

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

S.C. Supreme Court

Joe M. Crosby, Master-in-Equity

Appellate Case No. 2011-198986 (S.C. Ct. App. filed May 25, 2012)

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

v.

Todd C. Alexander, ... Petitioner.

APPENDIX

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STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-C-158

FILED
GEORGETOWN COUNTY, S.C.
2011 JUN 17 P 2:178
CLERK OF COURT
JANET WHITE

Wachesaw Plantation East Community
Services Association, Inc.,

Plaintiff,

vs.

Todd C. Alexander,

Defendant.

MOTION TO VACATE SALE

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.

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June 17, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-CP-22-1583

Wachesaw Plantation East Community)
Services Association, Inc.,)
)
Plaintiff,)

vs.)

Todd C. Alexander,)
)
Defendant.)
_____)

**MEMORANDUM IN SUPPORT OF
MOTION TO VACATE SALE**

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. 2d 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 judicata 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.

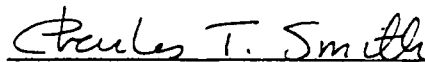
The sale of Todd Alexander's property was not complete and his equity of redemption was not barred when he exercised the right and equity of redemption on June 16, 2011. Therefore the sale should be vacated.

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, notwithstanding 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.



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July 19, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-22-1583

Wachesaw Plantation East Community)
Services Association, Inc.)

Plaintiff,)

v.)

Todd C. Alexander,)

Defendant.)

MEMORANDUM OF THIRD
PARTY BIDDER

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,

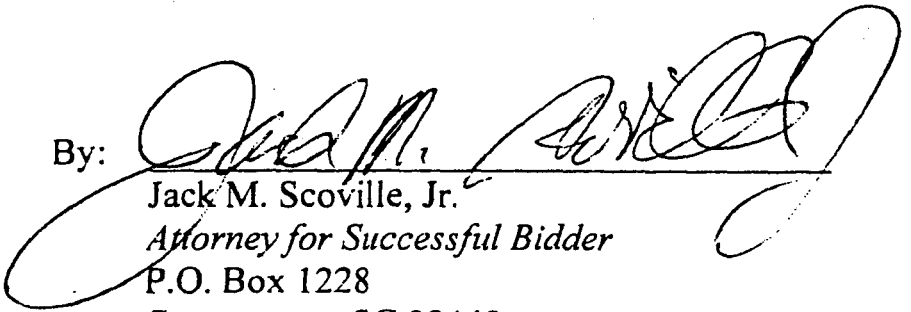
pursuant to SCRCP 4(d)(8). The Defendant personally signed the receipt. Therefore service was valid on October 10, 2010, per the receipt and rule. The record shows proper notice of the subsequent proceedings were sent to Defendant by mail, in accordance with the rules. The Defendant raises no issue of 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: 

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STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
Wachesaw Plantation East Community)
Services Association, Inc.)
Plaintiff,)
v.)
Todd C. Alexander,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-22-1583

COPY

ORDER DENYING MOTION

FILED
GEORGETOWN COUNTY, S.C.
2011 AUG -9 PM 4:43
ALMA Y. WHITE
CLERK OF COURT

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

1/2

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 SCRCF 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.

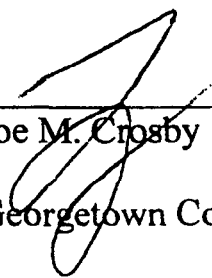
While Defendant indisputably has serious medical problems, no showing is made that such problems prevented him from making payment of the slightly more than \$5500.00 found to be due and owing by the Court in its final decree.

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

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

RECEIVED

SEP 12 2011

SC Court of Appeals

Case No. 2010-CP-22-1583

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

v.

Todd C. Alexander, ... Appellant.

NOTICE OF APPEAL

Todd C. Alexander appeals the order of the Honorable Joe M. Crosby dated August 9, 2011.
Appellant received written notice of entry of this order on August 15, 2011.

September 8, 2011

Charles T. Smith

Charles T. Smith
1112 Highmarket Street
Georgetown, South Carolina 29440
(843) 546-6131
Attorney for Appellant

Other Counsel of Record:

Hal L. "Chip" Beverly, Jr.
4610 Oleander Drive, Suite 203
Myrtle Beach, South Carolina 29577
(843) 449-3411
Attorney for Respondent

Jack M. Scoville, Jr.
Post Office Box 1338
Georgetown, South Carolina 29440
(843) 546-1130
Attorney for Third Party Bidder

RECEIVED
SEP 12 2011
SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Joe M. Crosby, Master-in-Equity
Case No. 2010-CP-22-1583**

Wachesaw Plantation East Community Services Association, Inc.,

Respondent,

v.

Todd C. Alexander,

Appellant.

MOTION TO DISMISS APPEAL

The Third Party bidder, William George, moves to dismiss this appeal on the grounds that the issue appealed is now moot.

FACTS

The original case here was to foreclose a homeowners' association assessment lien. Service of the Summons, Complaint, and Lis Pendens was made on the Defendant, Todd C. Alexander. (Exhibit 1) He

subsequently defaulted and an Order of Default was issued. He was notified of the Order of Default, Order of Reference, and the hearing date and place by mail on April 1, 2011. (Exhibit 2) The Master's Report and Judgment of Foreclosure and Sale was issued on April 19, 2011. (Exhibit 3) No appeal was taken from the final decree. The sale was duly advertised, and the property was sold at public auction on June 6, 2011. Bidding was competitive and the sale price was \$184,000.00. The successful bidder was William George. Mr. George complied with the terms of sale by paying the bid amount to the Master. On June 17, 2011, before the Master had issued the deed, Appellant filed a Motion to Vacate Sale, alleging that the sale price was inadequate; he had a right to redeem at any time until the deed was issued by the Master, and other grounds. (Exhibit 4) The Appellant did not request the Master stay the issuance of his deed while the case was appealed in the event the Master denied the motion to vacate. The Appellant has not raised any issue of lack of jurisdiction or notice and has not contested the validity of the foreclosure proceedings in any way. A hearing was held on the motion to vacate on June 21, 2011. The Master issued his order denying the

motion on August 9, 2011. (Exhibit 5) The Master's deed was recorded August 25, 2011. (Exhibit 6) Notice of Intent to Appeal that order was served on September 8, 2011. No bond has been posted to stay the sale. No motion for supercedeas or to stay the sale was made.

MOOTNESS

A court does not concern itself with moot or speculative questions. An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists. A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief. *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct.App.2009).

THE SALE WAS NOT STAYED

The Code provides that the sale pursuant to a foreclosure decree is not stayed by an appeal unless a bond is posted. Section 18-9-170, S.C.

Code Ann., provides in pertinent part:

If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking. When the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency, which sum shall be duly entered as a payment on the judgment; and in case the land shall be unimproved land, then in any action or proceedings now pending or hereafter

begun in any of the courts of this State the undertaking shall further provide for the payment by appellant, if the judgment be affirmed, of any taxes due at the time of the appeal or already paid by the mortgagee, or becoming due during the pendency of the appeal, and also for the payment by appellant of the interest on the debt falling due during the pendency of such appeal.

ARGUMENT

This appeal is moot because the sale was finalized before Appellant appealed. Even if the Appellant had filed his notice of appeal before the sale was finalized, such would not have stayed the execution of the judgment because no bond was posted.

Although Appellant had up to thirty days to file his Notice of Appeal, there is nothing that prevents him from filing it sooner. Since the execution of the sale is not stayed by an appeal unless a bond is posted, it was incumbent upon Appellant to file the appeal and bond immediately upon receipt of the order denying the motion to vacate the sale, if he wanted to protect his interest in the property.

Appellant could have further protected himself by asking the Master to stay issuance of the deed until the appeal was decided. He did not do this.

Public policy requires this appeal to be dismissed under these circumstances. “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).

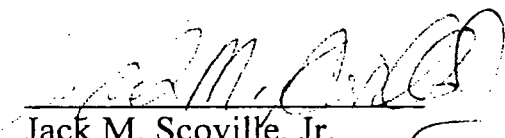
A statutory procedure is in place to protect the rights of a losing party in foreclosure actions. That is the sale may be stayed while the case is on appeal *if the appellant posts a bond to protect the interests of the other party*. This is only fair. The prevailing party has established his right to sell the property to recoup his investment per the judicial proceeding. If the mortgagor might delay the sale merely by filing a notice of appeal, sales would be chilled. Therefore, the Legislature has provided that sales go forward unless the mortgagor posts a bond to protect the interests of the successful bidder at the sale in the event the appeal is unsuccessful. If no bond is posted, the sale proceeds at the risk of the appellant. Since the sale has been consummated here, there is nothing the appellate court can do that would have any practical effect on the parties.

Appellant has only himself to blame for his situation. He ignored the process of the court, ignored the notices to appear at the hearing, ignored the sale, and failed to move expeditiously to obtain a stay of the sale. A decision of this court to reverse the decision of the Master will

be simply an answer to an academic question. This appeal is moot and should be dismissed.

Jack M. Scoville, Jr., P.A.

By:


Jack M. Scoville, Jr.

Attorney for Third Party Bidder

Post Office Drawer 1228

1001 Front Street

Georgetown, South Carolina 29442

(843) 546-1130 (phone)

(843) 546-0726 (fax)

Email: scorac@aol.com

Date: September 22, 2011

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-2-1583

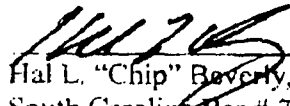
**PROOF OF SERVICE as to
Defendant Todd C. Alexander**

CLERK OF COURT

2010-11-2 PM 3:43

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: 1/2/2015

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

2. Article Number

(Transfer from service label)

7009 2250 0004 3081 8814

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Todd Alexander

☐ Age
☐ Ad

B. Received by (Printed Name)

Todd Alexander

C. Date of

10/18/

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 Merch
- ☐ Insured Mail ☐ G.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

2010 OCT -2 PM 3:43
CLEAN 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

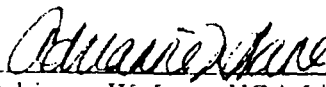
Adrianne W. Lane certifies that she is a legal assistant with the law firm of McCutchen, Mumford, Vaught, O'Dea & Geddie, P.A. and that she has mailed the documents listed below in the above-entitled action to the addressee(s) below on April 1, 2011 and proper postage was attached thereto.

