378 S.C. 127, 662 S.E.2d 413 (Ct. App. 2008) (action commenced in family court to challenge prior family court

decision); Thomas & Howard Co., Inc. v. T.W. Graham & Co., 318 S.C. 286, 457 S.E.2d 340 (1995) (challenge to circuit court's decision filed in circuit court). And, in Bunkum v. Manor Properties, 321 S.C. 95, 467 S.E.2d 758 (Ct. App. 1996), the action filed to challenge the decision of a Master In Equity on the grounds he did not have jurisdiction to render a supplemental order was filed within a year of the challenged decision and in the same circuit court in which the matter was referred to the Master.[3]

The most important deficiency in Plaintiff/Appellant's reliance on Rule 60 as the basis for his ability to collaterally attack the Magistrate Court judgments is that Rule 60 requires any motion made under this rule to be made "within a reasonable time." Rule 60(b), SCRCP. Because the one-year limit for reasons like mistake and fraud begins to run when the order is entered, not when the party receives notice, it is difficult to see how a reasonable time could be any longer than one year from the date on which the party seeking to challenge a court decision has actual notice. Here, Plaintiff/Appellant's pattern of behavior has been denial and delay. There must be some burden on the Plaintiff/Appellant to act diligently and promptly and, in any event, "within a reasonable time."

That the reasonable time limitation applies Rule 60(b)(4) motions was confirmed in McDaniel v. US Fidelity and Guaranty Co., 478 S.E.2d 868 (Ct. App. 1996). With none of his conduct has Plaintiff/Appellant acted within a reasonable time to address the issues in this and the previous actions.

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[3] Since a Master in Equity has authority only to the extent the reference to him is made, the circuit court retains jurisdiction over all non-referred issues.

Indeed, by his own testimony it appears that Plaintiff/Appellant simply did not believe he should have to pay the fees and he, therefore, simply ignored all of the County's attempts, through the courts and otherwise, to collect the fees owed.

The Circuit Court correctly decided it did not have subject matter jurisdiction in this matter. To properly attack the Magistrate Court's decisions, Plaintiff/Appellant should have filed any Rule 60 motion (or other post-trial motions or appeal) in the Magistrate's Court. He chose, instead, to file in the circuit court. The Circuit Court is essentially the higher court for the magistrate; that higher court should not make decisions the lower court was not given the opportunity to consider. Even assuming Plaintiff/Appellant is correct that the Magistrate Court did not have subject matter jurisdiction such that that issue may be raised at any time and before a higher court for the first time, consideration of that issue still must be within a permissible procedural avenue – appeal. To permit a party to wait years after notice of a judgment he considers void to challenge that judgment is detrimental to the parties and individuals who have relied upon the finality of the court's decision, particularly following expiration of the time for any appeals. Here, Mase and Company, LLC is so prejudiced.[4]

[4] Even if this Court deems this action a properly filed Rule 60(b)(4) motion, it should deny that motion, as the circuit court can be said to have done, particularly in the light of the standard of review of lower court's decisions on Rule 60 motions, which standard is abuse of discretion. See BB&T v. Taylor, 633 S.E.2d 501 (S.C. 2006).

The prejudice, fees and other costs incurred by this Respondent as a result of Plaintiff/Appellant's delayed response to his disputes with the County are sufficient reason to deny Plaintiff/Appellant the relief he seeks – return of the property – and, even if this Court reverses the lower court's decision any further proceedings should be solely between Plaintiff/Appellant and the County Respondents with only the possibility of money damages permitted to compensate Plaintiff/Appellant.

II. THE CIRCUIT COURT DID NOT ERR IN GRANTING DEFENDANTS SUMMARY JUDGMENT WHERE, IN ADDITION TO A LACK OF SUBJECT MATTER JURISDICTION, EVEN HAD JURISDICTION EXISTED NO GENUINE ISSUES OF MATERIAL FACT EXISTED UPON WHICH APPELLANT COULD SUCCEED ON ANY OF HIS CLAIMS.

