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**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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**APPEAL FROM DORCHESTER COUNTY  
COURT OF COMMON PLEAS**

**CHERYL GRAHAM, CLERK OF COURT**

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**RECEIVED**  
OCT 13 2017  
SC Court of Appeals

**CASE # 2009-CP-18-2200**

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**H. WAYNE CHAPIA.....APPELLANT**

**vs..**

**RENE McMASTERS , ET AL.....RESPONDENT**

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**INITIAL BRIEF**

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**FORECLOSURE OF A JUDGMENT LIEN SALE**

# 3

**Howard W. Charpia  
717 Old Trolley Road  
Suite 6 # 360  
Summerville, SC 29485  
843-925-7134**

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Arguments.....

1. Did the Court err in not following the statutory rules and provisions of South Carolina , i.e. S.C. Code 15-39-20 , 15-39-30 , et al and judicial sales , i.e. 15-39-630 , 15-39-635 , 15-39-640 , 15-39-720 , 15-39-760 , et al ?
2. Did the Court err in violating S.C Code 15-39-720 , 15-39-760 ; by not allowing the statutory “ upset bid” sale to be held as no deficiency judgment was cited in the Complaint or Order of Foreclosure .
3. Did the Court err in allowing a non-statutory rule and provision to set precedence by addressing a “foreclosure of a judgment lien” when “execution is the only process to enforce a judgment” in the state of South Carolina “ ?
4. Did the Court err in violating the Appellant’s “due process” in denying him access to the Court by forbidding him to bid at said sale of August 1, 2017 ?
5. Did the Court err in accepting a bid from the creditor that “shocked the conscience of the Court “ ?
6. Did the Clerk of Court and the Court err in accepting a fraudulent Affidavit from the winning bidder’s Attorney of \$ 59,100 .00 on August 1, 2017 ?
7. Did Judge Lee and the Court err in ruling on a Motion to Dismiss as Judge Lee states she is not assigned to this case and she will not hear the merits on this matter , letter dated February 9 , 2017 ; Jude Lee’s Order signed Feb. 23 , 2107 ?

Conclusion.....4 , 5

8. Did the court err in violating the Defendants statutory rights by not granting them their Homestead Exemptions pursuant to SC Code 15-41-30 (a)(1) ; Jody E. Charpia being a “multiple owner” of said property ?
9. Did the Court err in accepting an “ex parte” Order from the Court allowing a “foreclosure of a judgment lien” sale that falls under no statutory rule or provision within the State of south Carolina , i.e “execution” is the only process to enforce a judgment ?
10. Did the Clerk of Court err in changing the “conditions of the sale” by her supplementation of conditions not found in the decree / Order ?
11. Did the Clerk of Court err in her improper advertisement of the sale ?
12. Did the Court conspire with the creditor and allow the opposing Counsel to advertise the property ?
13. Did the Court err in violating the Defendants statutory rights by not granting them their Homestead Exemptions pursuant to SC Code 15-41-30(a)(1) ; Roger D. Charpia (dependent of the debtor) and a multiple owner of the property ?

## **TABLE OF AUTHORITIES**

**Louie Moore V. Fairfield Real Estate Company , Court of Appeals  
Opinion # 3352**

**Toggas v. RRR , Inc , civil action 2014-CP-07-2016**

**Home Port Rentals , Inc v. Roger Moore , Opinion # 3779 (2004)**

**S.C. Code 15-39-20 et al**

**S.C. Code 15-39-630 et al**

## **STATEMENTS OF THE ISSUES**

- 1. The Court did not have jurisdiction to rule on said Motion to Dismiss .**
- 2. The Court erred in not granting the Defendants their statutory rights to their Homestead exemptions pursuant to SC Code 15-41-30(a)(1) .**
- 3. The Clerk of Court changed the conditions of the sale from the original Order .**
- 4. The Clerk allowed the opposing Counsel to advertise the sale improperly.**
- 5. Creditor's Attorney Cisa , an "officer of the Court" submitted a fraudulent Affidavit to the Court and to the RMC's office , violating the Canon of Ethics.**
- 6. There was " no mortgage " to foreclose on said property until July 2017 .**
- 7. Jody E. Charpia is a "multiple owner" of said property .**
- 8. Roger D. Charpia is a "multiple owner" of said property .**

## **STATEMENT OF THE CASE**

**A judgment was rendered against Howard W. Charpia and Charpia Residentials LLC in August 2004 under case # 2002-CP-18-932 for \$ 191,600.00 . With interest , as of August 2014 , i.e the ten year active energy period ; said judgment was \$ 505,484.08 .**

**Attorney Cisa ( respondent's Counsel) initiated a non-statutory civil action in August 2009 , case # 2009-CP-18-2200 with Howard W. Charpia and Jody E. Charpia as defendants and as "multiple owners" of said property to be sold.**

**Respondent's Attorney Frank Cisa and Howard W. Charpia were the only two bidders at a foreclosure sale on July 5 , 2017 in Dorchester County . After numerous back and forth bidding by these two , Cisa's last bid was for \$ 374, 500.00 . Charpia made the final bid of \$ 375,000 .00 and was the highest bidder at said sale .**

**Cisa here admits that the property is worth at least \$ 374, 500.00 and Cisa also states at a Motion hearing in March 2017 , that the judgment in case # 932 is done .**

**Cisa purchased the property at a 5<sup>th</sup> sale of this property on August 1 , 2017 for \$ 59,100.00 and submitted an Affidavit to the Court that the "fair market value" is \$ 59,100.00 , thus misrepresenting material facts to the Court .**

**When an inadequacy of price exists and is the result of action by the officer selling the property OR successful bidder and that action could have been reasonably anticipated by the party for whose benefit the property was being sold , the Court should provide relief**

by setting aside the sale . ( See Henry , 216 S.C. at 19 , 56 S.E. 2<sup>nd</sup> at 583 )

The terms and conditions of a judicial sale are controlled by Court order , Rule 71, SCRPC , and the practice and custom of the county in which the property is being sold, and by statute . ( Fed'l Nat'l Mortgage v. Brooks , 304 S.C. 506 )

This sale was a 'foreclosure of a judgment lien ' not the statutory provisions of this state , i.e 15-39-20 (executions) et al .