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

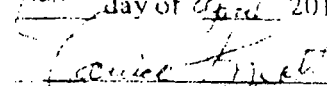
ADDRESSEE(S): Todd Alexander
Post Office Box 165
Carversville, PA 18913

FILED
CLERK OF COURT

2011 APR 11 P 2:25 B


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: 7/27/16

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-21583

**AFFIDAVIT OF DEFAULT and
NON-MILITARY SERVICE as to
DEFENDANT TODD C. ALEXANDER**

CLERK
COURT
2010-11-18

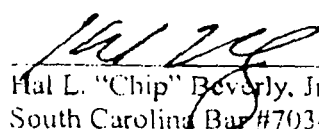
PERSONALLY APPEARED before me, the undersigned attorney, who first being duly sworn, deposes and says:

That I am one of the attorneys representing the Plaintiff above named; that the Summons and Complaint were served via Certified Return Receipt Restricted Delivery First Class Mail on October 18, 2010 upon **Defendant**, Todd C. Alexander, (attached hereto as Exhibit "A" is the Proof of Service as to this Defendant); that more than thirty (30) days have expired since such service(s), and **Defendant**, Todd C. Alexander, has failed to answer, appear or otherwise plead in this cause; consequently, said Defendant is now in default.

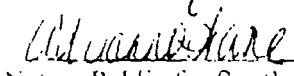
Further, I am familiar with the provisions of the Servicemember's Civil Relief Act (108 P.L. 189; 177 Stat. 2835; 2003 Enacted H.R. 100) and represent to the Court that from the information in my file, with specific reference to the Affidavit of Service attached hereto, the Defendant above named is not in the Military Service of the United States and is not entitled to the protection of the Servicemember's Civil Relief Act of 2003 and any amendments thereto.

This affidavit is made upon information and belief obtained from investigations conducted by McCutchen, Mumford, Vaught, O'Dea & Geddie, P.A. and Wachesaw Plantation East Community Services Association, Inc., Plaintiff herein.

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
23 day of November 2010.


Notary Public for South Carolina
My Commission expires: 11/7/2018

Defendant(s).

NOTICE OF HEARING

40

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

ORDER OF REFERENCE

FILED
GEORGETOWN COUNTY, S.C.
2011 MAR 24 PM 4:20
ALMA Y. WHITE
CLERK OF COURT

Pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled case is an action for foreclosure and may be referred to a Master-in-Equity in the above-entitled county by order of a Circuit Court Judge or the Clerk of Court.

IT IS HEREBY ORDERED that this action is referred to the Honorable Joe M. Crosby, as Master-in-Equity to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCP, and all matters arising from or reasonably related to such action. The Master-in-Equity shall retain jurisdiction to perform all necessary acts incident to this foreclosure action, including issuance of a writ of assistance or issuance of any rule to show cause including, but not limited to, any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, the Master-in-Equity shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including, but not limited to, Rule 60(b).

The hearing shall be held in the office of the Honorable Joe M. Crosby, Master-in-Equity for Georgetown County, located at:

Georgetown County Courthouse
401 Cleland Street, Courtroom 2C
Georgetown, South Carolina 29442

And the final report by the Master-in-Equity shall be filed with the Clerk of Court for Georgetown County not later than sixty (60) days after the date of the hearing.

Circuit Court Judge for Horry County

OR

Georgetown
County, South Carolina
March 24, 2011

W. S. 1250
2/2/2011
[Signature]

[Signature]
Horry County Clerk of Court
Georgetown

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

**MASTER'S REPORT AND JUDGMENT
OF FORECLOSURE AND SALE**

FILED
2011 APR 29 A 8:52
CLERK OF COURT

Pursuant to Rule 53 SCRPC, 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	\$ 25.00
(i.e., certified letters, etc.)	
+ 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 lien 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) 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), SCRCF.

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

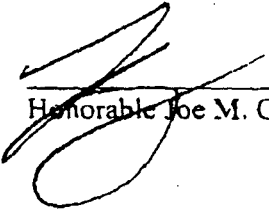
records; said plat being incorporated herein by reference as part of this description.

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

19 April, 2011
Georgetown, South Carolina


Honorable Joe M. Crosby

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-CR-158

Wachesaw Plantation East Community
Services Association, Inc.,

Plaintiff,

vs.

Todd C. Alexander,

Defendant.

MOTION TO VACATE SALE

FILED
2011 JUN 17 P 2:16
CLERK OF COURT

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)
COUNTY OF GEORGETOWN)
Wachesaw Plantation East Community)
Services Association, Inc.)
Plaintiff,)
v.)
Todd C. Alexander,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-22-1583

COPY

ORDER DENYING MOTION

FILED
GEORGETOWN COUNTY, S.C.
2011 AUG -9 PM 4:43
ALMA Y. WHITE
CLERK OF COURT

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

1/2

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,

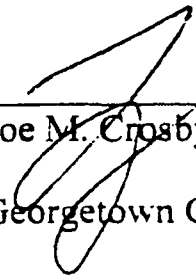
per the receipt and rule. The record shows proper notice of the subsequent proceedings were sent to Defendant by mail, in accordance with the rules. The Defendant raises no issue of improper service, lack of notice or lack of jurisdiction.

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

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

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-22-1583

Wachesaw Plantation East Community
Services Association, Inc.

Plaintiff,

v.

Todd C. Alexander,

Defendant.

Certificate of Mailing

The undersigned hereby certifies that she is an employee of the Law Office of Jack M. Scoville, Jr., and that she served a copy of the *Order Denying Motion* on the following counsel by mailing a copy thereof, depositing same in the United States mail, on the 12 day of August, 2011, first class postage prepaid, and addressed as follows:

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

Charles T. Smith, Esquire
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440

Jack M. Scoville, Jr., PA

By:

Mira Watson
Mira Watson

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN) **MASTER IN EQUITY DEED**

GRANTEES' ADDRESS:

William George
3250 New Castle Drive
Rock Hill, S.C. 29732

KNOW ALL MEN BY THESE PRESENTS, that I, Joe M. Crosby, Master in Equity for Georgetown County, S.C., send greetings.

WHEREAS, in an action in the Court of Common Pleas in Georgetown County, S.C., with Civil Number 2010 CP 22 1583, between Wachesaw Plantation East Community Services Association, Inc., as Plaintiff, and Todd C. Alexander, as Defendant, the undersigned, by Master's Report and Judgment of Foreclosure and Sale filed on April 29, 2011, did decree that the property herein after described should be sold by the undersigned, as Master In Equity for Georgetown County, on the terms and for the purposes mentioned in the said Judgment; and,

WHEREAS, I, the undersigned, as Master in Equity for Georgetown County, S.C., after due advertisement of the said property for sale at public outcry, did openly and publicly, and after the manner of auction, sell the said property on June 6, 2011, for the sum of ONE HUNDRED EIGHTY-ONE THOUSAND DOLLARS (\$181,000.00), said sum being the highest amount bid at said sale and having been made by Jerry Callahan, as agent for William George; and,

GEORGETOWN COUNTY PARCEL # 41-0182F-225-00-00
SPE

1/8

S.C., (**Grantor**), in the State aforesaid, for and in consideration of a sum of ONE HUNDRED EIGHTY-ONE THOUSAND AND NO/100 DOLLARS. (\$181,000.00) paid by William George, Grantee, in the State aforesaid, (receipt whereof is hereby acknowledged) have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said **Grantee, his**

Heirs and Assigns forever the following described property:

ALL AND SINGULAR that certain piece, parcel of lot of land, together with the 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 III, Stage 3, Executive Village IV, Wachesaw Plantation East Subdivision, being more particularly shown on that 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 a part of this description.

This being the same property conveyed to Todd C. Alexander by deed of C. Richard Dobson Builders, Inc., dated December 29, 2000, and recorded in the Office of the Register of Deeds for Georgetown County, S.C., in Book 1145 at Page 159 on January 2, 2001.

This conveyance of the aforesaid real property shall be subject to all easements, reservations, rights-of-way, restrictions, encroachments, and covenants of record which may affect the above described property, and all governmental statutes, ordinances, rules and regulations.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

A handwritten signature in black ink, appearing to be '2/8' or similar, located below the main text block.

Grantee, his heirs and assigns forever.

WITNESS the execution hereof by Grantor this 24th day of August, 2011 and two hundred thirty-third (235th) year of the Sovereignty and Independence of the United States of America.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

Sheree M. Steen
(notary public signs here)

Joe M. Crosby (L.S.)
Master in Equity

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 24th day of August, 2011, by Joe M. Crosby.

Sheree M. Steen
Notary Public for South Carolina

My Commission Expires: 9-24-2019

3/f

TMS# 41-182F-225

Instrument
201100008145

Book Page
1735 338

108896 Aton Swann

201100008145

Filed for Record in
GEORGETOWN SC

WANDA PREVATTE, REGISTER OF DEEDS

08-25-2011 At 04:19 pm.

DEED 10.00

STATE TAX 470.60

COUNTY TAX 199.10

Book 1735 Page 335 - 338

Wanda J. Prevatte

61

RECORD THIS DATE



AUDITOR GEORGETOWN CO.

LINDA S. MOCK

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Joe M. Crosby, Master-in-Equity

Civil Action Number 2010-CP-22-1583
Case Tracking Number 2011198986

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

v.

Todd C. Alexander, ... Appellant.

