

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

App. Case No. 2014-002018

Belle Hall Plantation Homeowner's Association, Inc.....Plaintiff,

v.

John A. Murray, Trustee of John E. Murray & Gloria C. Murray Family Trust.....Respondent,

David Conor Keys & Karen Keys, Third-Party Plaintiff,.....Petitioners.

AMENDED APPENDIX

VOLUME II

D. Conor Keys #100148
The Law Office of
David Conor Keys, LLC
P.O. Box 14225
Charleston, SC 29422
Phone: 843-906-3998
Conor@dconorkeyslaw.com
*Individually and as
Attorney for Petitioner*

Amanda Reece
Reece Law Firm, LLC
217 Lucas Street, Unit J
Mt. Pleasant, SC 29464
Phone: 843-209-9830
amanda@reecelawfirm.com
Attorney for Respondent

COUNTY

- Less

**62. JOHN P MURRAY**

DOB: [REDACTED] (Age: 47)

[Create Report](#)

Address: 1219 PICKENS AVE, CHARLESTON, SC 29406 | CHARLESTON COUNTY

Phone Numbers: 843-569-2225

- Less

**63. JOHN C MURRAY**

Address: 1440 BRIAN RD, CHARLESTON, SC 29407-5318 | CHARLESTON COUNTY

[Create Report](#)

- Less

**64. JOHN O MURRAY JR**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] (Age: 68)

DOD: 01/15/1996

Address: CHARLESTON, SC 29492 | BERKELEY COUNTY

- Less

**65. JOHN O MURRAY**

DOB: [REDACTED] (Age: 84)

[Create Report](#)

Address: 1111 PAULINE AVE, CHARLESTON, SC 29412-4027 | CHARLESTON COUNTY

Reported 06/01/2011 - 06/01/2011

7447 US HIGHWAY 98, FAIRHOPE, AL 36532-5816 | BALDWIN COUNTY

Reported 02/25/2004 - 02/25/2004

11592 ISLAND AVE, MATLACHA, FL 33993-9701 | LEE COUNTY

Phone Numbers: 251-928-6614

843-795-4152

- Less

**66. SINGLEE MURRAY**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] (Age: 35)

Address: 1308 PIEDMONT ARCH, CHESAPEAKE, VA 23320-6435 | CHESAPEAKE CITY COUNTY

Reported 10/25/2011 - 05/06/2013

1425 KEMPSVILLE RD, VIRGINIA BEACH, VA 23464-7301 | VIRGINIA BEACH CITY COUNTY

Reported 11/29/2011 - 11/29/2011

5476 BULLS BAY DR, VIRGINIA BEACH, VA 23462-7199 | VIRGINIA BEACH CITY COUNTY

Reported 09/02/2006 - 09/03/2011

Phone Numbers: 757-963-0102

571-0945

AKAs: SINGLEE JOHN

JOHN PAU MURRAY

SINGLEE J MURRAY

Spouse/Close: GAYLA

Association: - Less

**67. JOHN M COMPTON, III**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] (Age: 32)

Address: 1181 CAMDEN ST, NORTH CHARLESTON, SC 29405-4327 | CHARLESTON COUNTY

Reported 01/01/2005 - 10/31/2012

40192, CHARLESTON, SC 29423 | CHARLESTON COUNTY

Reported 03/14/2010 - 03/14/2010

PO BOX 40192, NORTH CHARLESTON, SC 29423-0192 | CHARLESTON COUNTY, USA

Reported 03/14/2010 - 03/14/2010

Phone Numbers: 843-225-7690

843-744-3338

AKAs: MR JOHN M COMPTON, 3D

J M COMPTON, III

JOHN COMPTON, III

- Less

**68. JOHN MURRAY**

Address: 2144 SAVANNAH HWY, CHARLESTON, SC 29414-5312 | CHARLESTON COUNTY

[Create Report](#)

Reported 01/01/1991 - 12/31/1991

- Less

298**69. JOHN MURRAY****RECORD 294**

Address: 3835 SAINT JOHNS AVE APT 12, NORTH CHARLESTON, SC 29405-7129 |
CHARLESTON COUNTY

- Less

Create Report

**70. JOHN MURRAY**

Address: 4654 W MONTAGUE AVE, NORTH CHARLESTON, SC 29418-5696 |
CHARLESTON COUNTY

Reported 03/17/2010 - 03/17/2010

Phone Numbers: 843-255-6386

- Less

Create Report

**71. MR JOHN MURRAY**

Address: 8106 S SPLIT OAK, NORTH CHARLESTON, SC 29420-8568 |
DORCHESTER COUNTY

Reported 01/01/1986 - 06/30/2010

Phone Numbers: 843-767-4225

- Less

Create Report

**72. JOHN MURRAY**

Address: 1724 61ST HWY, CHARLESTON, SC 29407 | CHARLESTON COUNTY

Reported 01/01/1995 - 12/31/1995

- Less

Create Report

**73. JOHN MURRAY**

SSN: [REDACTED]

Address: 57 WARREN ST, CHARLESTON, SC 29403-6765 | CHARLESTON COUNTY

Reported 06/13/2014 - 06/13/2014

Phone Numbers: 706-589-2214

- Less

Create Report

**74. JOHN MURRAY**

Address: 71 SOCIETY ST, CHARLESTON, SC 29401-1446 | CHARLESTON COUNTY

Reported 12/21/2009 - 12/21/2009

71 SOCIETY ST APT 420, CHARLESTON, SC 29401-1442 | CHARLESTON COUNTY

Reported 11/23/2009 - 11/23/2009

Phone Numbers: 843-720-5282

- Less

Create Report

**75. JOHN MURRAY**

Address: 2 BISHOP GADSDEN WAY UNIT 2024, CHARLESTON, SC 29412-3580 |
CHARLESTON COUNTY

Reported 01/01/2011 - 02/02/2011

- Less

Create Report

**76. JOHN MURRAY**

DOB: [REDACTED] (Age: 74)

Address: 1509 ACACIA ST, CHARLESTON, SC 29407-5801 | CHARLESTON COUNTY

- Less

Create Report

**77. JOHN MURRAY**

DOB: [REDACTED] (Age: 74)

Address: 67 CANNON ST, CHARLESTON, SC 29403-6795 | CHARLESTON COUNTY

- Less

Create Report

**78. JOHN MURRAY**

SSN: [REDACTED] X

DOB: [REDACTED] (Age: 50)

DOD: [REDACTED]

Address: CHARLESTON, SC 29403 | CHARLESTON COUNTY

- Less

Create Report

**79. JOHN MURRAY**

SSN: [REDACTED] X

DOB: [REDACTED] (Age: 80)

DOD: [REDACTED]

Address: CHARLESTON, SC 29407 | CHARLESTON COUNTY

- Less

Create Report

**80. TROY J MURRAY**

SSN: 22-299-XXXX

DOB: 06/XX/1969 (Age: 45)

Create Report

RECORD 295

Address: 3712 N 10TH ST, TACOMA, WA 98406-5002 | PIERCE COUNTY
Reported 02/05/2012 - 03/26/2014
 7035 S FIFE ST, TACOMA, WA 98409-5925 | PIERCE COUNTY
Reported 03/18/2011 - 02/19/2013
 911 S 27TH ST, TACOMA, WA 98409-8102 | PIERCE COUNTY
Reported 06/30/2011 - 10/18/2011

Phone Numbers: 843-747-6471
 458-8816

AKAs: TROY MURRAY
 TROYS MURRAY
 TROY JOHN MURRAY

- Less

**81. JOHNNY MURRAY, JR**[Create Report](#)

SSN: [REDACTED] X
DOB: [REDACTED] (Age: 45)
Address: 1710 PRESCOTT ST S, SAINT PETERSBURG, FL 33712-2838 | PINELLAS COUNTY
Reported 04/14/2005 - 09/09/2013
 6041 HIGHLAND ST S, SAINT PETERSBURG, FL 33705-5748 | PINELLAS COUNTY
Reported 07/21/2011 - 07/21/2011
 6041 HIGHLAND ST S, SAINT PETERSBURG, FL 33712 | PINELLAS COUNTY
Reported 05/05/2009 - 05/05/2009

Phone Numbers: 727-346-3168
 727-244-8501
 821-4877

AKAs: JOHNNY NONE MURRAY
 MR JOHNNY N MURRAY, JR
 JOHNNY MURRAY

Spouse/Close Association: DAWN
 TRACEY

- Less

**82. JOHN MURRAY**[Create Report](#)

SSN: [REDACTED] X
DOB: [REDACTED] (Age: 56)
Address: 1339 ASHLEY RIVER RD, CHARLESTON, SC 29407-5315 | CHARLESTON COUNTY
Reported 02/01/1994 - 02/01/1994
 1207 VILLAGE CREEK LN APT 3, MOUNT PLEASANT, SC 29464-6178 | CHARLESTON COUNTY
Reported 01/01/1986 - 12/31/1986
 207 VILLAGE CRK UNIT 3, MOUNT PLEASANT, SC 29464 | CHARLESTON COUNTY

AKAs: JOHN L EST
 JOHN L MURRAY

- Less

**83. MICHAEL J MURRAY**[Create Report](#)

SSN: [REDACTED] X
DOB: [REDACTED] (Age: 44)
Address: 16 ROSE LN, CHARLESTON, SC 29403-6845 | CHARLESTON COUNTY
Reported 10/07/2012 - 09/17/2013
 814 EAGLE VIEW DR, CHARLESTON, SC 29414-5767 | CHARLESTON COUNTY
Reported 01/01/2012 - 05/31/2012
 113 PLYMOUTH AVE, CHARLESTON, SC 29412-2027 | CHARLESTON COUNTY
Reported 11/15/2010 - 03/01/2011

Phone Numbers: 843-881-5757
 843-814-3320
 703-339-4640

AKAs: MIKE MURRAY
 MICHAEL MURRAY
 MIKE MURRAY

- Less

**84. TROY J MURRAY**[Create Report](#)

SSN: [REDACTED] X
DOB: [REDACTED] (Age: 45)
Address: 4336 RUGHEIMER AVE APT 2, NORTH CHARLESTON, SC 29405-4788 | CHARLESTON COUNTY
Reported 07/01/1996 - 07/01/1996
 303 RIVERLAND DR, CHARLESTON, SC 29412-2319 | CHARLESTON COUNTY
Reported 10/01/1993 - 10/01/1993
 310 BROAD ST APT 3A, CHARLESTON, SC 29401-1257 | CHARLESTON COUNTY

Phone Numbers: 843-881-5757

AKAs: TROY JOHN MURRAY

RECORD 296

[- Less](#)**85. MR JOHN J MURPHY**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] (Age: 50)

