

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

APPELLATE CASE NUMBER 2017-000834

The Honorable Carmen T. Mullen
Dorchester County
Trial Court Case N. 2009CP1802200

RECEIVED
JAN 22 2018
SC Court of Appeals

Rene McMasters now known as Rene McMasters Ronaghan..... Respondent

vs.

H. Wayne Charpia a/k/a Howard W. Charpia and Jody E. Charpia..... Defendants

of whom H. Wayne Charpia a/k/a Howard W. Charpia is the Appellant

INITIAL BRIEF OF RESPONDENT

This 18th day of January, 2018

Appellant of record:
Howard W. Charpia
717 Old Trolley Road, Suite 6#360
Summerville, SC 29485

Frank M. Cisa
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STATEMENT OF THE CASE

The Respondent filed this action in the Court of Common Pleas for Dorchester County on August 10, 2009, wherein the Respondent sought the foreclosure of a judgment lien that the Respondent obtained against the Appellant, Howard W. Charpia (ROA__ Filed copy of Complaint).

On July 30, 2012, the case came before Judge Dickson for trial. By Order dated October 29, 2012, Judge Dickson issued an Order of Foreclosure and Sale (ROA__ Order of Foreclosure and Sale).

The Appellant then appealed the denial of Appellant's motion to reconsider the granting of Judge Dickson's Order of Foreclosure and Sale to the Court of Appeals. The Court of Appeals affirmed Judge Dickson's Order of Foreclosure and sale in an Unpublished Opinion filed on October 5, 2016, 2011 (ROA__ Unpublished Opinion number 2016-UP-423).

The Appellant then Petitioned for a writ of certiorari to the Supreme Court of South Carolina. The petition for a writ of certiorari was denied by Order dated February 8, 2017. (ROA__ Order from the Supreme Court dated February 8, 2017)

On February 2, 2017 the Appellant filed a motion for Declaratory Judgment requesting the court to grant a homestead exemption in the property subject to the Order of Foreclosure and Sale pursuant to S.C. Code Ann. 15-41-30 (A) (1) for Appellant's brother, Roger D. Charpia. (ROA__ Motion for Declaratory Judgment)

The Motion for Declaratory Judgment was heard by Judge Carmen T. Mullen on March 21, 2017. By order filed April 10, 2017 Judge Mullen denied the motion for an exemption for Appellant's brother, Roger D. Charpia, and granted the Appellant an exemption of \$59,100.00 in

the sale proceeds and ordered that the bidding would start at \$59,100.00. This is an appeal of Judge Mullen's Order.(ROA___ Order o Judge Mullen filed April 10, 2017)

STATEMENT OF THE FACTS

Respondent commenced this action to foreclose her judgment lien against Appellant's residence by filing a Complaint and Lis Pendens on August 10, 2009. (ROA___ filed copy of Complaint; ROA___ filed copy of Lis Pendens) . By deed dated April 23, 2012 the Appellant conveyed a One-half interest in the property subject to the foreclosure action to his brother, Roger Dale Charpia. The deed was recorded on May 1, 2012. (ROA___ Deed from Appellant to Roger Dale Charpia recorded on May 1, 2012). Judge Mullen denied the Appellant's motion based upon two findings. First, that S.C. Code 15-41-30(A)(1) grants the exemption to the debtor or dependent of the debtor, but not to both.

Secondly, that "a properly filed Lis Pendens binds subsequent purchasers... to all proceedings evolving from the litigation." ROA___ Judge Mullen's Order filed April 10, 2017.

ARGUMENT

I.The trial Court did not err in failing to award a homestead exemption to Roger D. Charpia as S.C.Code 15-41-30(A)(1) grants the exemption to the debtor or dependent of the debtor, but not to both.

S.C.Code 15-41-30(A)(1) states that the following property is exempt; "The debtor's aggregate

interest, not to exceed fifty thousand dollars in value, in real property...that the debtor or dependent of the debtor uses as a residence.”(underlining added)

The record is not clear as whether Roger D. Charpia is in fact a dependent of Appellant, but even if he is a dependent, the Appellant is not entitled to use his brother to increase the exemption.

The United States Bankruptcy Court for South Carolina in discussing the application of S.C.Code 15-41-30(A)(1) stated: “ In sum, to be entitled to a homestead exemption, a debtor must have an ownership interest in the property he seeks to exempt;... Nor does the inclusion of the word “dependent” in the statute affect the result. The purpose of this inclusion is to exempt the property interest of the debtor if the debtor or a dependent of the debtor uses the property as a residence. The debtor need not reside on the property as long as a dependent does. The use of the property by both the debtor and a dependent does not, however, increase the amount of the exemption available to debtor.” In re Scotti, 456 B.R.760, 764 (2011)

II. The trial court did not err in finding that the conveyance of a one-half interest in the property from Appellant to Roger D. Charpia occurred after the Respondent filed her lis pendens.

Respondent’s Lis Pendens was filed on August 10, 2009. (ROA__ filed copy of Lis Pendens) The deed which purported to convey a one-half interest in the subject property is dated April 23, 2012 and was recorded on May 1, 2012.(ROA__ deed from Appellant to Roger Dale Charpia dated April 23, 2012 and recorded on May 1, 2012)

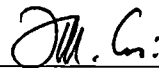
It is well settled in South Carolina that "A properly filed lis pendens binds subsequent purchasers or encumbrancers to all proceeding evolving from the litigation South Carolina National Bank V. Cook, 291S.C.530,532, 354S.E.2d 562,562 (1987).

Roger D. Charpia is bound by the foreclosure action. Any claim of ownership by him is subject to the Respondent's judgment lien.

CONCLUSION

Based upon the foregoing it is respectfully requested that the Order On Defendants' Motion For Declaratory Judgment be affirmed.

CISA & DODDS, LLP



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This 18th day of January, 2018

Mt. Pleasant, SC

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APPEAL FROM DORCHESTER COUNTY
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APPELLATE CASE NUMBER 2017-000834

Foreclosure of Judgment Lien Sale
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of whom H. Wayne Charpia a/k/a Howard W. Charpia is the Appellant

PROOF OF SERVICE

I certify that I have served a copy of Respondent's Initial Brief and Designation of Matter, by United States mail, postage prepaid, on January ~~10~~¹⁶, 2018, addressed to Appellant, H. Wayne Charpia at 717 Old Trolley Road, Suite 6+360, Summerville, S.C., 29485.



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Attorney for the Respondent,
Renee McMasters Ronaghan

This 10th day of January, 2018

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January 18, 2018

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE: Rene McMasters V. Howard W. Charpia
Case No.: 2009-CP-18-2200
Appellant No.: 2017-000834
Our file: 09-084

Dear Ms. Kitchings:

Enclosed is the original and one (1) copy of the Respondent's Initial Brief and Designation of Matter to Be Included in the Record on Appeal together with my Proof of Service. I would appreciate you filing the original and returning one (1) filed copy to me in the self-addressed stamped envelope provided.

With kindest regards, I am

Very truly yours,



Frank M. Cisa

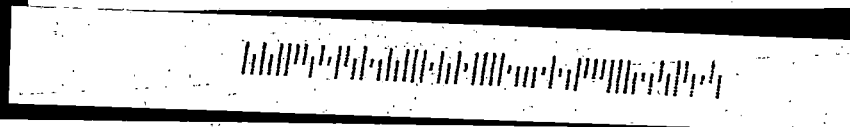
FMC/alp

Enclosures

cc: H. Wayne Charpia (w/enc.)



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