INITIAL BRIEF OF APPELLANT

Charles T. Smith
1112 Highmarket Street
Georgetown, South Carolina 29440
(843) 546-6131
Attorney for Appellant

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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 THE PROPERTY HAD BEEN TIMELY REDEEMED?

STATEMENT OF THE CASE

Wachesaw Plantation East Community Services Association, Inc. commenced this action to foreclose a homeowners association lien for \$761.00 in past due assessments and late fees. The action was referred to Joe M. Crosby as Master-in-Equity. A hearing was held and a judgment of foreclosure and sale was issued.

Todd Alexander failed to bid at the foreclosure sale to protect his interests in the property. A third party bidder placed the high bid.

Todd Alexander tendered payment of the judgment and moved to vacate the sale before the sale was completed by full compliance with the bid. The Master-in-Equity denied the motion to vacate the sale.

FACTS

In 2001 Todd Alexander paid \$263,500.00 for the house in Wachesaw Plantation East. (Transcript of Testimony Ex. A) The house was purchased for his father and has been unoccupied since June of 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. (Alexander Affidavit p. 3) The present market value of the house is \$316,800.00 according to the Georgetown County Tax Assessor. (Order p. 6)

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. (Alexander Affidavit p. 3) He suffers from dilated cardiomyopathy as a result of cardiac sarcoidosis and has frequent hospitalizations for related heart and organ failure and secondary illnesses. (Alexander Affidavit p. 3) The amount claimed by the homeowners association was trivial compared to his equity in the house.

Todd Alexander continued to pay regime fees to the homeowners association. (Alexander Affidavit pp. 3-4) He did not know that a foreclosure decree had been issued or that the property had been scheduled for sale. (Alexander Affidavit p. 4) He was hospitalized from May 28, 2011 through June 10, 2011 for ablation surgery to correct chronic arrhythmias. (Alexander Affidavit p. 2) On June 7, 2011, the day after the sale, copies of the foreclosure decree and notice of sale were brought to his hospital room. (Alexander Affidavit p. 4) He had no knowledge of the foreclosure sale until June 7, 2011, the day after the sale. (Alexander Affidavit p. 4)

A third party placed the high bid at the sale. The third party bid of \$181,000.00 was \$135,000.00 less than the tax valuation of the house.

Todd Alexander tendered payment in full to the homeowners association's attorney on June 16, 2011. (Smith Affidavit p. 1) The homeowners association's attorney declined the tender because of concern about potential liability to the third party bidder. (Smith Affidavit p. 1) The motion to vacate the sale was filed and served on June 17, 2011 reaffirming that Todd Alexander is ready, willing and able to pay in full the judgment in this action. (Smith Affidavit p. 1) The third party bidder did not comply with his bid until June 24, 2011. (Smith Affidavit p. 1) A deed was not issued by the Master-in-Equity until after the motion to vacate sale was denied.

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 p. 4) The undisputed evidence in that Todd Alexander did not know of the foreclosure hearing, the foreclosure decree or the judicial sale until the day after the sale because of his illness and hospitalizations. 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. 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.*" (emphasis in original) *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 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. (Transcript of Testimony Ex. C) 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. (Alexander Affidavit p. 1) His medical conditions cause him to experience periods of extended hospitalization, repeated emergency room visits, confinement and rehabilitation. (Alexander Affidavit p. 2) 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 p. 3) 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 p. 4) On the day of the sale, Todd Alexander was hospitalized in Pennsylvania. (Alexander Affidavit p. 2)

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. 2d 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 a resident of South Carolina and is in very fragile health.

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

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 foreclosure sale was \$181,000.00, "The fair market value of the property was thus established at \$181,000.00." (Order p. 4) 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 (6th Ed. 1990)." *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 151, 662 S.E.2d 424, 426 (C.. 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." *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 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 \$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. Instead 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 the present 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 salesday. 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 at Todd Alexander's expense.

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

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 p. 5) The common law, the statutes and the decree in this action do not support the Master's conclusion. The equity of redemption is not terminated until the judicial sale is complete 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.

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

A property owner's rights and interests 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 judicata 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 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 *Cumbe v. Newberry*, 251 S.C. 33, 159 S.E.2d 915 (1968). The Court of Appeals disagreed stating:

“Cumbe 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 before the sale was completed. When he exercised his equity of redemption, the third party bidder had not complied with his bid and the proceedings were 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 his bid.

The foreclosure decree issued in this action is consistent with the pertinent statutes and case law. Paragraph nine 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 foreclosure decree recognizes that bidders do not always comply with the terms of their bids 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. The decree does not state that a high bidder receives an immediate right to the property upon the knocking down of the property on salesday. Only upon completion of the sale does the property owner lose his right, title, interest and equity of redemption in the property sold.

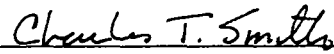
The sale of Todd Alexander's property was not complete and his equity of redemption was not barred upon the knocking down of the third party's bid. The property was timely redeemed before the sale was completed. Therefore the judicial sale should be vacated.

CONCLUSION

This is an action to foreclose a homeowners association lien for \$761.00 in assessments and late fees. The property has a fair market value of \$316,800.00. The high bid at the foreclosure sale was only \$181,000.00. Todd Alexander, notwithstanding his debilitating medical condition, timely exercised his right to redeem the property from the foreclosure.

The judicial sale should be set aside thereby permitting the homeowners association to accept Todd Alexander's payment in full of his debt or permitting the property to be readvertised and resold.

September 30, 2011



Charles T. Smith
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Georgetown, South Carolina 29440
(843) 546-6131
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

Civil Action Number 2010-CP-22-1583
Case Tracking Number 2011198986

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

v.

Todd C. Alexander, ... Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN
RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Order of Reference;
2. Transcript of Testimony;
3. Master's Report and Judgment of Foreclosure and Sale;
4. Motion to Vacate Sale;
5. Affidavit of Todd C. Alexander;
6. Affidavit of Charles T. Smith;
7. Memorandum in Support of Motion to Vacate Sale;
8. Memorandum of Third Party Bidder;
9. Correspondence of Third Party Bidder Regarding Right of Redemption;
10. Reply to Correspondence of Third Party Bidder Regarding Right of Redemption;
11. Order Denying Motion.

I certify that this designation contains no matter which is irrelevant to this appeal.

September 30, 2011

Charles T. Smith
Charles T. Smith
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Georgetown, South Carolina 29440
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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
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Joe M. Crosby, Master-in-Equity

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

v.

Todd C. Alexander, ... Appellant.

RETURN TO MOTION TO DISMISS APPEAL

FACTS

In 2001 Appellant paid \$263,500.00 for the house in Wachesaw Plantation East. The present market value of the house is \$316,800.00 according to the Georgetown County Tax Assessor. (Order p. 6)

When Appellant 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. (Alexander Affidavit p. 3) He suffers from dilated cardiomyopathy as a result of cardiac sarcoidosis and has frequent hospitalizations for related heart and organ failure and secondary illnesses. (Alexander Affidavit p. 3) The \$761.00 in past due assessments and late fees claimed by the homeowners association was

trivial compared to his equity in the house.

Appellant continued to pay regime fees to the homeowners association. (Alexander Affidavit pp. 3-4) He did not know that a foreclosure decree had been issued or that the property had been scheduled for sale. (Alexander Affidavit p. 4) He was hospitalized from May 28, 2011 through June 10, 2011 for ablation surgery to correct chronic arrhythmias. (Alexander Affidavit p. 2) On June 7, 2011, the day after the sale, copies of the foreclosure decree and notice of sale were brought to his hospital room. (Alexander Affidavit p. 4) He had no knowledge of the foreclosure sale until June 7, 2011, the day after the sale. (Alexander Affidavit p. 4)

A third party placed the high bid at the sale. The third party bid of \$181,000.00 was \$135,000.00 less than the tax valuation of the house.

Appellant tendered payment in full to the homeowners association's attorney on June 16, 2011. (Smith Affidavit p. 1) The homeowners association's attorney declined the tender because of concern about potential liability to the third party bidder. (Smith Affidavit p. 1) The motion to vacate the sale was filed and served on June 17, 2011 reaffirming that Appellant is ready, willing and able to pay in full the judgment in this action. (Smith Affidavit p. 1) The third party bidder did not comply with his bid until June 24, 2011. (Smith Affidavit p. 1)

The third party bidder vigorously opposed the motion to vacate the sale. A deed was issued by the Master-in-Equity following denial of the motion to vacate sale.

ARGUMENT

1. *William George is not a party in this appeal.*

William George was not named as a party in the pleadings. William George did not apply to intervene as provided in Rule 24 of the Rules of Civil Procedure. William George has not applied to intervene in this appeal or to file an amicus curiae brief as provided in Rule 213 of the Appellate Court Rules.

The Order which is the subject of this appeal states that, "The successful bidder was Jerry Callahan who bid \$181,000.00." and that, "The bidder has complied in all respects with the terms of the bid." (Order p. 2) William George's Motion to Dismiss Appeal states that, "The successful bidder was William George. Mr. George complied with the terms of the sale by paying the bid amount to the Master." (Motion p. 2) If either William George or Jerry Callahan wish to participate in this appeal, he should petition to intervene and submit to the jurisdiction of the Court.

2. *The Motion to Dismiss Appeal does not address the merits of the appeal.*

The Initial Brief of Appellant states four 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 the property

had been timely redeemed?

The Motion to Dismiss Appeal does not address the merits of the appeal. Instead William George argues that this Court lacks the authority to grant any relief, no matter how meritorious the appeal.

William George cites no statute, court rule or precedent prohibiting this Court from considering this appeal. Instead William George urges creation of a new rule that foreclosures or other judicial sales cannot be appealed unless a writ of supersedeas has been issued and a bond posted.