Address: 9086 RON DEN LN, WINDERMERE, FL 34786-8328 | ORANGE COUNTY

Reported 05/06/2009 - 12/18/2013

7216 BAY CLUB WAY, ORLANDO, FL 32835-1891 | ORANGE COUNTY

Reported 04/16/2007 - 12/14/2008

2700 MONTICELLO PL APT 110, ORLANDO, FL 32835-2487 | ORANGE COUNTY

Reported 09/15/2005 - 08/16/2007

Phone Numbers: 407-488-8806

407-217-2652

843-529-0600

AKAs: JON MURPHY

JOHN JOS MURRAY

JOHN MURPHY

Spouse/Close

T

Association: - Less

**86. JOHN M HIRS**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] X

DOD: [REDACTED] (Age: 84)

11/1978

Address: 229 RIVERLAND DR, CHARLESTON, SC 29412-2347 | CHARLESTON COUNTY

Reported 08/06/2011 - 08/06/2011

1633 WIGEON LN, CHARLESTON, SC 29412-9538 | CHARLESTON COUNTY

Reported 07/13/2001 - 07/13/2001

CHARLESTON, SC 29407 | CHARLESTON COUNTY

Phone Numbers: 843-762-0387

AKAs: J M HIRS

JONATHAN R HIRS

JOHN HIRS

[- Less](#)**87. JONATHAN MURRAY**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] (Age: 65)

Address: 4615 MATILDA AVE, BRONX, NY 10470-1507 | BRONX COUNTY

Reported 03/10/2014 - 03/10/2014

145 LIVINGSTON AVE, YONKERS, NY 10705-2207 | WESTCHESTER COUNTY

Reported 04/10/2013 - 04/10/2013

198 HAWTHORNE AVE, YONKERS, NY 10705-6001 | WESTCHESTER COUNTY

Reported 03/15/2013 - 03/15/2013

Phone Numbers: 843-766-4629

AKAs: JONATHAN MURRAY

JOHNATHAN MURRAY

JOHN MURRAY

[- Less](#)**88. SINGLEE JOHN P MURRAY**

DOB: [REDACTED] (Age: 35)

[Create Report](#)

Address: 1308 PIEDMONT ARCH, CHESAPEAKE, VA 23320-6435 | CHESAPEAKE

CITY COUNTY

Reported 11/01/2011 - 11/01/2011

5476 BULLS BAY DR, VIRGINIA BEACH, VA 23462-7198 | VIRGINIA BEACH CITY COUNTY

Reported 10/13/2010 - 10/13/2010

PO BOX 32215, CHARLESTON, SC 29417-2215 | CHARLESTON COUNTY

Reported 08/16/2010 - 08/16/2010

Phone Numbers: 757-963-0102

AKAs: MURRAY, SINGLEE

MURRAY, SINGLEE J

[- Less](#)**89. JOHN C MURRAY**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] (Age: 88)

DOD: 02/28/1999

Address: 1582 ECKWICK ST, CHARLESTON, SC 29407-5017 | CHARLESTON COUNTY

Reported 01/01/1999 - 01/01/1999

RECORD 297

RR 1, ANDREWS, SC 29510 | GEORGETOWN COUNTY

Reported 01/01/1992 - 12/31/1992

PO BOX 325, ANDREWS, SC 29510-0325 | GEORGETOWN COUNTY

Reported 01/01/1988 - 12/31/1988

Phone Numbers:

221-7517

- Less

**90. JOHN E MURRAY**

DOB: [REDACTED] (Age: 55)

Create Report

Address: 6240 OLD POINT RD, HANAHAN, SC 29410-2151 | BERKELEY COUNTY

- Less

**91. JOHN J MURRAY**

DOB: [REDACTED] (Age: 47)

Create Report

Address: 1219 PICKENS ST, HANAHAN, SC 29410-2021 | BERKELEY COUNTY

- Less

**92. MR JOHN O MURRAY, 3D**

DOB: [REDACTED] (Age: 64)

Create Report

Address: 8960 N RED MAPLE CIR, SUMMERVILLE, SC 29485-9016 | DORCHESTER COUNTY

Reported 08/13/2012 - 08/13/2012

355 CLAYTON DR, CHARLESTON, SC 29414-5048 | CHARLESTON COUNTY

Reported 01/01/1998 - 07/31/2012

4577 GREAT OAK DR, NORTH CHARLESTON, SC 29418-5002 | CHARLESTON COUNTY

Reported 04/01/2005 - 04/01/2005

Phone Numbers:

843-766-5972

843-767-5835

AKAs:

JOHN O MURRAY, IV

JOHN O MURRAY

MURRAY, JOHN

- Less

**93. CHRISTOPHER J MURRAY**

SSN: [REDACTED]

Create Report

DOB: [REDACTED] (Age: 37)

Address: 528 N JUDD ST, HONOLULU, HI 96817-2275 | HONOLULU COUNTY

Reported 03/10/2014 - 04/06/2014

99-545 POHUE PL, AIEA, HI 96701-3348 | HONOLULU COUNTY

Reported 11/13/2011 - 03/26/2014

1235 KRUGER AVE, CHARLESTON, SC 29407-6659 | CHARLESTON COUNTY

Reported 01/03/2014 - 01/03/2014

Phone Numbers:

843-209-7265

808-846-4684

803-731-2054

AKAs:

CHRISTOPHER MURAY

CHRISTOPHER MURRAY

CHRISTOPH J MURRAY

Spouse/Close

VESELY

Association:

- Less

**94. JOHNNY P MURRAY**

SSN: [REDACTED]

Create Report

Address: 5902 PARK ST, HANAHAN, SC 29410-2617 | BERKELEY COUNTY

Reported 01/01/1996 - 12/31/1996

8458 PREAKNESS DR, NORTH CHARLESTON, SC 29420-7551 | DORCHESTER COUNTY

Reported 01/01/1996 - 12/31/1996

1219 PICKENS ST, HANAHAN, SC 29410-2021 | BERKELEY COUNTY

Reported 01/01/1993 - 12/31/1993

Phone Numbers:

760-6637

- Less

**95. JOHN M SEGARS**

SSN: [REDACTED]

Create Report

DOB: [REDACTED] (Age: 85)

DOD: 09/23/2009

Address: 240 XAMER ST, CHARLESTON, SC 29414-9201 | CHARLESTON COUNTY

Reported 09/07/2012 - 09/07/2012

78 ASHLEY HALL PLANTATION RD APT D45, CHARLESTON, SC 29407-9627 | CHARLESTON COUNTY

Reported 09/29/2010 - 09/29/2010

78 ASHLEY HALL PLANTATION RD APT D49, CHARLESTON, SC 29407-9627 | CHARLESTON COUNTY

RECORD 298

COUNTY
Reported 10/01/2009 - 11/11/2009
Phone Numbers: 843-871-8347
843-792-2146
871-8347
AKAs: SEGARS JOHN
JOHN SEGARS
JOHN MURRAY SEGARS
Spouse/Close M
Association: - Less

**96. JOHN M SCHERLEN**

SSN: [REDACTED] [Create Report](#)
DOB: [REDACTED] (Age: 53)
Address: 4435 RUGHEIMER AVE, NORTH CHARLESTON, SC 29405-4755 | CHARLESTON COUNTY
Reported 01/01/2012 - 04/30/2013
213 BANTRY CIR, CHARLESTON, SC 29414-8090 | CHARLESTON COUNTY, USA
Reported 06/07/2012 - 06/07/2012
212 STONE ST, BRIDGEPORT, WV 26330-1840 | HARRISON COUNTY, USA
Reported 02/27/2010 - 02/27/2010
Phone Numbers: 843-225-4741
937-840-0246
763-6768
AKAs: JOHN E SCHERLEN
JOHN SCHERLEN
JOHN ROGERS
Spouse/Close GAIL
Association: - Less

**97. JONTHAN S MURRAY, JR**

SSN: [REDACTED] [Create Report](#)
DOB: [REDACTED] (Age: 25)
Address: 45 SYCAMORE AVE APT 1122, CHARLESTON, SC 29407-6732 | CHARLESTON COUNTY
Reported 02/02/2014 - 02/02/2014
1755 CENTRAL PARK RD UNIT 5204, CHARLESTON, SC 29412-2849 | CHARLESTON COUNTY
Reported 07/23/2013 - 07/23/2013
16024 SAMOA CT, FORT MILL, SC 29708-8551 | YORK COUNTY
Reported 09/03/2008 - 04/23/2013
AKAs: JONATHAN MURRAY
JONATHAN MURRAY, JR
JONATHAN S MURRAY
- Less

**98. JONATHAN SCOTT MURRAY**

SSN: [REDACTED] [Create Report](#)
Address: 45 SYCAMORE AVE APT 1122, CHARLESTON, SC 29407-6732 |
CHARLESTON COUNTY
Reported 08/14/2013 - 08/16/2013
1755 CENTRAL PARK RD UNIT 5204, CHARLESTON, SC 29412-2849 | CHARLESTON COUNTY
Reported 07/15/2013 - 07/16/2013
- Less

**99. JOHNNY MURRAY**

Address: 4960 LAMBS RD, NORTH CHARLESTON, SC 29418-3525 | CHARLESTON [Create Report](#)
COUNTY
Reported 01/15/2014 - 01/15/2014
Phone Numbers: 843-767-8372
AKAs: MR JOHN MURRAY
- Less

**100. JOHNNY MURRAY**

SSN: [REDACTED] [Create Report](#)
Address: 5287 WATERVIEW DR, NORTH CHARLESTON, SC 29418-5724 |
CHARLESTON COUNTY
Reported 09/12/2011 - 03/13/2014
Phone Numbers: 843-767-8372
- Less

304

RECORD 300

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People (180)

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Location

☐ State 180

Year of Birth

☐ 1990s 5
☐ 1980s 23
☐ 1970s 33
☐ 1960s 47
☐ 1950s 29
☐ 1940s 29
☐ 1930s 11
☐ 1920s 11
☐ Pre1920s 8

Phone Number

☐ With Phone Number 130

Email

☐ With Email 42

Business/Employment

☐ With Business/Employment Information 13

Household Information

☐ Multi-Person Household 97

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☐ 101. JOHN M JOYE

SSN: [REDACTED]
DOB: [REDACTED] (Age: 68)
DOD: [REDACTED]
Address: 16249 CHOPPEE RD, HEMINGWAY, SC 29554-4449 | GEORGETOWN COUNTY
Reported 01/01/1996 - 06/30/2011
2699 ORCHID AVE, NORTH CHARLESTON, SC 29405-6856 | CHARLESTON COUNTY
Reported 05/14/2003 - 10/26/2010
501, GEORGETOWN, SC 29442 | GEORGETOWN COUNTY
Reported 01/22/2004 - 01/22/2004
Phone Numbers: 843-558-9018
AKAs: MR JOHN M JOYE, JR
JOHN JOYE, JR
- Less

