

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joseph M. Strickland
Master In Equity for Richland County

Appellate Case No.: 2016-001468
Civil Action No.: 2008-CP-40-8887

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SC Court of Appeals

South Carolina Community Bank,

Respondent,

v.

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

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

Appellants.

BRIEF OF APPELLANT

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Poole v. Jefferson Life Ins. Co.,
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S.C. National Bank v. Blossom,
241 SC 110, 467 S.E. 2d 76 – (Ct. App. 1996)

Wachovia Bank of SC v. Player,
341 SC 424, 535 S.E. 2d. 128 (2000)

Wells Fargo Bank, NA v. Turner,
622 S.E. 2d 424 (S.C. Ct. App. 2008)

STATUTES

Section 15-39-720

Section 15-39-760

OTHER AUTHORITIES

Rule 52 (SCRCP)

Rule 71 (SCRCP)

STATEMENT OF ISSUES ON APPEAL

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

STATEMENT OF THE CASE

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

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

The gist of this appeal concerns the appropriateness of the final order of the lower court, to wit: the Order Denying Motion to Reconsider. (R.p. 159)

Also, the Third Supplemental Order to The Master in Equity's Order and Judgment of Foreclosure and Sale dated June 30, 2015 and filed July 17, 2015 is relevant to this appeal as it did not comply with applicable law. (R.p. 62)

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

ARGUMENTS

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

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

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

The arguments raised by counsel for Appellants in his Motion to Set Aside Foreclosure Sale were not addressed in the Order being appealed from. (R.p. 86)

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Dated this the 6th day of April, 2017.

Respectfully Submitted,

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CERTIFICATE OF COUNSEL IN FINAL BRIEF

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Appellants.

Certificate of Counsel

The undersigned certified that this Final Brief complies with Rule 211 (b), SCACR

April 6, 2017



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Appellants.

Certificate of Service

I, Rhoda L. Stephens, secretary in the Pyatt Law Firm, LLC do hereby certify that I have served the Brief of Appellants by depositing three (3) copies of same in the United State Mail, postage pre-paid, on April 6, 2017, addressed to the attorney for Respondent, Carmen Ganjehsani, Post Office Drawer 7788 Columbia, SC 29202.

Dated this the 6th day of April, 2017.

Rhoda L. Stephens
Rhoda L. Stephens