In *Ex Parte Moore*, 346 S.C. 274, 550 S.E.2d 877 (Ct. App. 2001) the special referee required Moore to tender earnest money to the court within fifteen minutes of the close of bidding at a judicial sale. After Moore was unable to tender his deposit within the allotted time, the referee re-advertised the property. Moore objected to the second sale and moved to confirm the first sale. Moore's objections were denied and he appealed. Moore petitioned for a writ of supersedeas; however the petition was withdrawn. A deed was issued to the high bidder at the second sale.

Under the ruled proposed by William George, the Court of Appeals would have had no authority to consider Moore's appeal. In fact the Court of Appeals reversed the referee and set aside the second sale. *See also: Carsten v. Wilson*, 241 S.C. 516, 129 S.E.2d 431 (1963) (Supreme Court noted that the defendant had not posted a bond to stay the foreclosure sale and proceeded to consider the merits of the appeal).

3. *This Appeal is not moot.*

The purpose of a writ of supersedeas in a foreclosure action is to allow the defendant to retain possession of the property during an appeal. "When the judgment directs the sale of land to satisfy a mortgage therein or other lien, the undertaking shall provide that in case the judgment

appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land . . .” *S.C. Code* §18-9-170 (1976 as amended). The bond protects the lien holder, not third party bidders.

A writ of supersedeas is not a precondition to an appeal in a foreclosure action. The existence of an appeal is a precondition to a writ of supersedeas in a foreclosure action.

William George seeks to secure a \$135,000.00 windfall at Appellant’s expense by preventing this Court from considering the merits of this appeal. He argues that the sale cannot be vacated because Appellant did not obtain a writ of supersedeas to stay the sale. On its face this rule would prevent any judicial sale from being vacated since, if the sale had been stayed, there would be no sale to vacate.

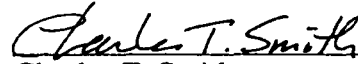
William George suffers no harm from the absence of a writ of supersedeas or a bond. The third party bidder has enjoyed the use and benefits of the property since he took possession on June 7, 2011. (Alexander Affidavit p. 4) It is the Appellant who is being denied the use and benefits of his property during the appeal. The third party bidder chose to comply with his bid after Appellant had filed a motion to vacate the sale.

Granting the Motion to Dismiss Appeal would overrule a number of cases in which appellate courts vacated judicial sales without requiring a writ of supersedeas. *See e.g.: Bonham v. Cave*, 102 S.E. 308, 86 S.E. 681 (1915); *Poole v. Jefferson Standard Life Ins. Co*, 174 S.C. 150, 177 S.E. 24 (1934); *Henry v. Blakely*, 216 S.C. 13, 56 S.E.2d 581 (1949); and *Ex Parte Moore*, 346 S.C. 274, 550 S.E.2d 877 (Ct. App. 2001)

CONCLUSION

If the Court considers William George's Motion to Dismiss Appeal, the motion should be denied.

October 5, 2011



Charles T. Smith
1112 Highmarket Street
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(843) 546-6131
Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
Wachesaw Plantation East Community)
Services Association, Inc.)
Plaintiff,)
v.)
Todd C. Alexander,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-22-1583

ORDER DENYING MOTION

FILED
GEORGETOWN COUNTY, S.C.
2011 AUG -9 PM 4:43
CLERK OF COURT
MAY Y. WHITE

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

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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

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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.

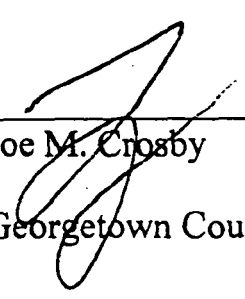
9. In the affidavits filed by Defendant in support of this motion, no excusable neglect is asserted. No reason is given for Defendant's failure to send a check upon receipt of the Summons and Complaint. While Defendant indisputably has serious medical problems, no showing is made that such problems prevented 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

4/

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

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

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

Wachesaw Plantation East Community
Services Association, Inc.,

Plaintiff,

vs.

Todd C. Alexander,

Defendant.

AFFIDAVIT

ALMA Y. WHITE
CLERK OF COURT

2011 JUL -7 P. 3:40 PM

FILED
GEORGETOWN COUNTY, S.C.

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 Lubert, the owner of Coastal Carolina Home Watch. Mr. Lubert 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.

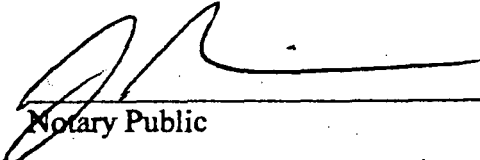
This news came as a great shock to me. I immediately contacted Renee Ambrosio who had periodically collected my mail at the post office. She brought the unopened letters to my hospital room. I had no prior knowledge of the foreclosure sale until June 7, 2011.

I am ready, willing and able to pay whatever money is owed Wachesa 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.

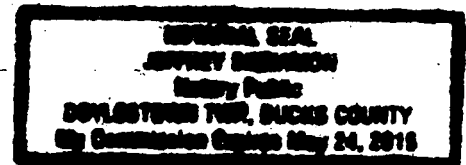


Todd C. Alexander

SWORN to before me this
6 day of July, 2011


Notary Public

My Commission Expires: May 24, 2015



STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-CP-22-1583

Wachesaw Plantation East Community
Services Association, Inc.,

Plaintiff,

vs.

Todd C. Alexander,

Defendant.

AFFIDAVIT

FILED
GEORGETOWN COUNTY, S.C.
2011 JUL -7 P 3:40
ALMA T. WHITE
CLERK OF COURT

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 Jean Markave
Notary Public

My Commission Expires: 04/17/2013



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 16, 2012

Charles T. Smith, Esquire
Grimes & Smith
1112 Highmarket St.
Georgetown, SC 29440

Hal LaVaughn Beverly, Jr, Esquire
McCutchen Mumford Vaught O'Dea & Geddie, PA
O'Dea & Geddie, PA
4610 Oleander Dr., Ste. 203
Myrtle Beach, SC 29577

Jack M. Scoville, Jr, Esquire
P.O. Drawer 1228
Georgetown, SC 29442

Re: Wachesaw Plantation v. Alexander, Todd

Dear Counsel:

Within ten (10) days of the date of this letter, please provide a memorandum addressing the following question, which was brought to light upon the filing of a motion by William George, the third party bidder: should this appeal be dismissed on the ground that all necessary parties were not named in the proceedings below?

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ma

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Joe M. Crosby, Master-in-Equity
Case No. 2010-CP-22-1583**

Wachesaw Plantation East Community Services Association, Inc.,

Respondent,

v.

Todd C. Alexander,

Appellant.

MEMORANDUM OF THIRD PARTY BIDDER

The Third Party bidder, William George, submits this memorandum in response to the Court's request that such be done addressing the issue of failure to name all necessary parties to the proceedings below.

FACTS

The original case here was to foreclose a homeowners' association assessment lien. The proceedings of foreclosure were regular. No appeal was taken from the final decree. The sale was duly advertised, and the property was sold at public auction on June 6, 2011. Bidding was competitive and the sale price was \$184,000.00. The successful bidder was William George, acting through his agent, Jerry Callahan. Mr. George complied with the terms of sale by paying the bid amount to the Master. On June 17, 2011, before the Master had issued the deed, Appellant filed a Motion to Vacate Sale, alleging that the sale price was inadequate; he had a right to redeem at any time until the deed was issued by the Master, and other grounds. Although a copy of the motion was served on Mr. Callahan by mail, neither he nor Mr. George were named as parties to the action. A hearing was subsequently held before the Master on the motion. Mr. George appeared through counsel and participated in the arguments. The Master denied the motion and the deed was issued to Mr. George. Appellant subsequently filed this appeal. Mr. George was not joined as a party to the appeal. Mr. George

filed a motion to dismiss the appeal on the grounds of mootness. The Court has now requested a memorandum on the issue of failing to join Mr. George as a party to the proceedings below.

THE PURCHASER AT A JUDICIAL BECOMES A PARTY TO THE ACTION

It appears well settled that the purchaser at a judicial sale becomes a party to the action. *Ex Parte Qualls*, 71 SC 87, 50 SE 646 (1905); *Parrot v. Dickson Hall*, 151 S.C. 114, 148 S.E. 704 (1929); *Harrington v. Blackston*, 311 S.C. 459, 429 S.E.2d 826(Ct. App. 1993). This rule appears proper and reasonable.

THE BURDEN IS ON THE APPELLANT TO IDENTIFY AND JOIN ALL NECESSARY AND INDISPENSABLE PARTIES

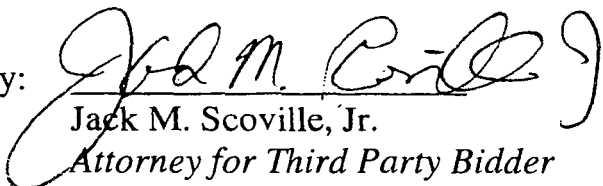
The burden is on the Appellant to identify and join all indispensable and necessary parties. *BancOhio Nat. Bank v. Neville* 310 S.C. 323, 426 S.E.2d 773, (1993). Rule 19, SCRCP provides for motions to dismiss for failure to join necessary parties up to the trial on the merits. No provision is made for such a motion under the circumstances present in this case. In *BancOhio Nat. Bank v. Neville*,

supra, the Supreme Court ordered joinder and remand in the appeal but a motion to dismiss had been made before the lower court pursuant to Rule 19. In this case, Mr. George had no interest in the proceedings until the close of the bidding. He had no procedure to move to dismiss and the parties below did not raise the issue.

THIS APPEAL SHOULD BE DISMISSED

Mr. George is a party to this action by virtue of being the successful bidder at the foreclosure sale, tendering the bid amount, and being the present owner of the subject property. It was Appellant's burden to join him as a party. It is too late to do so now under the rules. This matter should be dismissed.

Jack M. Scoville, Jr., P.A.