☐ 102. JOHNNIE MURRAY

Address: 7429 WARMAVE TRLR 27, NORTH CHARLESTON, SC 29420-4280 | CHARLESTON COUNTY
Reported 01/01/1993 - 12/31/1993
- Less

☐ 103. ERNEST J MURRAY, JR

SSN: [REDACTED]
DOB: [REDACTED] (Age: 51)
Address: 210 EQUINOX CIR, LADSON, SC 29456-5291 | DORCHESTER COUNTY
Reported 03/11/2013 - 03/11/2013
5120 THORNTON DR, SUMMERVILLE, SC 29485-8896 | DORCHESTER COUNTY
Reported 01/30/2006 - 01/30/2006
4501 HARBOUR LAKE DR APT 2J, GOOSE CREEK, SC 29445-5920 | BERKELEY COUNTY
Reported 02/25/2004 - 02/25/2004
Phone Numbers: 843-824-2342
843-824-0019
666-6666
AKAs: MURRAY, ERNEST J
ERNEST, MURRAY J
MURRAY, ERNEST JOHN
- Less

☐ 104. ERNEST J MURRAY, JR

SSN: [REDACTED]
Address: 210 EQUINOX CIR, LADSON, SC 29456-5291 | DORCHESTER COUNTY
Reported 10/05/2013 - 10/07/2013
5441 K ST, NORTH CHARLESTON, SC 29418 | CHARLESTON COUNTY
Reported 11/13/2000 - 11/13/2000
3506 TOMS CT, AUGUSTA, GA 30906-9098 | RICHMOND COUNTY
Reported 02/01/1999 - 02/01/1999
Phone Numbers: 843-693-6407
AKAs: MURRAY, ERNEST JOHN
ERNEST J MURRAY
ERNIE J MURRAY
- Less

☐ 105. JOHN L MCMURRAY

SSN: [REDACTED]
DOB: [REDACTED] (Age: 40)
Address: 2516 FLEMING MILL RD, LAURENS, SC 29360-4536 | LAURENS COUNTY
Reported 12/01/2013 - 12/01/2013
1 LAURENSVILLE LN, LAURENS, SC 29360-2327 | LAURENS COUNTY
Reported 01/01/2012 - 03/31/2012
547 WYNN ST, LAURENS, SC 29360-2719 | LAURENS COUNTY
Reported 02/10/2011 - 02/10/2011
Phone Numbers: 854-981-5421

RECORD 301

AKAs: 864-682-3421
864-984-4343
MR JOHN L MC MURRAY
JOHN MCMURRAY
JOHN L MCMURRAY, III
Spouse/Close
Association: MARGARET
- Less

☐ 106. NATHAN MURRAY[Update](#)

SSN: [REDACTED]
DOB: [REDACTED] (Age: 26)
Address: 7371 MAZYCK RD, CHARLESTON, SC 29406-6422 | CHARLESTON
COUNTY
Reported 03/25/2014 - 03/25/2014
1530 PRAIRIE DR, RACINE, WI 53406-5801 | RACINE COUNTY
Reported 06/05/2012 - 05/02/2013
208 E 4 MILE RD, RACINE, WI 53402-2626 | RACINE COUNTY
Reported 03/04/2012 - 02/18/2013
Phone Numbers: 262-633-7294
AKAs: NATHAN J MURRAY
NATHAN O MURRAY
- Less

[Create Report](#)☐ 107. NATHAN MURRAY[Update](#)

SSN: [REDACTED]
DOB: [REDACTED] (Age: 26)
Address: 7371 MAZYCK RD, CHARLESTON, SC 29406-6422 | CHARLESTON
COUNTY
Reported 03/25/2014 - 03/25/2014
1530 PRAIRIE DR, MOUNT PLEASANT, WI 53406-5801 | RACINE COUNTY
Reported 06/05/2012 - 05/02/2013
208 E 4 MILE RD, RACINE, WI 53402-2626 | RACINE COUNTY
Reported 03/04/2012 - 02/18/2013
Phone Numbers: 262-497-2388
262-994-8777
262-633-7294
AKAs: NATHAN J MURRAY
NATHAN O MURRAY
NATE MURRAY
- Less

[Create Report](#)☐ 108. JOHN F MURPHY, JR[Update](#)

SSN: [REDACTED]
DOB: [REDACTED] (Age: 42)
Address: 330 11TH ST, ATLANTIC BEACH, FL 32233-5532 | DUVAL COUNTY
Reported 03/14/2014 - 03/14/2014
920 MEADOWSONG CIR, LAWRENCEVILLE, GA 30043-4280 | GWINNETT COUNTY
Reported 12/20/2010 - 12/20/2010
JOHN MURPHY, LAWRENCEVILLE, GA 30043 | GWINNETT COUNTY
Reported 11/05/2009 - 11/05/2009
AKAs: MR JOHN F MURPHY
JOHN MURPHY, JR
JOHN F MURRAY, JR
Spouse/Close
Association: C
- Less

[Create Report](#)☐ 109. JON M REEDER[Update](#)

SSN: [REDACTED]
DOB: [REDACTED] (Age: 36)
Address: 726 WINDING WAY, ROCK HILL, SC 29732-3161 | YORK COUNTY
Reported 11/20/2007 - 08/20/2013
1240 PRIESTLY DR, ROCK HILL, SC 29732-2299 | YORK COUNTY
Reported 11/07/2007 - 11/07/2007
1240 PRIESTLY DR APT 101, ROCK HILL, SC 29732-2363 | YORK COUNTY
Reported 10/10/2007 - 10/10/2007
Phone Numbers: 864-576-5654
803-980-1871
324-1462
AKAs: JON REEDER
REEDER, JOHN
REEDER, JOHN M
- Less

[Create Report](#)306
RECORD 302

**110. NOAH J MURRAY**

SSN: [REDACTED]

DOB: [REDACTED] (Age: 34)

Address: 107 EQUINOX CIR, LADSON, SC 29456-5292 | DORCHESTER COUNTY

Reported 04/10/2014 - 04/10/2014

4976 WESCOTT BLVD APT 627, SUMMERVILLE, SC 29485-9026 | DORCHESTER COUNTY

Reported 08/24/2011 - 01/08/2014

9580 OLD GLORY LN APT 109, SUMMERVILLE, SC 29485-6813 | DORCHESTER COUNTY

Reported 11/24/2012 - 01/06/2014

Phone Numbers: 843-552-0857

AKAs: MR NOAH MURRAY

MURRAY N JONATHAN

- Less

[Update](#)[Create Report](#)**111. JONATHAN M TAYLOR**

SSN: [REDACTED]

DOB: [REDACTED] (Age: 37)

DOD: 04/04/2013

Address: 368 MALL DR, SAINT GEORGE, UT 84790 | WASHINGTON COUNTY

Reported 12/05/2012 - 02/11/2014

1812 W SUNSET BLVD STE 1, SAINT GEORGE, UT 84770-6568 | WASHINGTON COUNTY

Reported 01/01/2008 - 01/31/2014

1224 NE WALNUT ST, ROSEBURG, OR 97470-2026 | DOUGLAS COUNTY

Reported 09/04/2013 - 09/04/2013

Phone Numbers: 986-8020

AKAs: JOHNATHAN M TAYLOR

JONATHAN TAYLOR

JOHNTHAN M TAYLOR

- Less

[Update](#)[Create Report](#)**112. ERIC MURRAY**

SSN: [REDACTED]

DOB: [REDACTED] (Age: 33)

Address: 1306 YOSKO DR, EDISON, NJ 08817-2145 | MIDDLESEX COUNTY

Reported 04/08/2014 - 04/08/2014

RR 519 BOX 660, BELVIDERE, NJ 07823 | WARREN COUNTY

Reported 01/24/2014 - 01/24/2014

8767 YEARLING DR, CHARLESTON, SC 29406-8010 | CHARLESTON COUNTY

Reported 01/21/2014 - 01/21/2014

Phone Numbers: 518-396-0207

908-475-5219

518-257-8688

AKAs: ERIC J MURRAY

- Less

[Update](#)[Create Report](#)**113. MR RANDOLPH MURRAY**

SSN: [REDACTED]

DOB: [REDACTED] (Age: 35)

Address: 1099 OLD BATTERY CIR, CHARLESTON, SC 29412-8263 | CHARLESTON COUNTY

Reported 01/01/2008 - 01/31/2014

5360 SAVANNAH HWY LOT 23, RAVENEL, SC 29470-5402 | CHARLESTON COUNTY

Reported 02/14/2012 - 09/27/2013

RAVENEL, SC 29470 | CHARLESTON COUNTY

Reported 01/01/2012 - 11/30/2012

Phone Numbers: 843-889-0246

843-539-6598

843-763-0777

AKAs: MR RANDOLPH T MURRAY

RANDOLPH J MURRY

RANDOLPH J MURRAY

- Less

[Update](#)[Create Report](#)**114. JOHN B DAVIS**

SSN: [REDACTED]

DOB: [REDACTED] (Age: 45)

Address: 310 W BUTLER RD APT 228, MAULDIN, SC 29662-2538 | GREENVILLE COUNTY

Reported 06/21/2013 - 06/21/2013

310 BARKER RD, SIMPSONVILLE, SC 29680-6326 | GREENVILLE COUNTY

Reported 06/18/2013 - 06/18/2013

13 PILOT RD, GREENVILLE, SC 29609-6346 | GREENVILLE COUNTY

[Update](#)[Create Report](#)**RECORD 303**

Reported 09/22/1999 - 05/29/2010
Phone Numbers: 864-834-3586
834-5461
AKAs: JOHN DAMS
JOHN BATSON DAMS
MURRAY, JOHN G
- Less

☐ 115. JOHN MCMURRAY[Update](#)

SSN: [REDACTED]
DOB: [REDACTED] (Age: 28)
Address: 107 MUJR CT APT A, SUMMERVILLE, SC 29485-8932 | DORCHESTER COUNTY
Reported 11/11/2011 - 04/01/2014
9594 CROSSCUT DR, LADSON, SC 29456-4944 | DORCHESTER COUNTY
Reported 01/01/2007 - 09/30/2013
4976 WESCOTT BLVD, SUMMERVILLE, SC 29485-9020 | DORCHESTER COUNTY
Reported 08/30/2013 - 08/30/2013
Phone Numbers: 843-871-3186
803-286-8614
AKAs: MR JOHN A MCMURRAY
JOHN MC MURRAY
Spouse/Close Association: DERRY
- Less
Create Report

