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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland
Master In Equity for Richland County

Case No. 2016-CP-001468

South Carolina Community Bank,

Respondent,

v.

Carolina Procurement Institute, Inc.,
Gary A. Washington,
Michele A. Washington,
First Palmetto Savings Bank,
F.S.B., Branch Banking and
Trust Company of South
Carolina, Palmetto Health
Alliance, State of South
Carolina Department of Revenue

Of Whom Carolina
Procurement Institute, Inc.,
Gary A. Washington, Michele A.
Washington.

Appellants.

INITIAL BRIEF OF APPELLANT

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STATUTES

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STATEMENT OF ISSUES ON APPEAL

1. Did the Order Denying Motion to Reconsider fail to make sufficient findings of fact and conclusions of law in accordance with Rule 52(a) of the South Carolina Rules of Civil Procedure?
2. Did the Master In Equity err by not finding that the Notice of Sale did not comply with Rule 71 (b) of the South Carolina Rules of Civil Procedure?
3. Did the Master In Equity err by not issuing a revised Notice of Sale and holding a new foreclosure sale?

STATEMENT OF THE CASE

This was a foreclose action instituted by Respondent, South Carolina Community Bank, on or about December 17, 2008 against the Appellants seeking to foreclose upon a mortgage on real property situated in Richland County, South Carolina.

The foreclosure action was stayed as the Appellants, Gary A. Washington and Michele A. Washington filed bankruptcy several times and the automatic stay pursuant to the bankruptcy laws stayed the foreclosure proceedings in state court. Carolina Procurement Institute, Inc. filed bankruptcy also. The Appellants were subsequently dismissed from bankruptcy and the automatic stay lifted. As a result of the aforesaid, the real property was subsequently sold at public auction for the sum of \$370,000.00 on November 2, 2015.

The gist of this appeal concerns the appropriateness of the final order of the lower court, to wit: the Order Denying Motion To Reconsider.

Also, the Third Supplemental Order to The Master in Equity's Order and Judgment of Foreclosure and Sale dated June 30, 2015 and filed July 17, 2015 is relevant to this appeal as it did not comply with applicable law.

Appellants strongly feel that the notice issue is paramount to this appeal as well as the failure of the final order to make sufficient findings of fact and conclusions of law.

ARGUMENTS

I. THE ORDER OF THE MASTER IN EQUITY DID NOT COMPLY WITH RULE 52(A) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

Rule 52(a) provides that the Court shall find the facts specially and state separately its conclusions of law thereon.

An examination of the Order being appealed from herein clearly shows that the Master in Equity failed to make sufficient findings of fact and state its conclusions of law.

The arguments raised by counsel for Appellants in his Motion to Set Aside Foreclosure Sale were not addressed in the Order being appealed from.

Also, the grounds argued at the hearing on April 28, 2016 were not addressed or ruled upon in the final order.

Clearly, the final order does not comply with Rule 52(a) and this case should be remanded to the lower Court for further disposition.

II. THE NOTICE OF SALE HEREIN DID NOT COMPLY WITH RULE 71(B) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

Rule 71(b) of the South Carolina Rules of Civil Procedure outlines the matters required to be placed in an Order of Judgement and Sale on Foreclosure. The relevant Notice of Sale herein did not include any of the requisite matters outlined in the Rule.

At a minimum, the trial court's order of judgement shall contain (1) a sufficient legal description of the property being sold; (2) a provision for the necessary legal advertisement; (3) the time and location of the sale; (4) notice of any senior liens, taxes, or other rights to which the property to be sold is subject; (5) the amount of good faith deposit necessary at the time of the sale; and (6) the date that compliance must be made with the bid." Ex Parte Moore, 346 S.C. 274,284,550 S.E.2d 877,882 (Ct. App.2001).

Notwithstanding the discussion of the clean hands issue by the Master in Equity, the requirements of Rule 52(a) mandates at least a discussion how that equitable principal would preclude the relief being sought in the action then before the Court.

III. THE MASTER IN EQUITY SHOULD HAVE ORDERED AND ISSUED A NEW ORDER OF JUDGMENT AND NOTICE OF SALE AND SCHEDULED A NEW FORECLOSURE HEARING.

The Affidavit of Gary A. Washington attached to the Motion to Set Aside Foreclosure Sale clearly shows that Mr. Washington did not receive notice of the foreclosure sale scheduled for November 2, 2015. The clear intent and purpose of Rule 71 (b) is to ensure that all parties affected by the foreclosure sale will have notice of the sale. This did not occur.

This matter was brought to the Court's attention by the filing of the motion and also at the April 28, 2016 hearing on the motion.

The fact that Mr. Washington did not receive notice is sufficient alone to warrant the remand of this case back to the Master in Equity for Richland County regarding the issue of sufficient notice and rescheduling of the foreclosure sale.

CONCLUSION

For the reasons stated herein, this Court should reverse the Order Denying Motion to Reconsider and remand this case to the Master in Equity for Richland County for a new foreclosure sale.

Dated this the 15th day of December, 2016.

Respectfully Submitted,

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Alliance, State of South
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Of Whom Carolina
Procurement Institute, Inc.,
Gary A. Washington, Michele A.
Washington.

Appellants.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to be Included in the record on Appeal on the Respondent through its attorneys of record, Charles J. Webb and Carmen Ganjehsani at Post Office Drawer 7788, Columbia, South Carolina 29202 by depositing a copy of it in the United States Mail, postage prepaid, on December 15, 2016.

By:

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Reply to: Columbia Office

December 15, 2016

The Honorable Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
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Columbia, SC 29211

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SC Court of Appeals

RE: South Carolina Community Bank v. Carolina Procurement, Inc., et al
Appellate Case No.: 2016-001468
Our Case No.: 2016-034

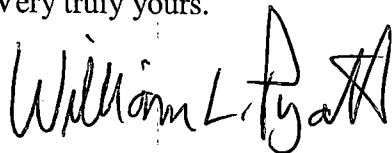
Dear Ms. Kitchings:

Enclosed please find for filing the original and one (1) copy of the Initial Brief of Appellant along with the Designation of Matter to be Included in the Record on Appeal. Also, enclosed is a proof of service herein.

Please provide us with clocked copies of the aforesaid documents.

By copy of this letter we are advising opposing counsel on the filing herein as well as providing them with all the aforesaid documents.

Very truly yours.



William L. Pyatt

WLP/rfs

Enclosures

cc: Mr. Charles J. Webb, Esquire (w/enclosures)
cc: Ms. Carmen Ganjehsani, Esquire (w/enclosures)