By: 
Jack M. Scoville, Jr.
Attorney for Third Party Bidder
Post Office Drawer 1228
1001 Front Street
Georgetown, South Carolina 29442
(843) 546-1130 (phone)
(843) 546-0726 (fax)
Email: scorac@aol.com

Date: February 23, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Joe M. Crosby, Master-in-Equity

Civil Action Number 2010-CP-22-1583
Case Tracking Number 2011198986

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

v.

Todd C. Alexander, ... Appellant.

THIS APPEAL SHOULD NOT BE DISMISSED ON THE
GROUND THAT ALL NECESSARY PARTIES WERE
NOT NAMED IN THE PROCEEDINGS BELOW

The simple answer to the question posed by the Court is that William George was not the third party bidder at the foreclosure sale. Jerry Callahan was the third party bidder. William George's interest in this action was not revealed until after the Master-in-Equity denied Todd Alexander's motion to vacate the foreclosure sale. The following chronology may be useful in clarifying the involvement of Jerry Callahan and William George.

June 7, 2011, the day after the foreclosure sale, Todd Alexander first learned of the foreclosure decree and the sale of his house. Letters notifying him of the foreclosure decree and the foreclosure sale were brought to his hospital room that day. The Master's office subsequently informed Todd

Alexander that the third party bidder at the sale was Jerry Callahan and that Jerry Callahan's attorney was Bob Gwin. Exhibit A.

June 17, 2011, Todd Alexander filed and served a motion to vacate the sale. The motion was mailed to the Plaintiff's attorney, Jerry Callahan and Jerry Callahan's attorney. Exhibit B.

June 20, 2011, the Plaintiff's attorney and Jerry Callahan's attorney were contacted by email to determine whether July 19, 2011 was convenient for a hearing on the motion to vacate sale. Jerry Callahan's attorney requested that the hearing be scheduled for another day. Three additional dates were offered by the Master's office. Jerry Callahan's attorney chose July 26, 2011. Exhibit C.

June 27, 2011, Jerry Callahan's attorney gave notice by email that the third party bidder would be retaining Jack M. Scoville as his attorney. Exhibit D.

June 27, 2011, notice of the hearing on the motion to vacate sale was mailed to the Plaintiff's attorney, Jerry Callahan, Bob Gwin and Jack M. Scoville. Exhibit E.

June 29, 2011, Jack M. Scoville filed and served a Notice of Appearance that he had been retained by the third party bidder. Exhibit F.

July 7, 2011, Todd Alexander's affidavits in support of the motion to vacate sale were filed and served on the attorneys of record. Exhibit G.

July 19, 2011, Todd Alexander's memorandum in support of the motion to vacate sale was mailed to the Master and the attorneys of record. Exhibit H.

July 21, 2011, the hearing was held, attended by the attorneys of record. At the hearing a Memorandum of Third Party Bidder was submitted stating that Jerry Callahan was the third party bidder. Exhibit I.

August 12, 2011, Jack M. Scoville served the Order Denying Motion. Finding of Fact number three states: "The successful bidder was Jerry Callahan who bid \$181,000.00." William George is not mentioned in the order. Exhibit J.

ARGUMENT

The lis pendens, summons and complaint in this foreclosure were filed on October 7, 2010. The purpose of a notice of pendency of an action is to inform a purchaser or encumbrancers that a particular piece of real property is subject to litigation. *Shelley Construction Co. v. Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (Ct. App. 1985). "A properly filed lis pendens binds subsequent purchasers or encumbrancers to all proceedings evolving from the litigation." *South Carolina National Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562, 562 (1987). William George became bound to all proceedings evolving from this litigation when he received the Master's deed.

William George could have intervened in the proceedings below and been named a party. Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property which is the subject of the action and the disposition of the action may as a practical matter impair or impede his ability to protect that interest. Rule 24(a), SCRPC. William George did not choose to intervene in this action and be named as a party.

Todd Alexander could not have named William George as a party in the proceedings below. A third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability to satisfy Rule 14(a), SCRPC. *First General Services of Charleston v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (Ct. App. 1994). Todd Alexander did not have a claim against William George founded on derivative liability.

CONCLUSION

William George was not the third party bidder at the foreclosure sale. Jerry Callahan was the third party bidder. Jerry Callahan was promptly informed of the motion to vacate the sale and fully participated in the proceedings below.

William George chose to conceal his interest in this action. William George chose not to intervene and be named as a party in the proceedings below. William George's decisions should not preclude consideration of Todd Alexander's appeal.

February 24, 2012

Charles T. Smith
Charles T. Smith
1112 Highmarket Street
Georgetown, South Carolina 29440
(843) 546-6131
Attorney for Appellant

Jerry Callahan
816 A 71st Ave.
Surfside Beach,
SC

843-997-6707
Atty. Bob ^{Gwin} ~~Gwyn~~
\$181,000.00

CHARLES T. SMITH
JOHN P. GRIMES

GRIMES & SMITH
ATTORNEYS AT LAW
1112 HIGHMARKET STREET
GEORGETOWN, SOUTH CAROLINA 29440

(843) 546-6131
FAX: (843) 527-6692

June 17, 2011

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

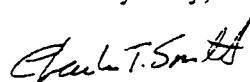
Jerry Callahan
816A 11th Avenue
Surfside Beach, SC 29575

RE: Wachesaw Plantation East Community Services Association, Inc. V. Todd C. Alexander
Case No.: 2010-CP-22-1583

Dear Gentlemen:

Enclosed are copies of the Motion and Order Information Form and Coversheet, Motion to Vacate Sale and Certificate of Mailing filed in the referenced matter.

Yours very truly,



Charles T. Smith

CTS:bjm

Enclosures

cc w/enc: Todd C. Alexander
Robert H. Gwin, III, Esq.

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-C-158

Wachesaw Plantation East Community
Services Association, Inc.,

Plaintiff,

vs.

Todd C. Alexander,

Defendant.

MOTION TO VACATE SALE

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

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GEORGETOWN COUNTY, S.C.
2011 JUN 17 P 2:178
CLERK OF COURT
ALAN WHITE

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
COUNTY OF GEORGETOWN

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

Wachesaw Plantation East Community
Services Association, Inc.,

Plaintiff,

vs.

Todd C. Alexander,

Defendant.

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of June, 2011, I mailed copies of the Motion and Order
Information Form and Coversheet and Motion to Vacate Sale to:

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

Jerry Callahan
816A 11th Avenue
Surfside Beach, SC 29575
Third Party Bidder

FILED
GEORGETOWN COUNTY, S.C.
2011 JUN 17 P 2:178
ALMA J. WHITE
CLERK OF COURT

with sufficient postage attached.


Betty Jean Marlowe

Subject: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)
From: Charles Smith <charles.smith@coastallaw.net>
Date: 6/22/2011 4:18 PM
To: "Robert H. Gwin" <rgwin1@sc.rr.com>, "Hal L. (Chip) Beverly Jr." <hlb@lawyersatthebeach.com>
CC: "Todd C. Alexander" <tcjalexander@gmail.com>

The Master in Equity's office has proposed scheduling the hearing on the Motion to Vacate Sale for 10:30 A.M. on July 19, 2011. Please let me know whether that time and day is convenient.

Charles

--

Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440

843-546-6131 (voice)
843-527-6692 (fax)

Re: Wachesaw Plantation East Community Services Association, Inc. ...

Subject: Re: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)

From: "Robert H. Gwin III" <rgwin1@sc.rr.com>

Date: 6/22/2011 4:36 PM

To: "Charles Smith" <charles.smith@coastallaw.net>

CC: <hlb@lawyersatthebeach.com>

Charles,

I am scheduled for a Mediation in a Horry County case on July 19. Would you be able to schedule the Motion Hearing for another day?

From: "Charles Smith" <charles.smith@coastallaw.net>

Sent: Wednesday, June 22, 2011 4:18 PM

To: "Robert H. Gwin" <rgwin1@sc.rr.com>; "Hal L. (Chip) Beverly Jr." <hlb@lawyersatthebeach.com>

Cc: "Todd C. Alexander" <tcjalexander@gmail.com>

Subject: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)

The Master in Equity's office has proposed scheduling the hearing on the Motion to Vacate Sale for 10:30 A.M. on July 19, 2011. Please let me know whether that time and day is convenient.

Charles

--

Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440

843-546-6131 (voice)

843-527-6692 (fax)

Re: Wachesaw Plantation East Community Services Association, Inc. ...

1112 Highmarket Street
Georgetown, SC 29440

843-546-6131 (voice)
843-527-6692 (fax)

Re: Wachesaw Plantation East Community Services Association, Inc. ...

Subject: Re: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)

From: Charles Smith <charles.smith@coastallaw.net>

Date: 6/23/2011 10:29 AM

To: "Robert H. Gwin III" <rgwin1@sc.rr.com>

CC: "Hal L. (Chip) Beverly Jr." <hlb@lawyersatthebeach.com>, "Todd C. Alexander" <tcjalexander@gmail.com>

The Master in Equity's office offered the following dates for hearing the Motion to Vacate Sale:

July 26 at 10:30 A.M.

August 11 at 10:30 A.M.

August 23 at 10:30 A.M.

Please let me know which date is most convenient.

Charles

On 6/22/2011 6:01 PM, Charles Smith wrote:

Certainly. I will ask the Master in Equity's office for some alternative dates.

Charles

On 6/22/2011 4:36 PM, Robert H. Gwin III wrote:

Charles,

I am scheduled for a Mediation in a Horry County case on July 19. Would you be able to schedule the Motion Hearing for another day?

From: "Charles Smith" <charles.smith@coastallaw.net>

Sent: Wednesday, June 22, 2011 4:18 PM

To: "Robert H. Gwin" <rgwin1@sc.rr.com>; "Hal L. (Chip) Beverly Jr." <hlb@lawyersatthebeach.com>

Cc: "Todd C. Alexander" <tcjalexander@gmail.com>

Subject: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)

The Master in Equity's office has proposed scheduling the hearing on the Motion to Vacate Sale for 10:30 A.M. on July 19, 2011. Please let me know whether that time and day is convenient.