☐ 116. JOHN A MCMURRAY[Update](#)

SSN: [REDACTED]
DOB: [REDACTED] (Age: 45)
Address: 324 CURTIS LOOP, WAHIAWA, HI 96786-4197 | HONOLULU COUNTY
Reported 10/11/2012 - 02/04/2014
CMR 411 BOX 3712, APO, AE 09112-0038
Reported 10/08/2009 - 11/26/2013
1005 OCEAN AVE, BOHEMA, NY 11716-3619 | SUFFOLK COUNTY
Reported 01/01/1992 - 06/28/2013
Phone Numbers: 843-388-2567
589-0043
AKAs: MR JOHN MCMURRAY
JOHN A MCMURRY
MR JOHN MC MURRAY
Spouse/Close Association: PATRICIA
- Less
Create Report

☒ 117. MS MELISSA B MURRAY[Update](#)

SSN: [REDACTED]
DOB: [REDACTED] (Age: 57)
Address: 420 ANAMOSA ST, RAPID CITY, SD 57701-0958 | PENNINGTON COUNTY
Reported 01/01/1999 - 07/31/2013
5801 BEATTYVILLE RD, JACKSON, KY 41339-9139 | BREATHITT COUNTY
Reported 01/20/2009 - 06/10/2013
11 HENDERSON DR, GOOSE CREEK, SC 29445-4242 | BERKELEY COUNTY
Reported 09/08/1999 - 07/16/2012
Phone Numbers: 605-355-4572
843-569-2309
795-0006
AKAs: MELISSA NULL MURRAY
MS MELISSA MURRAY
MYSI MURRAY
Spouse/Close Association: J
- Less
Create Report

☐ 118. CASEY E MURRAY[Update](#)

SSN: [REDACTED]
DOB: [REDACTED] (Age: 22)
Address: 512 ARMORY RD, ROCK HILL, SC 29730-7839 | YORK COUNTY
Reported 04/25/2014 - 04/25/2014
3106 POINT CLEAR DR, FORT MILL, SC 29708-8544 | YORK COUNTY
Reported 08/30/2009 - 07/09/2013
1000 PINEGATE DR APT K219, SPARTANBURG, SC 29303-6239 | SPARTANBURG COUNTY
Reported 04/01/2012 - 05/02/2012
AKAs: CASEY MURRAY
- Less
Create Report

308**RECORD 304**

- ☐ **119. JOHN G MURRAY** Update
DOB: [REDACTED] (Age: 77)
Address: 1901 HIGHWAY 174, EDISTO ISLAND, SC 29438-6547 | CHARLESTON COUNTY
Reported 01/01/1991 - 01/31/2014
Phone Numbers: 843-869-3067
AKAs: MR JOHN G MURRAY, 3D
MR JOHN G MURRAY, II
- Less
Create Report
- ☐ **120. MS LISA MURRAY** Update
DOB: [REDACTED] (Age: 47)
Address: 414 FOREST HILLS DR, WILMINGTON, NC 28403-2231 | NEW HANOVER COUNTY
Reported 01/01/1994 - 08/31/2012
625 FITZGERALD DR, WILMINGTON, NC 28405-1541 | NEW HANOVER COUNTY
Reported 01/01/2011 - 08/31/2011
Phone Numbers: 910-762-2621
910-762-4135
AKAs: MS LISA S MURRAY
- Less
Create Report
- ☐ **121. S MURRAY SANDRA** Update
SSN: [REDACTED]
DOB: [REDACTED] (Age: 52)
Address: 1882 MASSILLON RD, AKRON, OH 44312-4209 | SUMMIT COUNTY
Reported 03/26/2014 - 03/26/2014
866 KIRK WALL DR, COPLEY, OH 44321-1765 | SUMMIT COUNTY
Reported 06/05/2006 - 06/05/2006
2640 MASSILLON RD, AKRON, OH 44312-5318 | SUMMIT COUNTY
AKAs: MS SANDRA S MURRAY
- Less
Create Report
- ☐ **122. MS MARGARET S MCMURRAY** Update
SSN: [REDACTED]
DOB: [REDACTED] (Age: 38)
Address: 2616 FLEMING MILL RD, LAURENS, SC 29360-4537 | LAURENS COUNTY
Reported 01/26/2014 - 01/26/2014
2516 FLEMING RD, LAURENS, SC 29360 | LAURENS COUNTY
Reported 11/07/2013 - 11/12/2013
29 LONG LAKE DR, BLUFFTON, SC 29910-5519 | BEAUFORT COUNTY
Reported 01/01/2001 - 05/31/2012
Phone Numbers: 864-923-5352
864-882-3421
864-984-5421
AKAs: MARGARET S S MCMURRAY
MARGARET BAKER SMITH
MARGARET MCMURRAY
Spouse/Close Association: JOHN
- Less
Create Report
- ☐ **123. MR WILLIAM M JOYE** Update
SSN: [REDACTED]
DOB: [REDACTED] (Age: 32)
Address: 16249 CHOPPEE RD, HEMINGWAY, SC 29554-4449 | GEORGETOWN COUNTY
Reported 01/01/1996 - 08/31/2012
127 CANDACE LN, GEORGETOWN, SC 29440-5724 | GEORGETOWN COUNTY
Reported 02/11/2008 - 04/10/2008
PO BOX 185, HEMINGWAY, SC 29554-0185 | WILLIAMSBURG COUNTY
Reported 01/16/2008 - 01/16/2008
Phone Numbers: 843-558-9018
843-558-3219
843-558-6974
AKAs: WILLIAM JOYE
JOYE WILLIAM
JOYE, WILL
- Less
Create Report
- ☐ **124. ALLISON J COMPTON** Update
SSN: 247-57-XXXX

RECORD 305

DOB: [REDACTED] (Age: 32)
 Address: 1181 CAMDEN ST. NORTH CHARLESTON, SC 29405-4327 | CHARLESTON COUNTY
Reported 01/01/2005 - 06/30/2012
 243 BROADPATH RD, HUGER, SC 29450-9747 | BERKELEY COUNTY
Reported 07/14/2006 - 07/14/2006
 904 MIDDLE ST, SULLIVANS ISLAND, SC 29482-9752 | CHARLESTON COUNTY
 Phone Numbers: 336-4177
 AKAs: ALLISON M. JENSEN
 ALLISON JENSEN COMPTON
 ALLISON COMPTON

- Less

☐ 125. MR CARSON MURRAY[Update](#)

DOB: [REDACTED] (Age: 24)
 Address: 3530 DUNMOVIN DR, JOHNS ISLAND, SC 29455-8419 | CHARLESTON COUNTY
Reported 01/01/1987 - 02/29/2012

- Less

☐ 126. CAROLINE LOFTON THORESON[Create Report](#)

SSN: [REDACTED]
 DOB: [REDACTED] (Age: 38)
 Address: 10754 HAPPY VALE RD, JACKSONVILLE, FL 32246-1746 | DUVAL COUNTY
Reported 03/10/2013 - 12/26/2013
 2914 PARR CT E, JACKSONVILLE, FL 32216-5434 | DUVAL COUNTY
Reported 03/29/2013 - 03/29/2013
 1390 N SPRING ST, PENSACOLA, FL 32501-2611 | ESCAMBIA COUNTY
Reported 01/01/1984 - 02/29/2012
 Phone Numbers: 904-998-9275
 904-221-5570
 723-4179
 AKAs: CAROLINE L THORESON
 MS CAROLINE L MURRAY
 CAROLINE THORESON

- Less

☐ 127. K MURRAY[Create Report](#)

Address: 8106 S SPLIT OAK, NORTH CHARLESTON, SC 29420-8558 | DORCHESTER COUNTY
Reported 01/01/1986 - 06/30/2013
 Phone Numbers: 843-767-4225
 AKAs: KATANA MURRAY

- Less

☐ 128. ORADELL H MURRAY[Create Report](#)

SSN: [REDACTED]
 DOB: [REDACTED] (Age: 77)
 Address: 1901 HIGHWAY 174, EDISTO ISLAND, SC 29438-6547 | CHARLESTON COUNTY
Reported 05/13/1998 - 05/11/2012
 733 KNOTTY PINE RD, CHARLESTON, SC 29412-9125 | CHARLESTON COUNTY
Reported 05/19/1991 - 05/25/1993
 Phone Numbers: 843-869-3067
 869-3067
 AKAs: ORADELL MURRAY
 ORADELL MURRAY
 MS ORAD MURRAY, 3D

- Less

☐ 129. SHIRLEY MURRAY[Create Report](#)

SSN: [REDACTED]
 DOB: [REDACTED] (Age: 54)
 Address: PO BOX 16992, SAINT PETERSBURG, FL 33733-6992 | PINELLAS COUNTY
Reported 09/07/2010 - 09/23/2013
 1710 PRESCOTT ST S, SAINT PETERSBURG, FL 33712-2838 | PINELLAS COUNTY
Reported 01/01/2006 - 11/30/2012
 730 SAINT PETERSBURG S, SAINT PETERSBURG, FL 33705 | PINELLAS COUNTY
Reported 04/22/2010 - 04/22/2010
 Phone Numbers: 727-346-3168
 727-346-3168
 866-7352

RECORD 306

AKAs: SHERLY MURRAY
MS SHIRLEY MURRAY, JR
SHIRLEY T MURRAY

- Less

**130. MS KATHY M MURRAY**

DOB: [REDACTED] (Age: 50)
Address: 1099 OLD BATTERY CIR, CHARLESTON, SC 29412-8263 | CHARLESTON COUNTY
Reported 01/01/2008 - 08/31/2012

Create Report

- Less

**131. CHARLOTTE J MURRAY**

SSN: [REDACTED]
DOB: [REDACTED] (Age: 63)
Address: 4483 SPRING MTN LN, POWDER SPRINGS, GA 30127-8224 | COBB COUNTY
Reported 08/19/2013 - 02/18/2014
44 DARBYS CROSSING CT, HIRAM, GA 30141-6000 | PAULDING COUNTY
Reported 11/19/2012 - 11/19/2012
96015 OTTER RUN DR, FERNANDINA BEACH, FL 32034-1153 | NASSAU COUNTY
Reported 08/01/2010 - 04/11/2011
Phone Numbers: 904-491-1821
843-569-2309
572-7192
AKAs: MS CHARLOTTE MURRAY
CHARLETTLE J MURRAY