Plaintiff/Appellant also alleges as error in this appeal the Circuit Court's dismissal of the Fourth and Fifth causes of action, which alleged denial of equal protection (Fourth) and negligence under the South Carolina Tort Claims Act (Fifth). Mase's position is that these claims were properly dismissed and adopts and incorporates the County Respondents' arguments as to these claims. These actions, however, do not directly impact Mase and are most appropriately addressed, if reinstated, by money damages.

Plaintiff/Appellant also asserts error in the dismissal of the more recently added Sixth cause of action asserting that the sale of Plaintiff/Appellant's property should be set aside because of the low purchase price. This claim was also properly dismissed.

A judicial or similar sale can only be set aside for equitable reasons. Admittedly, under some circumstances, one of those reasons may be a

grossly inadequate price that shocks the conscience. See, e.g., Arrow Bonding Co. v. Warren, 399 S.C. 603, 732 S.E.2d 622 (2012); Investors Savings Bank v. Phelps, 397 S.E.2d 780 (Ct. App. 1990); and Poole v. Jefferson Stand. Life Ins. Co., 174 S.C. 150, 177 S.E. 24 (1934); see also Ex Parte Eastern Savings Bank FSB v. Sanders, Op. 4234 (2007). Here, though the price was low, there were at least two bidders, and no evidence of fraud. Mase was a good faith purchaser in a legitimately conducted public sale. Whether to set aside a sale lies within the sound discretion of the trial judge. See Phelps, 397 S.E.2d 780.

A review of the jurisprudence on this issue demonstrates that absent some showing of inequitable conduct by the one conducting the sale or the purchaser, a sale such as occurred in this case should not be set aside regardless of the price. Appeal of Paslay, 230 S.C. 55, 94 S.E.2d 57 (S.C. 1956) (citing a number of early cases on the point, (citations omitted) including explaining where no improper conduct by the purchaser is alleged "inadequacy of price will not vitiate a sheriff's sale" and "where unfair means have not been employed to prevent competition at sheriff's sales, inadequacy of price, however great is no ground for setting them aside").

It is not mere inadequacy of price that can justify invalidating the sale here. Perhaps the best recitation of the law on this point in South Carolina was this Court's recognition of the law as quoted from an opinion from the Georgia Supreme Court:

> Inadequacy of price paid upon the sale of property under power of [foreclosure sale] will not of itself and standing alone be

> sufficient reason for setting aside the sale. It is only when the price realized is grossly inadequate **and** the sale is accompanied by either fraud, mistake, misapprehension, surprise or other circumstances which might authorize a finding that such circumstances contributed to bringing about the inadequacy of price that such a sale may be set aside by a court of equity.

Patterson v. Goldsmith, 292 S.C. 619, 628, 358 S.E.2d 163 (Ct. App. 1987) (quoting Giordano v. Stubbs, 184 S.E.2d 165 (Ga. 1971) (emphasis added)). Simply put, no evidence exists of any misconduct that resulted in the price bid and paid by Mase. Mase was a stranger to the situation and merely appeared and participated in a properly conducted public sale. Plaintiff/Appellant's complaint only alleges inadequacy of price as compared to the alleged fair market value. Not only is this not the proper comparison to state a claim that the price shocks the conscience, but it fails to allege the other element to recover on this claim – that there was some impropriety in the actual sale that chilled the bidding and resulted in a low purchase price. Thus, this cause of action was properly dismissed as no relief could be granted on the facts pled by Plaintiff/Appellant and not even a scintilla of evidence exists to support this claim, even if properly pled

III. AS A GOOD FAITH PURCHASER FOR VALUE OF THE RELEVANT PROPERTY, RESPONDENT MASE AND COMPANY, LLC, WHICH ENTITY HAS BEEN THE OWNER OF THE PROPERTY SINCE 2009 AND HAS UNDERTAKEN ALL MAINTENANCE, TAXES AND OTHER COSTS ASSOCIATED WITH SUCH OWNERSHIP SHOULD BE DISMISSED FROM THIS ACTION WITH ANY REMAINING DISPUTES TO BE DECIDED AS BETWEEN THE OTHER PARTIES WITHOUT IMPACT ON MASE'S TITLE TO THE REAL PROPERTY NOW OWNED BY IT.