Charles

--

Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440

843-546-6131 (voice)

843-527-6692 (fax)

Charles T. Smith
Grimes & Smith

Re: Wachesaw Plantation East Community Services Association, Inc. ...

Georgetown, SC 29440

843-546-6131 (voice)

843-527-6692 (fax)

--
Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440

843-546-6131 (voice)

843-527-6692 (fax)

Re: Wachesaw Plantation East Community Services Association, Inc. ...

Subject: Re: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)
From: "Robert H. Gwin III" <rgwin1@sc.rr.com>
Date: 6/23/2011 12:19 PM
To: "Charles Smith" <charles.smith@coastallaw.net>
CC: <hlb@lawyersatthebeach.com>

July 26 at 10:30 works well for me. Thank you.

From: "Charles Smith" <charles.smith@coastallaw.net>
Sent: Thursday, June 23, 2011 10:29 AM
To: "Robert H. Gwin III" <rgwin1@sc.rr.com>
Cc: "Hal L. (Chip) Beverly Jr." <hlb@lawyersatthebeach.com>; "Todd C. Alexander" <tcjalexander@gmail.com>
Subject: Re: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)

The Master in Equity's office offered the following dates for hearing the Motion to Vacate Sale:

July 26 at 10:30 A.M.
August 11 at 10:30 A.M.
August 23 at 10:30 A.M.

Please let me know which date is most convenient.

Charles

On 6/22/2011 6:01 PM, Charles Smith wrote:

Certainly. I will ask the Master in Equity's office for some alternative dates.

Charles

On 6/22/2011 4:36 PM, Robert H. Gwin III wrote:

Charles,

I am scheduled for a Mediation in a Horry County case on July 19. Would you be able to schedule the Motion Hearing for another day?

From: "Charles Smith" <charles.smith@coastallaw.net>
Sent: Wednesday, June 22, 2011 4:18 PM
To: "Robert H. Gwin" <rgwin1@sc.rr.com>; "Hal L. (Chip) Beverly Jr." <hlb@lawyersatthebeach.com>
Cc: "Todd C. Alexander" <tcjalexander@gmail.com>
Subject: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)

The Master in Equity's office has proposed scheduling the hearing on the Motion to Vacate Sale for 10:30 A.M. on July 19, 2011. Please let me know whether that time and day is convenient.

Charles

Charles T. Smith
Grimes & Smith
1112 Highmarket Street

Would you be able to schedule the Motion Hearing for another day?

From: "Charles Smith" <charles.smith@coastallaw.net>
Sent: Wednesday, June 22, 2011 4:18 PM
To: "Robert H. Gwin" <rgwin1@sc.rr.com>; "Hal L. (Chip) Beverly Jr." <hlb@lawyersatthebeach.com>
Cc: "Todd C. Alexander" <tcjalexander@gmail.com>
Subject: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)

The Master in Equity's office has proposed scheduling the hearing on the Motion to Vacate Sale for 10:30 A.M. on July 19, 2011. Please let me know whether that time and day is convenient.

Charles

--

Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440

843-546-6131 (voice)
843-527-6692 (fax)

--

Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440

843-546-6131 (voice)
843-527-6692 (fax)

--

Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440

843-546-6131 (voice)
843-527-6692 (fax)

Re: Wachesaw Plantation East Community Services Association, Inc. ...

Subject: Re: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)

From: "Robert H. Gwin III" <rgwin1@sc.rr.com>

Date: 6/27/2011 12:00 PM

To: "Charles Smith" <charles.smith@coastallaw.net>, "Hal L. (Chip) Beverly Jr." <hlb@lawyersatthebeach.com>

Charles,

Pleased be advised that I was told late Friday that the successful bidder will be retaining Jack Scoville to represent it in connection with the hearing on your motion.

Bob

From: "Charles Smith" <charles.smith@coastallaw.net>

Sent: Monday, June 27, 2011 11:20 AM

To: "Hal L. (Chip) Beverly Jr." <hlb@lawyersatthebeach.com>

Cc: "Robert H. Gwin III" <rgwin1@sc.rr.com>

Subject: Re: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)

Chip,

Is July 26 at 10:00 A.M. acceptable to you?

Charles

On 6/23/2011 12:19 PM, Robert H. Gwin III wrote:

July 26 at 10:30 works well for me. Thank you.

From: "Charles Smith" <charles.smith@coastallaw.net>

Sent: Thursday, June 23, 2011 10:29 AM

To: "Robert H. Gwin III" <rgwin1@sc.rr.com>

Cc: "Hal L. (Chip) Beverly Jr." <hlb@lawyersatthebeach.com>; "Todd C. Alexander" <tcjalexander@gmail.com>

Subject: Re: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander (2010-CP-22-1583)

The Master in Equity's office offered the following dates for hearing the Motion to Vacate Sale:

July 26 at 10:30 A.M.

August 11 at 10:30 A.M.

August 23 at 10:30 A.M.

Please let me know which date is most convenient.

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On 6/22/2011 6:01 PM, Charles Smith wrote:

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Charles,

I am scheduled for a Mediation in a Horry County case on July 19.

CHARLES T. SMITH
JOHN P. GRIMES

GRIMES & SMITH
ATTORNEYS AT LAW
1112 HIGHMARKET STREET
GEORGETOWN, SOUTH CAROLINA 29440

(843) 546-6131
FAX: (843) 527-6692

June 27, 2011

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

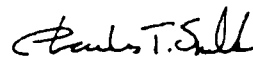
Jerry Callahan
816A 11th Avenue
Surfside Beach, SC 29575

RE: Wachesaw Plantation East Community Services Association, Inc. V. Todd C. Alexander
Case No.: 2010-CP-22-1583

Dear Gentlemen:

Enclosed are copies of the Notice of Motion Hearing and Certificate of Mailing filed in the referenced matter.

Yours very truly,



Charles T. Smith

CTS:bjm

Enclosures

cc w/enc: Todd C. Alexander
Robert H. Gwin, III, Esq.
Jack M. Scoville, Jr., Esq.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-CP-22-1583

Wachesaw Plantation East Community
Services Association, Inc.,

Plaintiff,

vs.

Todd C. Alexander,

Defendant.

NOTICE OF MOTION HEARING

FILED
GEORGETOWN COUNTY, S.C.
2011 JUN 27 P 4:28 PM
ALMA Y. WHITE
CLERK OF COURT

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

Jerry Callahan
816A 11th Avenue
Surfside Beach, SC 29575
Third Party Bidder

PLEASE TAKE NOTICE that a hearing on the undersigned's Motion to Vacate Sale will be held on Tuesday, July 26, 2011, at 10:30 A.M., before the Honorable Joe M. Crosby in the Master in Equity's Courtroom on the Second Floor of the Georgetown County Courthouse located at 401 Cleland Street in Georgetown, South Carolina.

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

June 27, 2011

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-CP-22-1583

Wachesaw Plantation East Community
Services Association, Inc.,

Plaintiff,

vs.

Todd C. Alexander,

Defendant.

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of June, 2011, I mailed copies of the Notice of Motion

Hearing to:

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

Jerry Callahan
816A 11th Avenue
Surfside Beach, SC 29575
Third Party Bidder

with sufficient postage attached.

Betty Jean Marlowe
Betty Jean Marlowe

FILED
GEORGETOWN COUNTY, S.C.
2011 JUN 27 P 4:28
ALMA T. WHITE
CLERK OF COURT

Jack M. Scoville, Jr.
Attorney at Law
A Professional Association
1001 Front Street
Post Office Drawer 1228
Georgetown, South Carolina 29442

TELEPHONE: (843) 546-1130
FAX # (843) 546-0726

June 29, 2011

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

Charles T. Smith, Esquire
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440

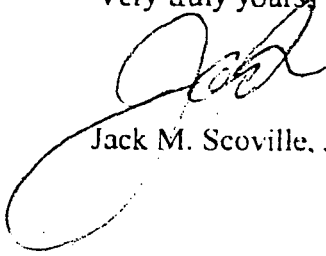
RE: Wachesaw Plantation East Community Services Association, Inc. vs. Alexander
Civil Action Number: 2010-CP-22-1583

Gentlemen:

I am herewith enclosing and serving upon you a Notice of Appearance in the above-referenced matter. Also enclosed is a Certificate of Mailing.

With kind regards, I remain

Very truly yours,


Jack M. Scoville, Jr.

JMSjr/mmww

Enclosures

cc: Mr. Alton Swann
Mr. Jerry Callahan

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-22-1583

Wachesaw Plantation East Community)
Services Association, Inc.)

Plaintiff,)

v.)

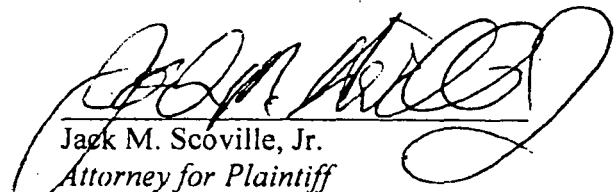
Todd C. Alexander,)

Defendant.)
_____)

NOTICE OF APPEARANCE

Please take notice that the undersigned has been retained by the Third Party Bidder in the
above-captioned action.

Jack M. Scoville, Jr., PA



Jack M. Scoville, Jr.
Attorney for Plaintiff
1001 Front Street
P.O. Box 1228
Georgetown, SC 2442
(843) 546-1130

June 29, 2011

FILED
GEORGETOWN COUNTY, S.C.
2011 JUN 30 11:37
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Wachesaw Plantation East Community
Services Association, Inc.)

Plaintiff,)

v.)