Create Report

- Less

**132. JOHN E MURRAY**

SSN: [REDACTED]
DOB: [REDACTED] (Age: 65)
Address: 660 COUNTY ROAD 519, BELVIDERE, NJ 07823-2662 | WARREN COUNTY
Reported 01/01/1986 - 07/31/2013
JUDITH C MURRAY, BELVIDERE, NJ 07823 | WARREN COUNTY
Reported 09/07/2001 - 09/07/2001
RR 1 BOX 264A, BELVIDERE, NJ 07823 | WARREN COUNTY
Reported 11/13/2000 - 11/13/2000
Phone Numbers: 908-475-5219
475-5219
AKAs: MR JOHN E MURRAY, JR
JOHN MURRAY
JOHN F MURRAY
Spouse/Close Association: J
- Less

Create Report

**133. JEAN K MURRAY**

SSN: [REDACTED]
DOB: [REDACTED] (Age: 65)
Address: 233 FOREST TRL, ISLE OF PALMS, SC 29451-2527 | CHARLESTON COUNTY
Reported 12/04/1989 - 04/12/2013
314 E MONROE AVE, ALEXANDRIA, VA 22301-1623 | ALEXANDRIA CITY COUNTY
Reported 05/30/2008 - 05/30/2008
904 COMMONWEALTH AVE, ALEXANDRIA, VA 22301-2312 | ALEXANDRIA CITY COUNTY
Reported 08/30/2007 - 08/30/2007
Phone Numbers: 843-886-8216
AKAs: J MURRAY
JEAN MURRAY
MS JEAN K MURRAY, JR
Spouse/Close Association: JOHN
- Less

Create Report

**134. JOHN L MURRAY**

SSN: [REDACTED]
DOB: [REDACTED] (Age: 25)
Address: 504 REGENT PL, AUGUSTA, GA 30909-3113 | RICHMOND COUNTY
Reported 01/01/1997 - 02/28/2014
Phone Numbers: 706-738-4816
AKAs: MR JOHN L MURRAY, 3D
JOHN L MURRAY, IV

Create Report

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311

RECORD 307

**135. VESELY E MURRAY**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] (Age: 35)

Address: 528 N JUDD ST, HONOLULU, HI 96817-2275 | HONOLULU COUNTY
 Reported 03/18/2014 - 04/21/2014
 99-545 POHUE PL, AIEA, HI 96701-3348 | HONOLULU COUNTY
 Reported 11/21/2011 - 01/20/2014
 5276 IROQUOIS AVE, EWABEACH, HI 96706-3242 | HONOLULU COUNTY
 Reported 01/17/2011 - 03/04/2012

Phone Numbers: 763-5669

AKAs: MS VESELY ESPIRITU
 MR VESELY MURRAY
 VESELY I ESPIRITU

- Less

**136. KATHY G MURRAY**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] (Age: 57)

Address: 8106 S SPLIT OAK, NORTH CHARLESTON, SC 29420-8568 | DORCHESTER COUNTY
 Reported 01/01/1987 - 04/01/2014
 8146 S SPLIT OAK, NORTH CHARLESTON, SC 29420-8568 | DORCHESTER COUNTY
 Reported 08/19/1999 - 08/19/1999

Phone Numbers: 843-767-4225

AKAs: KATHY C MURRAY
 KATHY GETHERS
 KATHY MURRAY

Spouse/Close Association: EARL

- Less

**137. MR EARL L MURRAY**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] (Age: 57)

Address: 8106 S SPLIT OAK, NORTH CHARLESTON, SC 29420-8568 | DORCHESTER COUNTY
 Reported 01/01/1986 - 09/30/2013

Phone Numbers: 843-767-4225

- Less

**138. MS TRISH MCMURRAY**

Address: 324 CURTIS LOOP, WAHIAWA, HI 96786-4197 | HONOLULU COUNTY
 Reported 01/01/2013 - 06/30/2013

[Create Report](#)

- Less

**139. MS AMY MURRAY**

Address: 44 DARBYS CROSSING CT, HIRAM, GA 30141-5000 | PAULDING COUNTY
 Reported 01/01/2011 - 03/31/2012

[Create Report](#)

- Less

**140. LISA S MURRAY**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] (Age: 47)

Address: 414 FOREST HILLS DR, WILMINGTON, NC 28403-2231 | NEW HANOVER COUNTY
 Reported 07/11/1996 - 06/10/2013
 276 EASTWOOD LN SE, LELAND, NC 28451-9561 | BRUNSWICK COUNTY
 Reported 10/08/2004 - 10/08/2004
 2222 METTS AVE, WILMINGTON, NC 28403-2273 | NEW HANOVER COUNTY
 Reported 01/19/1993 - 06/21/1998

Phone Numbers: 910-762-4135

910-762-2621

762-4135

AKAs: LISAL SMITH
 LISAMURRAY
 LISA SMITH MURRAY

- Less

**141. MS KATHY E JOYE**

SSN: [REDACTED] X

[Create Report](#)

DOB: [REDACTED] (Age: 31)

Address: 16249 CHOPPEE RD, HEMINGWAY, SC 29554-4449 | GEORGETOWN COUNTY
 Reported 01/01/1996 - 12/31/2012
 6 MATTHEWS RD, HEMINGWAY, SC 29554-5393 | WILLIAMSBURG COUNTY
 Reported 06/01/2011 - 06/01/2011

RECORD 308

RR 3 BOX 8, HEMINGWAY, SC 29554 | WILLIAMSBURG COUNTY

Reported 03/14/2004 - 03/14/2004

Phone Numbers: 843-558-9018
843-558-9417
843-558-6930

AKAs: PARSONS, KATHYE
JOYE, KATHY
KATRINA JOYE

- Less

☒ 142. MS JUDITH C MURRAY

SSN: [REDACTED] X

Create Report

DOB: [REDACTED] (Age: 65)

Address: 660 COUNTY ROAD 519, BELVIDERE, NJ 07823-2662 | WARREN COUNTY

Reported 01/01/1986 - 04/30/2012

RR 3 BOX 322, BELVIDERE, NJ 07823 | WARREN COUNTY

Reported 12/08/1997 - 01/26/2001

322 RR3, BELVIDERE, NJ 07823 | WARREN COUNTY

Reported 12/08/1997 - 01/26/2001

Phone Numbers: 908-475-5219
475-5219

AKAs: JUDITH MURRAY
MURRAY, JUDY

- Less

☒ 143. SARA MURRAY

SSN: [REDACTED] X

Create Report

DOB: [REDACTED] (Age: 71)

Address: 11 GEORGE ST APT A, CHARLESTON, SC 29401-1669 | CHARLESTON COUNTY

Reported 01/01/2003 - 10/31/2012

1390 N SPRING ST, PENSACOLA, FL 32501-2611 | ESCAMBIA COUNTY

Reported 01/01/1984 - 03/31/2012

11 GEORGE ST, CHARLESTON, SC 29401-1669 | CHARLESTON COUNTY

Reported 02/06/2004 - 03/18/2008

Phone Numbers: 843-853-0201
843-853-9054
432-2224

AKAs: MS SARA A MURRAY, IV
SARA MURRAY, III
FARA MURRAY

Spouse/Close JOHN

Association: - Less

☐ 144. MS ALYSSA D MURRAY

SSN: [REDACTED] X

Create Report

DOB: [REDACTED] (Age: 40)

Address: 2507 BORREGO DR, DURANGO, CO 81301-5806 | LA PLATA COUNTY

Reported 01/03/2014 - 01/03/2014

10061 HUGHES WAY, HIGHLANDS RANCH, CO 80126-4747 | DOUGLAS COUNTY

Reported 01/01/2013 - 08/31/2013

661 STIEKEL LN, BRECKENRIDGE, CO 80424 | SUMMIT COUNTY

Reported 04/24/2012 - 04/24/2012

Phone Numbers: 970-485-3779
970-513-4601

AKAs: MS ALICIA D MURRAY
ALYSSA DARNALL
ALYSSA MURRAY

Spouse/Close JOHN

Association: - Less

☒ 145. JOHN P MCMURRAY

SSN: [REDACTED] X

Create Report

DOB: [REDACTED] (Age: 76)

Address: 1005 OCEAN AVE, BOHEMA, NY 11716-3619 | SUFFOLK COUNTY

Reported 06/28/2013 - 06/28/2013

CMR 411 BOX 3712, APO, AE 09112-0038

Reported 04/15/2009 - 04/15/2009

1806 BELLE ISLE AVE, MOUNT PLEASANT, SC 29464-8261 | CHARLESTON COUNTY

Reported 04/29/2003 - 04/29/2003

Phone Numbers: 589-0043

AKAs: MR JOHN P MCMURRAY, JR
JOHN MCMURRAY

RECORD 309

JOHN R MCMURRAY

- Less

☐ 146. MS AMY R MURRAY

SSN: [REDACTED] X
 (Age: 39) Create Report
 DOB: [REDACTED]
 Address: 4483 SPRING MTN LN, POWDER SPRINGS, GA 30127-8224 | COBB COUNTY
Reported 01/01/2013 - 09/30/2013
 3107 PLAINSMAN DR, POWDER SPRINGS, GA 30127-7024 | COBB COUNTY
Reported 01/01/2009 - 07/31/2012
 15811 STARLING WATER DR, LITHIA FL 33547-3929 | HILLSBOROUGH COUNTY
Reported 08/01/2011 - 09/08/2011
 Phone Numbers: 770-693-7825
 813-507-2433
 912-233-1981
 AKAs: AMY MURRAY
 AMY R HOLCOMB
 AMY M HOLCOMB
 Spouse/Close JOHN
 Association: - Less

☐ 147. JOHN MURRAY, JR

SSN: [REDACTED] X
 (Age: 54) Create Report
 DOB: [REDACTED]
 Address: 90 MAPLE ST, VARNVILLE, SC 29944 | HAMPTON COUNTY
Reported 03/03/2010 - 04/04/2014
 1169 HICKSVILLE RD, EARLY BRANCH, SC 29916-4723 | HAMPTON COUNTY
Reported 05/22/2003 - 12/08/2013
 PO BOX 12, EARLY BRANCH, SC 29916-0012 | HAMPTON COUNTY
Reported 06/01/2012 - 06/01/2012
 Phone Numbers: 843-589-2540
 AKAs: JOHN MURRAY JR
 JOHN MURRAY
 JOHN, MURRAY W
 Spouse/Close SUSAN
 Association: - Less

☐ 148. MS MARNIE S MCMURRAY

Address: 2516 FLEMING MILL RD, LAURENS, SC 29360-4536 | LAURENS COUNTY Create Report
Reported 01/01/2008 - 01/31/2013
 Phone Numbers: 864-682-3421
 - Less