Given the equitable claims made by Plaintiff/Appellant, equity should determine any relief in this matter. Plaintiff/Appellant does not come to this court with clean hands. His delay and adversarial stance with the County has made it inequitable, at this point, regardless of this Court's decision on the survival of any of Plaintiff/Appellant's claims, for return of the property to be an appropriate remedy.

Mase purchased the property at a sheriff's sale. He had no relationship with any of the parties prior to this purchase and the ensuing litigation. He played no part in orchestrating or conducting the sale. He merely attended, per the posted notice of sale, and bid on the property. He was the high bidder. Upon receipt of the deed, he then became responsible for all fees, taxes and maintenance of the property. He has continued to be responsible for those costs and responsibilities since 2009 – six years ago. To issue any decision in this matter that would require the return of the property to Plaintiff/Appellant would be inequitable.

At many points in the years of proceedings, Plaintiff/Appellant could have taken actions to stop the sale of his property. He chose not to do so and to wait an unreasonable period of time to file this action. He should not unduly benefit from his delays by being returned property for which someone else has been legally liable since 2009.[5]

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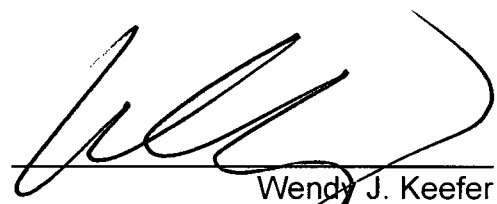
[5] Should any decision in this matter require Mase to return the property either to the Sheriff to conduct a new sale or to Appellant, which return Mase contends would be improper, Mase contends he would be entitled to recover from one or more of those parties any and all costs incurred with his purchase and ownership of the property.

CONCLUSION

For the foregoing reasons, and those contained in the Initial Brief of the County Respondents, Respondent Mase and Company, LLC respectfully requests this Honorable Court affirm the lower court's decision granting summary judgment against Plaintiff/Appellant on all claims. In the alternative, Respondent requests this Honorable Court deem him a good faith purchaser for value and rightful owner of the property at issue with any remaining issues between the other parties to be resolved through the award of money damages.

Respectfully Submitted,



Wendy J. Keefer
S.C. Bar #16427
Keefer & Keefer, LLC
1643B Savannah Hwy, Suite 226
Charleston, South Carolina 29407
(843) 860-1534
wendykeefer@yahoo.com

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CERTIFICATE OF COMPLIANCE

I certify that to the best of my knowledge the Final Brief of Respondent Mase and Company, LLC, being filed with this Certificate, complies with Rule 211(b) and all other applicable rules of the South Carolina Appellate Court Rules

Wendy J. Keefer
S.C. Bar #16427
Keefer & Keefer, LLC
1643B Savannah Hwy, Suite 226
Charleston, South Carolina 29407
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RESPONDENT MASE AND COMPANY, LLC'S
PROOF OF SERVICE

I certify that I have served copies of Respondent Mase and Company, LLC's Final Brief, by depositing a copy of each in the United States Mail, postage prepaid, on March 28, 2016, addressed to attorneys of record, Edward A. Bertele, 1812 Pierce Street, Charleston, SC 29492 and Christopher T. Dorsel, Senn Legal, P.O. Box 12279, Charleston, SC 29422:

Wendy J. Keefer
S.C. Bar #16427
Keefer & Keefer, LLC
1643B Savannah Hwy, Suite 226
Charleston, South Carolina 29407
(843) 860-1534
wendykeefer@yahoo.com