Todd C. Alexander,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-22-1583

Certificate of Mailing

The undersigned hereby certifies that she is an employee of the Law Office of Jack M. Scoville, Jr., and that she served a copy of the *Notice of Appearance* on the following counsel by mailing a copy thereof, depositing same in the United States mail, on the 30 day of June, 2011, first class postage prepaid, and addressed as follows:

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

Charles T. Smith, Esquire
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440

FILED
2011 JUN 30 4:11:38 PM
ALMA T. WHITE
CLERK OF COURT

Jack M. Scoville, Jr., PA

By:

Mira Watson
Mira Watson

CHARLES T. SMITH
JOHN P. GRIMES

GRIMES & SMITH
ATTORNEYS AT LAW
1112 HIGHMARKET STREET
GEORGETOWN, SOUTH CAROLINA 29440

(843) 546-6131
FAX: (843) 527-6692

July 7, 2011

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

Jack M. Scoville, Jr., Esquire
Jack M. Scoville, Jr., PA
Post Office Box 1228
Georgetown, SC 29442

RE: Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander
Case No.: 2010-CP-22-1583

Dear Gentlemen:

Enclosed are copies of affidavits of Todd C. Alexander and Charles T. Smith in support of the Motion to Vacate Sale and Certificate of Mailing filed in the referenced matter.

Yours very truly,



Charles T. Smith

CTS:bjm

Enclosures

cc w/enc: Honorable Joe M. Crosby
Todd C. Alexander

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

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

Wachesaw Plantation East Community
Services Association, Inc.,

Plaintiff,

vs.

Todd C. Alexander,

Defendant.

AFFIDAVIT

ALMA Y. WHITE
CLERK OF COURT

2011 JUL -7 P 3:40 PM

FILED
GEORGETOWN COUNTY, S.C.

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.

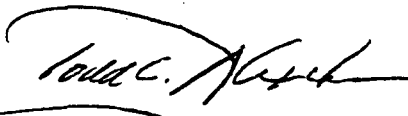
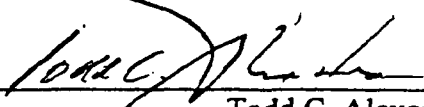
I was made aware of a lien being placed against the house by a notice from McCutchen, Mumford, Vaught, O'Dea & Geddie, P.A. I believed that when my health returned to a more stable condition, allowing for better focus on my personal financial matters, I could easily resolve the matter, since my equity 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.

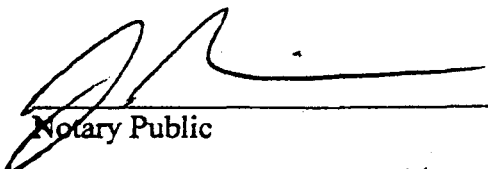
I was not aware of a foreclosure decree or a sale of the property until I received a phone call on June 7, 2011 from Jack Lubert, the owner of Coastal Carolina Home Watch. Mr. Lubert informed me that a Coastal Carolina Home Watch employee had discovered a person changing the locks on the house on June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

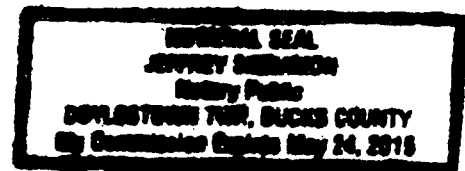
I am ready, willing and able to pay whatever money is owed Wachesaw Plantation East Community Services Association, Inc. I am also ready, willing and able to reimburse the high bidder at the foreclosure sale for whatever reasonable costs and expenses he may have incurred. The house is certainly worth 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



STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-CP-22-1583

Wachesaw Plantation East Community
Services Association, Inc.,

Plaintiff,

vs.

Todd C. Alexander,

Defendant.

AFFIDAVIT

FILED
GEORGETOWN COUNTY, S.C.
2011 JUL -7 P 3:40 PM
ALMA T. WHITE
CLERK OF COURT

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 Jean Marlowe
Notary Public

My Commission Expires: 04/17/2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-CP-22-1583

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

Plaintiff,)

vs.)

Todd C. Alexander,)

Defendant.)

CERTIFICATE OF MAILING

ALMA T. WHITE
CLERK OF COURT

FILED
GEORGETOWN COUNTY, S.C.
2011 JUL -7 P 3:40 PM

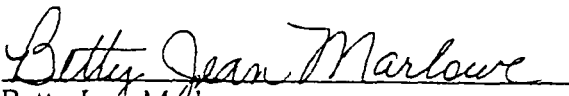
I hereby certify that on the 7th day of July, 2011, I mailed copies of Affidavits of Todd C.

Alexander and Charles T. Smith to:

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

Jack M. Scoville, Jr., Esquire
Jack M. Scoville, Jr., PA
Post Office Box 1228
Georgetown, SC 29442
Attorney for Third Party Bidder

with sufficient postage attached.


Betty Jean Marlowe

CHARLES T. SMITH
JOHN P. GRIMES

GRIMES & SMITH
ATTORNEYS AT LAW
1112 HIGHMARKET STREET
GEORGETOWN, SOUTH CAROLINA 29440
July 19, 2011

(843) 546-6131
FAX: (843) 527-6692

Joe M. Crosby, Esquire
Master-in-Equity
405 Dozier Street
Georgetown, South Carolina 29440

RE: Wachesaw Plantation East Community Services Association, Inc.
Case No.: 2010-CP-22-1583

Dear Judge Crosby:

Enclosed for your consideration is a Memorandum in Support of Todd C. Alexander's Motion to Vacate Sale and copies of the Affidavits filed in support of the motion. The hearing is scheduled for 9:30 AM on Thursday, July 21, 2011. By copy of this letter, copies of the Memorandum are being provided to the other attorneys in the action. With highest regards, I remain,

Yours very truly,

Charles

Charles T. Smith

CTS:bjm

Enclosure

cc w/enc: Hal L. "Chip" Beverly, Jr., Esq.
Jack M. Scoville, Jr., Esq.
Todd C. Alexander

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

)
)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2010-CP-22-1583

Wachesaw Plantation East Community
Services Association, Inc.,

)
)
)

Plaintiff,

)
)

vs.

)
)

Todd C. Alexander,

)
)

Defendant.

)
)

**MEMORANDUM IN SUPPORT OF
MOTION TO VACATE SALE**

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 judicata 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.

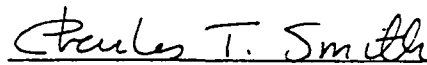
The sale of Todd Alexander's property was not complete and his equity of redemption was not barred when he exercised the right and equity of redemption on June 16, 2011. Therefore the sale should be vacated.

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, notwithstanding 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.

A handwritten signature in cursive script that reads "Charles T. Smith". The signature is written in dark ink and is positioned above a horizontal line.

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)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-22-1583

Wachesaw Plantation East Community
Services Association, Inc.)

Plaintiff,)

v.)

Todd C. Alexander,)

Defendant.)

MEMORANDUM OF THIRD
PARTY BIDDER

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.

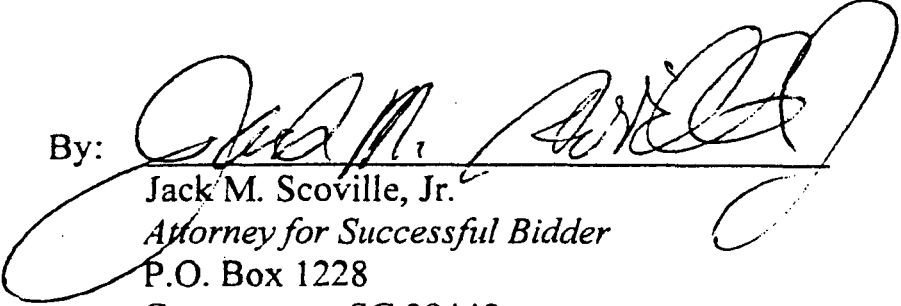
In the affidavits filed by Defendant in support of this motion, no excusable neglect is asserted, much less proven. No reason is given for Defendant's failure to send a check upon receipt of the Summons and Complaint. While Defendant indisputably has serious medical problems, no showing is made that 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

Georgetown, SC 29442

Telephone: (843) 546-1130

Facsimile: (843) 546-0726

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A Professional Association
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TELEPHONE: (843) 546-1130
FAX # (843) 546-0726

August 11, 2011

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

Charles T. Smith, Esquire
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440

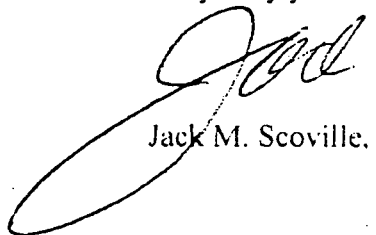
RE: Wachesaw Plantation East Community Services Association, Inc. vs. Alexander
Civil Action Number: 2010-CP-22-1583

Gentlemen:

I am herewith enclosing and serving upon you a clocked copy of the Order Denying Motion in the above-referenced matter. Also enclosed is a Certificate of Mailing.

With kind regards, I remain

Very truly yours,


Jack M. Scoville, Jr.

JMSjr/mmw

Enclosures

cc: Mr. Alton Swann
Mr. Jerry Callahan

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

Wachesaw Plantation East Community)
Services Association, Inc.)
)
Plaintiff,)
)
v.)
)
Todd C. Alexander,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-22-1583

COPY

ORDER DENYING MOTION

ALMA Y. WHITE
CLERK OF COURT

2011 AUG -9 PM 4:43

FILED
GEORGETOWN COUNTY, S.C.

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,

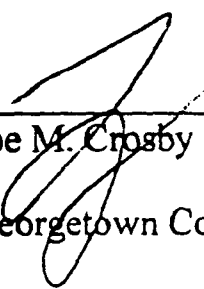
per the receipt and rule. The record shows proper notice of the subsequent proceedings were sent to Defendant by mail, in accordance with the rules. The Defendant raises no issue of improper service, lack of notice or lack of jurisdiction.

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

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

COUNTY OF GEORGETOWN

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

Plaintiff,

v.