☐ 149. KENDALL L ROWLAND

SSN: [REDACTED] X
 (Age: 42) Create Report
 DOB: [REDACTED]
 Address: 1109 MARSH HARBOR LN, CHARLESTON, SC 29492-8050 | BERKELEY COUNTY
Reported 01/01/2009 - 02/28/2014
 714 NORALN, MOUNT PLEASANT, SC 29464-4934 | CHARLESTON COUNTY
Reported 03/05/2006 - 05/01/2009
 17 VINCENT DR APT A, MOUNT PLEASANT, SC 29464-4083 | CHARLESTON COUNTY
Reported 04/08/2002 - 08/04/2005
 Phone Numbers: 843-416-8011
 843-388-5892
 843-216-2677
 AKAs: KENDALL MURRAY
 KENDALL ROWLAND
 KENDALL R MURRAY
 Spouse/Close JOHN
 Association: - Less

☐ 150. KENDALL R MURRAY

DOB: [REDACTED] (Age: 42) Create Report
 Address: 1109 MARSH HARBOR LN, CHARLESTON, SC 29492-8050 | BERKELEY COUNTY
Reported 01/01/2009 - 02/28/2014
 Phone Numbers: 843-388-5892
 843-416-8011
 AKAs: KENDALL MURRAY
 - Less

☐ 151. MS ANNETTE C MURRAY

314
RECORD 310

SSN: [REDACTED]
DOB: [REDACTED] (Age: 48)
Address: 3106 POINT CLEAR DR, FORT MILL, SC 29708-8544 | YORK COUNTY
Reported 01/01/2007 - 02/28/2014
8031 PIKE RD APT 1012, CHARLOTTE, NC 28262-3852 | MECKLENBURG COUNTY
Reported 09/01/2012 - 10/03/2012
148 AMBER WOODS DR, FORT MILL, SC 29708-6421 | YORK COUNTY
Reported 08/01/2011 - 08/24/2011
Phone Numbers: 803-396-5509
770-466-1902
492-7376
AKAs: ANETTE C MURRAY
ANNE MURRAY-RANDOLPH
ANNETTE MURRAY
Spouse/Close Association: JOHN
- Less

[Create Report](#)**152. JOHN MURRAY**

SSN: [REDACTED]
DOB: [REDACTED] (Age: 42)
Address: 1653 KALAEPA DR, HONOLULU, HI 96819-3010 | HONOLULU COUNTY
Reported 03/12/2012 - 03/13/2014
1390 N SPRING ST, PENSACOLA, FL 32501-2611 | ESCAMBIA COUNTY
Reported 01/01/1984 - 02/29/2012
1824 W GREGORY ST, PENSACOLA, FL 32502-6305 | ESCAMBIA COUNTY
Reported 03/10/2002 - 04/04/2005
Phone Numbers: 850-444-9311
850-432-2224
850-209-1770
AKAs: JOHN MURPHY
JOHN MURRAY, IV
REV JOHN W MURRAY, 3D
Spouse/Close Association: ALLISON
- Less

[Create Report](#)**153. MR JOHN B MURRAY, JR**

SSN: [REDACTED]
DOB: [REDACTED] (Age: 68)
Address: 233 FOREST TRL, ISLE OF PALMS, SC 29451-2527 | CHARLESTON COUNTY
Reported 01/01/1978 - 11/30/2012
36 COUNTRY CLUB DR, ARAPAHOE, NC 28510-9568 | PAMLICO COUNTY
Reported 02/10/2011 - 02/10/2011
184 CEDAR DR, DURANGO, CO 81301-7207 | LA PLATA COUNTY
Reported 11/01/2009 - 11/26/2009
Phone Numbers: 843-886-8216
866-8216
AKAs: MURRAY, JOHN
MURRAY, JOHN B
- Less

[Create Report](#)**154. SAMUEL MURRAY**

SSN: [REDACTED]
DOB: [REDACTED] (Age: 25)
Address: 504 REGENT PL, AUGUSTA, GA 30909-3113 | RICHMOND COUNTY
Reported 09/23/2010 - 01/19/2013
Phone Numbers: 706-738-4815
AKAs: MR SAMUEL W MURRAY
- Less

[Create Report](#)**155. KATHY MOLONY**

SSN: [REDACTED]
DOB: [REDACTED] (Age: 48)
Address: 1099 OLD BATTERY CIR, CHARLESTON, SC 29412-8263 | CHARLESTON COUNTY
Reported 01/01/2008 - 09/30/2013
1046 FORT SUMTER DR, CHARLESTON, SC 29412-4308 | CHARLESTON COUNTY
Reported 02/01/1987 - 03/16/2007
46 QUEEN ST APT B, CHARLESTON, SC 29401-2805 | CHARLESTON COUNTY
Reported 01/18/2005 - 12/13/2005
Phone Numbers: 843-795-8962
843-856-7900
843-577-3115
AKAs: MS MILDRED M MURRAY

[Create Report](#)**RECORD 311**

MILDRED KATHLEEN MURRAY
MS MILDRED MOLONY
Spouse/Close V
Association: - Less

☐ 156. EDWARD MURRAY

Address: 704 THAMES ST, NEWPORT, RI 02840-6735 | NEWPORT COUNTY [Create Report](#)
Reported 01/01/1971 - 11/30/2012
Phone Numbers: 401-846-4731
AKAs: MR EDWARD C MURRAY
MURRAY, E
- Less

☒ 157. ANNA MYATT MURRAY

SSN: [REDACTED] [Create Report](#)
DOB: [REDACTED] (Age: 54)
Address: 122 ADALIA AVE, TAMPA, FL 33606-3304 | HILLSBOROUGH COUNTY
Reported 03/25/1995 - 04/17/2014
CHESAPEAKE, VA 23320 | CHESAPEAKE CITY COUNTY
Reported 01/01/1996 - 11/30/2012
INVALID ADDRESS DO NOT MAIL, TAMPA, FL 33606 | HILLSBOROUGH COUNTY
Reported 08/10/2003 - 08/10/2003
Phone Numbers: 813-251-8858
757-436-5234
845-0092
AKAs: ANNA M MURRY
MS ANNA M MURRAY
ANNA MURRAY
Spouse/Close JOHN
Association: - Less

☒ 158. MEREDITH GRAY MURRAY

SSN: [REDACTED] [Create Report](#)
DOB: [REDACTED] (Age: 26)
Address: 122 ADALIA AVE, TAMPA, FL 33606-3304 | HILLSBOROUGH COUNTY
Reported 07/02/2006 - 03/07/2014
916 S OREGON AVE APT 12, TAMPA, FL 33606-3062 | HILLSBOROUGH COUNTY
Reported 12/04/2012 - 12/04/2012
222 DRYDEN RD APT 4B, ITHACA, NY 14850-4749 | TOMPKINS COUNTY
Reported 12/04/2008 - 12/04/2008
Phone Numbers: 251-8858
AKAs: MEREDITH MURRAY
MS MEREDITH G MURRAY
- Less

☒ 159. SUSAN MURRAY

SSN: [REDACTED] [Create Report](#)
DOB: [REDACTED] (Age: 51)
Address: 1169 HICKSVILLE RD, EARLY BRANCH, SC 29916-4723 | HAMPTON COUNTY
Reported 01/13/2006 - 12/02/2013
PO BOX 12, EARLY BRANCH, SC 29916-0012 | HAMPTON COUNTY
Reported 02/01/2013 - 02/27/2013
VARNVILLE, SC 29944 | HAMPTON COUNTY
Reported 01/01/2010 - 11/30/2012
Phone Numbers: 803-942-8176
843-589-2540
843-589-2674
AKAs: SUSAN D MURRAY
SUSAN MURRAY
SUSAN D GREEN
Spouse/Close DIJOHNA
Association: J
- Less

☒ 160. MS KATHY E JOYE

SSN: [REDACTED] [Create Report](#)
DOB: [REDACTED] (Age: 60)
Address: 16249 CHOPPEE RD, HEMINGWAY, SC 29554-4449 | GEORGETOWN COUNTY
Reported 02/04/2013 - 02/06/2013
2699 ORCHID AVE, NORTH CHARLESTON, SC 29405-6856 | CHARLESTON COUNTY
Reported 02/20/2009 - 08/02/2011
6 MATTHEWS RD, HEMINGWAY, SC 29554-5393 | WILLIAMSBURG COUNTY

RECORD 312

Reported 06/01/2011 - 06/01/2011

Phone Numbers: 843-558-6930
843-558-9018
843-558-9417

AKAs: KATHY JOYE
PARSONS, KATHY E
JOYE KATHY

Spouse/Close: CARRY

Association: - Less

**161. MR SAMUEL W MURRAY**

DOB: [REDACTED] (Age: 25)

Address: 504 REGENT PL, AUGUSTA, GA 30909-3113 | RICHMOND COUNTY
Reported 12/01/2013 - 12/01/2013

Phone Numbers: 706-738-4816

AKAs: SAMUEL MURRAY

- Less

[Create Report](#)**162. EARL L MURRAY**

SSN: [REDACTED]

DOB: [REDACTED] (Age: 57)

Address: 8106 S SPLIT OAK, NORTH CHARLESTON, SC 29420-8568 | DORCHESTER COUNTY
Reported 11/01/1988 - 04/16/2014
8146 S SPLIT OAK, NORTH CHARLESTON, SC 29420-8568 | DORCHESTER COUNTY
Reported 08/19/1999 - 08/19/1999

Phone Numbers: 843-767-4225

AKAs: EARL MURRAY
EARL L MURRAY
L MUR EARL

Spouse/Close: KATHY

Association: - Less

[Create Report](#)**163. LOUISE G RUDISILL**

SSN: [REDACTED]

DOB: [REDACTED] (Age: 47)

Address: 1718 AFTON AVE, CHARLESTON, SC 29407-4202 | CHARLESTON COUNTY
Reported 01/01/2006 - 09/30/2013
7 BUCKINGHAM DR, CHARLESTON, SC 29407-3421 | CHARLESTON COUNTY
Reported 01/01/2001 - 08/31/2012
7 BUCKINGHAM DR UNIT 21, CHARLESTON, SC 29407-3421 | CHARLESTON COUNTY
Reported 03/03/2010 - 03/04/2010

Phone Numbers: 843-442-1996
571-1832

AKAs: MS LOUISE R MURRAY
LOUISE MURRAY
LOUISE R FURR

- Less

[Create Report](#)**164. MS ORA D MURRAY, 3D**

SSN: [REDACTED]

DOB: [REDACTED] (Age: 77)

Address: 1901 HIGHWAY 174, EDISTO ISLAND, SC 29438-6547 | CHARLESTON COUNTY
Reported 01/01/1991 - 12/31/2011
733 KNOTTY PINE RD, CHARLESTON, SC 29412-9125 | CHARLESTON COUNTY
Reported 12/01/1992 - 12/01/1992