### FACTS

Said judgment rendered in August 2004 has lost it's active energy pursuant to S.C. Code 15-39-20 , 15-39-30 et al and caselaw precedence in this State .

Attorney Cisa's theory for this action , case # 2009-CP-18-2200 is that since Charpia conveyed out half his interest in the property , Cisa's thinks this is the best way to proceed . ( see letter dated August 4 , 2009 from Cisa )

Cisa cancelled the 2<sup>nd</sup> sale held in June 2009 by the Sheriff's office. Cisa filed this non-statutory action on August 10 , 2009 ; case # 2009-CP-18-2200 .

Jody E. Charpia owes ½ interest in said property . Roger D. Charpia owns ½ interest in said property , thus entitling both of them to a statutory Homestead Exemption pursuant to 15-41-30 (a)(1) , "multiple owners" of such a living unit exempt as a homestead .

**Howard W. Charpia has secured and closed on a loan for a Reverse Mortgage on July 7, 2017 which was recorded with the RMC office in Dorchester County on July 14, 2017, thus constituting a 1<sup>st</sup> & 2<sup>nd</sup> Lien on said property .**

**Attorney Cisa and the Clerk of Court held a non-statutory and fraudulent sale on August 1, 2017 in which Cisa was the high bidder at \$ 59 ,100 .00 .**

**Dorchester County , the Clerk of Court and the RMC office allowed Cisa to file a deed with the RMC's office on August 1, 2017 and by Affidavit stating the "fair market value is \$ 59,100.00 .**

**Cisa did not pay-off the 1<sup>st</sup> & 2<sup>nd</sup> Lien before taking title to property .**

**Charpia was served with a "Writ of Assistance " from Judge Early by the Sheriff's Office on August 11, 2017 @ approx.. 4:35 pm to vacate the property by August 15, 2017 i.e. only 4 days to pack-up and move .**

**Charpia vacated said property by August 15, 2017 in fear of being incarcerated .**

### **CONCLUSION**

**Said judgment rendered in August 2004 has lost its active energy , case # 2002-CP-18-932 . This case # 2009-CP-18-2200 is a non-statutory action in this state . Execution is the only process to enforce a judgment . Respondent has not initiated any collection efforts within the 10 year statutory rule (s).**

**The Clerk of Court did not follow the statutory rules and provisions for the sale of said property violating numerous statutes.**

**The Clerk of Court changed the conditions of the sale. Cisa submitted the advertisement which is in violation of the statutory rules of S. C.**

**The winning bid of \$ 59 ,100.00 on August 1 , 2017 by Attorney Cisa “ shocked the conscience “ of the Court when Cisa clearly admits the property is worth \$ 374,500 .00 on July 5 , 2017 at another Clerk of Court’s sale .**

**And further ammunition for this argument is the judgment owed on August 5, 2014 was / is \$ 505, 484.00 .**

**Cisa initiates an action because Charpia conveyed ½ interest to Jody E. Charpia , thus confirming a statutory exemption for Jody E. Charpia pursuant to S. C. Code 15-41-30 (a) (1) ; a “ multiple owner “ of such a living unit exempt as a homestead .**

**Roger D. Charpia owns ½ interest in said property and is entitled to the Statutory provision of S.C. Code 15-41-30 (a)(1) , “multiple owner “.**

**Charpia filed a “Motion to Assert “ Jody E. Charpia’s Homestead Exemption with the Dorchester County Clerk of Court’s office on July 3, 2017 . Charpia has requested on numerous occasions to be heard on this Motion and his attempts have been futile , over 90 days have elapsed since the defendants filed this Motion .**

**WHEREFORE, Howard W. Charpia prays that this Court look into this matter and set aside the sale of August 1, 2017 . And grant Jody E. Charpia and Roger D. Charpia their statutory provision of the state’s Homestead Exemption pursuant to SC Code 15-41-30 (a)(1) being multiple owners of said property . And grant the refund of Mr. Soles \$ 6,500.00 deposit from the April 2017 sale of said property . And honor the 1<sup>st</sup> & 2<sup>nd</sup> Mortgage lien of Howard W. Charpia’s recorded July 14 , 2017 in Dorchester County .**

**6**



**Howard W. Charpia  
717 Old Trolley Road  
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**PROOF OF SERVICE**

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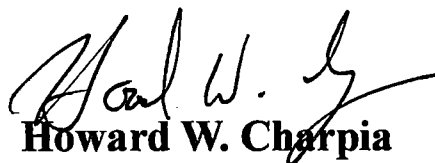
I, Howard W. Charpia , hereby certify that I mailed this INITIAL BRIEF to :

Attorney frank M. Cisa  
858 Lowcountry Blvd. Suite 101  
Mt. Pleasant , SC 29464

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5200 East Jim Bilton Blvd.  
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Date mailed 10-11 , 2017

  
Howard W. Charpia

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