Todd C. Alexander,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-22-1583

Certificate of Mailing

The undersigned hereby certifies that she is an employee of the Law Office of Jack M. Scoville, Jr., and that she served a copy of the *Order Denying Motion* on the following counsel by mailing a copy thereof, depositing same in the United States mail, on the 12 day of August, 2011, first class postage prepaid, and addressed as follows:

Hal L. "Chip" Beverly, Jr., Esquire
McCutchen, Mumford, Vaught,
O'Dea & Geddie, P.A.
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By:

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The South Carolina Court of Appeals

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

v.

Todd C. Alexander, Appellant.

Appellate Case No. 2011-198986

ORDER

This is an appeal from the denial of Appellant's motion to vacate a foreclosure sale. Appellant failed to comply with the mandates of section 18-9-170 of the South Carolina Code, and, accordingly, the order was not stayed by the appeal. Because the master has now properly issued the deed, this appeal is moot. Accordingly, this appeal is hereby dismissed. *See Sloan v. Greenville County*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief." (citations omitted)).

Columbia, South Carolina

cc: Jack M. Scoville, Jr.
Charles T. Smith
Hal LaVaughn Beverly, Jr.

FOR THE **FILED**

5/25/12

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Joe M. Crosby, Master-in-Equity

Civil Action Number 2010-CP-22-1583
Case Tracking Number 2011198986

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

v.

Todd C. Alexander, ... Appellant.

PETITION FOR REHEARING

The Appellant, Todd C. Alexander, petitions for rehearing on William George's motion to dismiss this appeal. The Appellant respectfully suggests that the Order dated May 25, 2012 overlooked or misapprehended the following matters:

1. *William George is not a party to this appeal.*

William George was not named as a party in the pleadings. William George did not apply to intervene as provided in Rule 24 of the Rules of Civil Procedure. William George did not apply to intervene in this appeal or to file an amicus curiae brief as provided in Rule 213 of the Appellate Court Rules. Jerry Callahan was the third party bidder at the foreclosure sale.

2. *The Motion to Dismiss Appeal does not address the merits of the appeal.*

William George's motion to dismiss appeal and this Court's Order do not address the merits of the appeal. Instead William George urges, and this Court's Order creates, a new rule that foreclosures and other judicial sales cannot be appealed unless a writ of supersedeas has been issued and a bond posted.

This new rule is contrary to the established appellate practice in this state. In *Ex Parte Moore*, 346 S.C. 274, 550 S.E.2d 877 (Ct. App. 2001), Moore initially petitioned for a writ of supersedeas. The petition for a writ of supersedeas was subsequently withdrawn and a deed was issued to the high bidder. 346 S.C. at 282, 550 S.E.2d at 881. The first lien holder moved to dismiss Moore's appeal on the ground it had become moot and the Court of Appeals denied the motion to dismiss. 346 S.C. at 282-283, 550 S.E.2d at 881.

The Court of Appeals reversed the trial court and vacated the sale. *Id.*, rev'd on other grounds, 352 S.C. 508, 573 S.E.2d 561 (2003). *See also: Carsten v. Wilson*, 241 S.C. 516, 129 S.E.2d 431 (1963) (Supreme Court noted that the defendant had not posted a bond to stay the foreclosure sale and proceeded to consider the merits of the appeal).

3. *This Appeal is not moot.*

The issuance of a deed does not render an appeal moot. See e.g.: *Bonham v. Cave*, 102 S.E. 308, 86 S.E. 681 (1915); *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 177 S.E. 24 (1934); *Henry v. Blakely*, 26 S.C. 13, 56 S.E.2d 581 (1949) and *Ex Parte Moore*, 346 S.C. 274, 550 S.E.2d 877 (Ct. App. 2001).

This issue was directly addressed in *McLemore v. Powell*, 32 S.C. 582, 10 S.E. 550 (1880). McLemore obtained a foreclosure decree. Powell appealed. McLemore moved to dismiss the

appeal on the ground that Powell had not filed an appeal bond in the foreclosure. The Supreme Court refused to dismiss the appeal. *See also*: SOUTH CAROLINA LAWYER, May 20, 2012, at 25 (judgment debtor not obtaining a supersedeas does not affect the appeal on its merits).

CONCLUSION

If the Court considers William George's motion to dismiss this appeal, *McLemore v. Powell*, 32 S.C. 582, 10 S.E. 550 (1880) should be followed and the motion to dismiss should be refused.

June 4, 2012

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM GEORGETOWN COUNTY
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Joe M. Crosby, Master-in-Equity
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Wachesaw Plantation East Community Services Association, Inc.,

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v.

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Appellant.

RETURN TO PETITION FOR REHEARING

The Third Party bidder, William George, in return to the Appellant's Petition for Rehearing, would show as follows:

1. *William George was automatically made a party to this proceeding.*

William George became a party when he, acting through his agent Jerry Callahan, purchased the property at the judicial sale. It is well

settled that the purchaser at a judicial sale becomes a party to the action. *Ex Parte Qualls*, 71 SC 87, 50 SE 646 (1905); *Parrot v. Dickson Hall*, 151 S.C. 114, 148 S.E. 704 (1929); *Harrington v. Blackston*, 311 S.C. 459, 429 S.E.2d 826(Ct. App. 1993). This rule appears proper and reasonable.

It was not Mr. George's responsibility to move to intervene in this appeal. It was the responsibility of the Appellant to name him when the appeal was filed. Under Appellant's theory, a successful bidder could pay the bid, obtain a deed, and never be aware of a subsequent appeal, but apparently would be bound by the decision on appeal if the foreclosure sale were set aside.

Even if Jerry Callahan is treated as the successful bidder instead of Mr. George's agent, Appellant failed to name him as a party in any post sale procedures.

2. *Mr. George does not assert a new rule of appellate practice.*

Appellant contends the case of *Ex parte Moore*, 346 S.C. 274, 550 S.E. 2d 877 (Ct. App. 2001) is applicable authority. That case was

reversed by the Supreme Court. However, that case, if anything, supports Mr. George's position. In *Moore*, the deed was issued on March 23, 2000, some five months after the Notice of Appeal was filed. In this case, the Master's deed was recorded on August 25, 2011, and the Notice of Appeal was served on September 8, 2011. Appellant did not request that the Master not issue the deed until the case was decided, post a bond, or take any other steps to protect his interests. He waited until the last possible day to file his Notice of Appeal.

The other cases cited by Appellant do not apply. In *Carsten v. Wilson*, 241 S.C. 516, 129 S.E.2d 431, (S.C.1963), it does not appear that a deed was issued before the decision of the Supreme Court. The Court stated "If the appellant in this action desired to stay the sale of the mortgaged premises, it was his duty to give a bond in conformity with Section 7-417 of the Code. Since he did not give such a bond, his appeal from the order of sale in foreclosure did not stay the sale." The Court's consideration of the merits of the appeal was purely "*ex gratia*."

Appellant cites *Bonham v. Cave*, 102 S.C. 308, 86 S.E. 681 (1915) as authority that issuance of a deed does not render an appeal moot. However, in that case no deed was ever issued before the appeal was decided. In fact, the case reveals the Master was specifically enjoined from issuing a deed.

The case of *Poole v. Jefferson Standard Life ins. Co.*, 174 S.C. 150, 177 S.E. 2d 24, (1934), cited by Appellant for the same proposition, does not support Appellant. In *Poole*, the Master refused to issue a deed to either of the contending parties until the dispute was settled.

Henry v. Blakely, 216 S.C. 13, 56 S.E. 2d 581, (1941) involved a chattel mortgage on a vehicle. It does not appear the vehicle was released to a bidder or a certificate of title was issued as a result of the sheriff's sale. This case has no relevance to this appeal.

Appellant asserts this issue was directly addressed in the case of *McLemore v. Powell*, 32 S.C. 582, 10 S.E. 550 (1889). That is not correct. The sole issue in *McLemore* was should the appeal be dismissed because of the failure to post an appeal bond. There is nothing in the

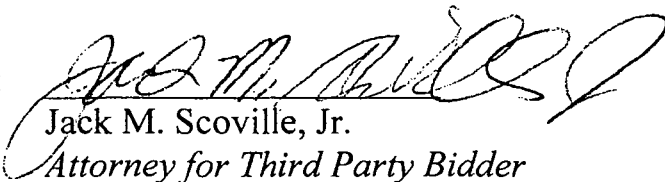
decision that indicates that the foreclosure deed had been issued. The issue here is that the issuance of the Master's deed before the appeal and without the posting of a bond renders the appeal moot, not the failure to post the bond itself.

3. *The appeal is moot.*

Appellant has only himself to blame for his situation. He ignored the process of the court, ignored the notices to appear at the hearing, ignored the sale, and failed to move expeditiously to obtain a stay of the issuance of the deed. A decision of this court to reverse the decision of the Master will be simply an answer to an academic question. This appeal is moot and should be dismissed.

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The South Carolina Court of Appeals

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

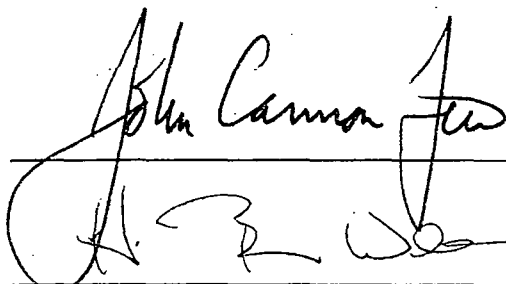
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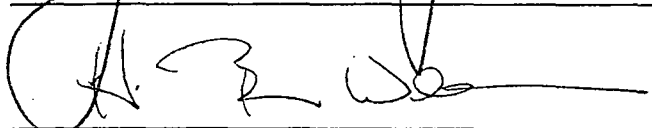
Appellate Case No. 2011-198986

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc:

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Charles T. Smith

Hal LaVaughn Beverly, Jr.

FILED

10/18/12 AS