Phone Numbers: 843-869-3067
869-3067

AKAs: ORADELL H MURRAY
MURRAY, ORA D
MURRAY, ORA

- Less

[Create Report](#)**165. JOHN JOSEPH MURPHY**

DOB: [REDACTED] (Age: 50)

Address: 9086 RON DEN LN, WINDERMERE, FL 34786-8328 | ORANGE COUNTY
Reported 11/06/2013 - 11/06/2013
5055 TIMBER RACE CRSE, HOLLYWOOD, SC 29449-5990 | CHARLESTON COUNTY, USA
Reported 08/18/2004 - 08/18/2004
505 LADSON CT, DECATUR, GA 30033-5379 | DEKALB COUNTY
Reported 02/25/2004 - 02/25/2004

Phone Numbers: 407-317-1652
843-529-0600

[Create Report](#)**RECORD 313**

843-763-1417
AKAs: MR JOHN J MURPHY
JOHN MURPHY

- Less

☐ **166. COLLEEN MURRAY**

SSN: [REDACTED]
DOB: [REDACTED] (Age: 64)
Address: 704 THAMES ST, NEWPORT, RI 02840-6735 | NEWPORT COUNTY
Reported 11/01/1987 - 03/08/2013
1 1/2 WILLOW ST, NEWPORT, RI 02840-1917 | NEWPORT COUNTY
Reported 05/21/2011 - 05/21/2011
41 GARFIELD ST, NEWPORT, RI 02840-1304 | NEWPORT COUNTY
Reported 09/22/2010 - 09/22/2010
Phone Numbers: 401-846-4731
AKAs: COLLEEN MURRAY
MS COLLEEN C MURRAY
MURRAY, C
Spouse/Close JOHN
Association: - Less

Create Report

☐ **167. SANDRA S MURRAY**

SSN: [REDACTED]
DOB: [REDACTED] (Age: 52)
Address: 1882 MASSILLON RD, AKRON, OH 44312-4209 | SUMMIT COUNTY
Reported 03/26/2014 - 03/26/2014
11080 FENBROOK CIR NE, HARTVILLE, OH 44632-9729 | STARK COUNTY
Reported 01/01/1982 - 12/31/2012
AKRON OH, AKRON, OH 44312 | SUMMIT COUNTY
Reported 09/27/2004 - 09/27/2004
Phone Numbers: 330-877-3441
AKAs: MURRA SANDRA BRODZENSKI
MS SANDRAS BRODZENSKI
SANDRA MURRAY
Spouse/Close JOHN
Association: - Less

Create Report

☐ **168. X MURRAY**

Address: 11433 FOGGY BANK LN, CHARLOTTE, NC 28214-7149 | MECKLENBURG COUNTY
Reported 01/01/2008 - 06/30/2012

Create Report

- Less

☐ **169. LARRY W JOYE**

SSN: [REDACTED]
DOB: [REDACTED] (Age: 65)
Address: 16249 CHOPPEE RD, HEMINGWAY, SC 29554-4449 | GEORGETOWN COUNTY
Reported 01/01/1996 - 06/30/2013
3922 SAINT IVES RD UNIT 727, MYRTLE BEACH, SC 29588-1159 | HORRY COUNTY
Reported 06/09/2007 - 06/09/2007
3560 HUMMINGBIRD ST, MYRTLE BEACH, SC 29577-5024 | HORRY COUNTY
Reported 04/14/2005 - 04/14/2005
Phone Numbers: 843-558-9018
662-4651
AKAs: MR LARRY W JOYE, JR
LARRY WAYNE JOYE
LARRY R JOYE
Spouse/Close K
Association: - Less

Create Report

☐ **170. JAPHIA B MURRAY**

DOB: [REDACTED] (Age: 31)
Address: 5360 SAVANNAH HWY LOT 23, RAVENEL, SC 29470-5402 | CHARLESTON COUNTY
Reported 01/01/2011 - 01/31/2012
8594 SUGAR HILL RD, HOLLYWOOD, SC 29449-5508 | CHARLESTON COUNTY
Reported 01/01/2012 - 01/01/2012

Create Report

- Less

☐ **171. MR JOHN G MURRAY**

Address: 4483 318 MTN LN, POWDER SPRINGS, GA 30127-8224 | COBB COUNTY

Create Report

RECORD 314

Reported 01/01/2013 - 10/31/2013
 Phone Numbers: 904-583-1332
 AKAs: MR JOHN MURRAY
 - Less

☐ 172. KENDALL MURRAY

DOB: [REDACTED] (Age: 42)
 Address: 1109 MARSH HARBOR LN, CHARLESTON, SC 29492-8050 | BERKELEY COUNTY
 Reported 01/01/2009 - 02/28/2014
 714 NORA LN, MOUNT PLEASANT, SC 29464-4934 | CHARLESTON COUNTY
 Reported 02/01/2006 - 02/01/2006
 Phone Numbers: 843-416-8011
 843-388-5892
 843-216-2677
 AKAs: MURRAY, KENDALL M
 - Less

[Create Report](#)☐ 173. ALLISON COMPTON

DOB: [REDACTED] (Age: 32)
 Address: 1181 CAMDEN ST, NORTH CHARLESTON, SC 29405-4327 | CHARLESTON COUNTY
 Reported 01/01/2005 - 06/30/2012
 2205 MYRTLE AVE, SULLIVANS ISLAND, SC 29482-8754 | CHARLESTON COUNTY
 Reported 07/13/2001 - 07/13/2001
 NORTH CHARLESTON, SC
 AKAs: ALLISON J COMPTON
 ALLISON MJENSEN
 - Less

[Create Report](#)☐ 174. LATOYA P MURRAY

SSN: [REDACTED] X
 DOB: [REDACTED] (Age: 32)
 Address: 5380 SAVANNAH HWY LOT 23, RAVENEL, SC 29470-5402 | CHARLESTON COUNTY
 Reported 02/11/2012 - 03/06/2014
 6360 SAVANNAH HWY APT 23, CHARLESTON, SC 29407 | CHARLESTON COUNTY
 Reported 02/27/2014 - 02/27/2014
 5360 SAVANNAH HWY, RAVENEL, SC 29470-5401 | CHARLESTON COUNTY
 Reported 01/01/2012 - 10/31/2012
 Phone Numbers: 843-564-1480
 843-564-1024
 AKAs: MURRAY LATOYA
 LATOYA T MURRAY
 BRADLEY, LATOYA
 Spouse/Close Association: CYNTHIA
 - Less

[Create Report](#)☐ 175. ELIZABETH D MURRAY

SSN: [REDACTED] X
 DOB: [REDACTED] (Age: 50)
 Address: 504 REGENT PL, AUGUSTA, GA 30909-3113 | RICHMOND COUNTY
 Reported 01/01/1997 - 12/31/2013
 504 REGENT RD, AUGUSTA, GA 30909-3115 | RICHMOND COUNTY
 Reported 08/26/1997 - 08/15/2012
 1420 MONTE SANO AVE, AUGUSTA, GA 30904-5360 | RICHMOND COUNTY
 Reported 06/20/2008 - 06/20/2008
 Phone Numbers: 706-738-4816
 738-4816
 AKAs: MS ELIZABETH D MURRAY, 3D
 LISAD MURRAY
 ELIZABETH MURRAY
 - Less

[Create Report](#)☐ 176. MR RANDOLPH T MURRAY

SSN: [REDACTED] X
 DOB: [REDACTED] (Age: 45)
 Address: 1099 OLD BATTERY CIR, CHARLESTON, SC 29412-8263 | CHARLESTON COUNTY
 Reported 01/01/2008 - 11/30/2012
 1831 RAILROAD AVE, RIFLE, CO 81650-3203 | GARFIELD COUNTY
 Reported 02/10/2011 - 02/10/2011
 46 Q 319 APT B, CHARLESTON, SC 29401-2805 | CHARLESTON COUNTY
 Reported 07/20/2007 - 12/04/2008

[Create Report](#)

RECORD 315

Phone Numbers: 843-795-8962
 970-625-5169
 864-229-3190
 AKAs: RANDOLPH MURRAY
 RANDY MURRY
 MURRAY, RANDY B

- Less

☐ 177. ELISABETH WHEELER MURRAY

SSN: [REDACTED]
 DOB: [REDACTED] (Age: 22)
 Address: 122 ADALIA AVE, TAMPA, FL 33606-3304 | HILLSBOROUGH COUNTY
 Reported 02/22/2013 - 02/22/2013
 AKAs: MS ELISABETH W MURRAY

- Less

Create Report

☐ 178. MS PATRICIA L BOLS

SSN: [REDACTED]
 DOB: [REDACTED] (Age: 45)
 Address: 324 CURTIS LOOP, WAHIAWA, HI 96786-4197 | HONOLULU COUNTY
 Reported 10/15/2012 - 02/04/2014
 1005 OCEAN AVE., BOHEMA, NY 11716-3619 | SUFFOLK COUNTY
 Reported 06/28/2013 - 06/28/2013
 1311 BASTOGNE CT, FORT WAINWRIGHT, AK 99703-1373 | FAIRBANKS NORTH STAR COUNTY
 Reported 01/13/2010 - 08/11/2012
 Phone Numbers: 907-687-5144
 931-906-1888
 928-2073
 AKAs: PATRICIA L MCMURRY
 PATRICIA MCMURRAY
 MS TRISH MCMURRAY
 Spouse/Close Association: JOHN
 - Less

Create Report

☐ 179. MS JANE H MURRAY

SSN: [REDACTED]
 DOB: [REDACTED] (Age: 59)
 Address: 335 CLAYTON DR, CHARLESTON, SC 29414-5048 | CHARLESTON COUNTY
 Reported 01/01/2013 - 02/28/2014
 355 CLAYTON DR, CHARLESTON, SC 29414-5048 | CHARLESTON COUNTY
 Reported 12/12/2000 - 10/15/2013
 111 RIVER BREEZE DR, CHARLESTON, SC 29407-5662 | CHARLESTON COUNTY
 Reported 02/01/1988 - 03/23/2006
 Phone Numbers: 843-766-5972
 843-769-4516
 AKAs: MS JANE MURRAY
 JANE H ROBERTS
 JANE ROBERTS
 Spouse/Close Association: JOHN
 - Less

Create Report

☐ 180. MR JAY L MCMURRAY

Address: 2516 FLEMING MILL RD, LAURENS, SC 29360-4536 | LAURENS COUNTY
 Reported 01/01/2008 - 10/31/2012
 Phone Numbers: 864-682-3421
 - Less

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100 per page ▼

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Belle Hall Plantation Homeowners
Association, Inc.,

Plaintiff,

v.

John A. Murray, Trustee of John E. Murray
and Gloria C. Murray Family Trust

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A No.: 2013-CP-10-4248

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION TO VACATE**

015521/00071

FILED
2014 JUL -3 AM 9:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FACTS

Defendant was the owner of property located at 378 Jardinere Walk in the Belle Hall subdivision in Charleston County (the "Property") up to December 2013. The Property is encumbered by the restrictive covenants for Belle Hall. Plaintiff is the homeowners' association for Belle Hall. The Declaration requires all property owners to pay assessments to Plaintiff and further provides that the Plaintiff may foreclose its lien against the Property if those assessments are not paid.

Plaintiff filed this action on July 22, 2013 seeking foreclosure of its lien for unpaid homeowners' association assessments dating back to 2012. Plaintiff's counsel was unable to locate John A. Murray as trustee for the Defendant, despite several attempts by a process server. On September 30, 2013 Plaintiff's counsel filed an affidavit averring that she could not locate John A. Murray after a diligent search. Accordingly, the Clerk of Court for Charleston County issued an Order for Service Via Publication on October 4, 2013. The Summons was

appropriately advertised in the Moultrie News on October 16, 2013, October 23, 2013, and October 30, 2013 as evidenced by the Affidavit of Publication filed Nov. 4, 2013. Defendant did not file a responsive pleading and a Judgment of Foreclosure and Sale was entered. The foreclosure sale was held May 6, 2014 and David Conor Keys and Karen Keys were the successful purchasers at sale. Defendant subsequently filed his motion alleging fraud and collusion by the Plaintiff in obtaining the Order for Publication.

LEGAL ARGUMENT

S.C. Code Ann. § 15-9-710(5) provides for service via publication “when the subject of the action is real or personal property in this State and the defendant has or claims a lien or interest . . . therein.” “An order of publication is issued upon an affidavit to the effect that these [] facts are true ‘to the satisfaction’ of the issuing clerk or judge.” Yarbrough v. Collins, 293 S.C. 290, 292, 360 S.E.2d 300, 301 (1987). Absent fraud or collusion, when the judicial officer is satisfied, that decision is final and may not be attacked. Id., 293 S.C. 290, 360 S.E.2d 300. Because Defendant has not established any fraud or collusion and because the sufficiency of Plaintiff’s due diligence cannot be collaterally attacked, the Judgment of Foreclosure and Sale should not be vacated.

Fraud or Collusion

“The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief.” BB & T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006). The burden of presenting evidence of fraud or collusion, for example, through the testimony of the clerk who ordered the publication, falls to the [movant]. Wachovia Bank of S.C. v. Player, 341 S.C. 424, 429, 535 S.E.2d 128, 130, n. 5 (2000).

The only evidence Defendant has presented is his affidavit filed June 30, 2014. The affidavit sets out the historical ownership of the property and three documents bearing his correct mailing address. Defendant seems to argue that Plaintiff has to be guilty of fraud or collusion because his mailing address was contained in various public records. However, these documents were all filed or dated **after** the affidavit and order for publication were executed. Additionally, Defendant has not proven that Plaintiff was aware of this information and intentionally ignored it in seeking the order for publication. Because Defendant sets forth no other evidence that Plaintiff intentionally excluded him from these proceedings or is otherwise guilty of fraud or collusion, his motion to vacate the judgment and sale should be denied.

Due Diligence

“Where a party contests the validity of an order of publication based on a lack of diligence in attempting to locate the party, [our courts have] held that the trial court is ‘without authority to overrule the finding of the clerk of court.’” Caldwell v. Wiquist, 402 S.C. 565, 569, 741 S.E.2d 583, 585-86 (Ct. App. 2013) (quoting Montgomery v. Mullins, 325 S.C. 500, 505-06, 480 S.E.2d 467, 470 (Ct.App.1997)). A court may not second-guess the sufficiency of the affidavit supporting an order for publication.

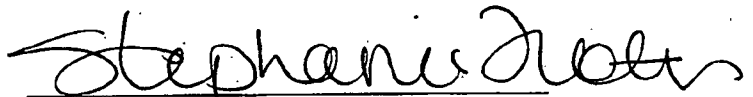
Plaintiff's counsel submitted an affidavit averring that she was unable, after due diligence, to locate John A. Murray. Plaintiff's counsel included the three affidavits from process servers who were unable to locate Mr. Murray at several addresses and telephone numbers. In fact, the telephone number provided by the Defendant's own tenants was not a serviceable phone number. The Clerk of Court was satisfied with this affidavit and issued an Order for Publication. Defendant argues that the Order for Publication is invalid because

Plaintiff failed to execute due diligence. He further states that his true address was available in public records. However, Defendant has not shown that this information was available when Plaintiff submitted its affidavit in support of publication. At best the Defendant's affidavit establishes that there are **currently** public records available that reflect his true address. The Plaintiff submitted an affidavit setting out facts to support its due diligence in attempting to locate the Defendant. The Clerk of Court was satisfied with that affidavit and this court should not overturn the clerk's finding of sufficiency.

CONCLUSION

For the reasons stated above Defendant's Motion should be denied.

July 1, 2014



Stephanie C. Trotter
McCabe Trotter & Beverly, PC
P.O. Box 212069
Columbia, South Carolina 29221
Phone: (803) 724-5000
Fax: (803) 724-5001
Email: Stephanie.Trotter@mccabetrotter.com
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Belle Hall Plantation Homeowner's
Association, Inc.

Plaintiff,

vs.

John A Murray, Trustee of John E. Murray
Gloria C. Murray Family Trust,

Defendant(s)

David Conor Keys & Karen Keys

Third Party – Purchasers

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-4248

**MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION TO VACATE
DEFAULT AND JUDGMENT AND TO
SET ASIDE THE SALE**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 JUL -3 AM 10:02

FILED

TO: AMANDA REECE, ATTORNEY FOR THE DEFENDANT:

The Third-Party PurchaserS, David Conor Keys and Karen Keys (hereinafter "Purchasers at Sale" or "Third-Party Purchasers"), respectfully submit, through their under signed council, this Memorandum in Opposition to Defendant, John A. Murray as Trustee of the John E. Murray and Gloria C. Murray Family Trust (hereinafter "Defendant") Motion to Vacate Default and Judgment and to Set aside the Sale.

SUMMARY OF THE FACTS AND PROCEDURE

On or about October 26, 2011 John A. Murray as attorney-in-fact for John E. Murray and Gloria C. Murray deeded the subject property to John A. Murray as Trustee for the John E. Murray and Gloria C. Murray Family Trust. On or about May 23, 2012, Plaintiff, Belle Hall Plantation Homeowner's Association, Inc. (hereinafter "Plaintiff"), caused to be filed a Notice of Lien Against upon the subject property in the amount of \$1,1103.28. Over a year later on July

22, 2013, Plaintiff filed this action against Defendant. On July 27, 2013, a Process Server, Craig Adams, attempted to serve John A. Murray as trustee of John E. Murray and Gloria C. Murray Family Trust, at 3100 Tradition Circle Apt. 1144, Mt. Pleasant, SC 29466. The Process Server notes in Affidavit of Non-Service that "[this is a guarded assisted living apartment complex, the apartment complex manager stated John A. Murray Does not Live there that Ms. Marsh Lives in Apartment 1144. He checked the resident records for the past two years and did not find a John Murray living there." (Affidavits of Non Service) On August 2, 2013, a Process Server, Jodie Adams, attempted to serve John A. Murray as trustee of John E. Murray and Gloria C. Murray Family Trust, at 378 Jardinere Walk, Mt. Pleasant, SC 29464. The Process Server notes in Affidavit of Non-Service that "[c]hecked given address above, resident (white female , approx.. 42 yrs old) stated John A. Murray does not live there, they rent this house from him. The did not know his address, they deposit the rent payment in account, his phone number is 843-[-***-****]- called this number a recording states - number not in service." (Affidavits of Non Service). On August 9, 2013 the process server, Jodie Adams attempted to serve John A. Murray as trustee of John E. Murray and Gloria C. Murray Family Trust, at 937 Bowman Rd, Apt. 261, Mt. Pleasant, SC 29464. The Process Server notes in the Affidavit of Non-Service that "[c]hecked given address above, this the palms of Mt. Pleasant (A Senior Living Community), Manager at front desk stated John A. Murray does not live in apt 261. She checked and does not have any tenants with the last name Murray. She also checked their sister facility-Savanah Grace. . ." (Affidavits of Non Service). On September 30, 2013, Plaintiff filed an affidavit for order of publication. On October 4, 2013, the Clerk of Court issued an Order of Publication. Plaintiff advertised this action in the Moultrie News on 10/16/13, 10/23/13, 10/30/13 and filed an Affidavit of Publication stating as much on November 4, 2013. On December 18, 2013, Plaintiff

filed an Affidavit of default as to John A. Murray as trustee of John E. Murray and Gloria C. Murray Family Trust. On December 23, 2013, John A. Murray as trustee of John E. Murray and Gloria C. Murray Family Trust granted the subject property by quit claim deed to John A. Murray. On December 27, 2013, and Order of Reference was filed in this matter. On February 27, 2014, Plaintiff mailed a Notice of Hearing to John A. Murray as trustee of John E. Murray and Gloria C. Murray Family Trust at the address 378 Jardinere Walk Mt. Pleasant, SC 29464 as well as 1090 Loyalist Lane Mt. Pleasant, SC 29464. On April 8, 2014, this Court issued an Order of Foreclosure and Sale. Thereafter Defendant did not within 10 days of the Order timely file a Motion to Reconsider under Rule 59, SCRPC. On or around April 24, 2014, the Purchaser at Sale, David Conor Keys, noticed the subject property, listed on the Master in Equities Auction List, and in conducting a due diligence title search on the property searched the Charleston County tax records for the Property, where upon he discovered the mailing address for the property tax notice listed as: 3100 Tradition Cir. Mt. Pleasant, SC 29466, which is the same address at which the process server initially attempted to serve Defendant (A copy of the property tax records search is attached hereto as Exhibit "A" and incorporated herein by reference). On May 6, 2014 the subject property was sold by the Court at auction where upon the Third Party Purchasers were the successful bidders purchasing the home for \$100,000.00. On May 16, 2014, the balance of the bid was paid in full by the Purchasers at Sale where upon the court noted in the record that the Deed had been issued to the Purchasers at Sale. On May 19, 2014, Defendant made his initial appearance in this matter filing a Motion to Vacate the Entry of Default and Judgment and to Set Aside the Sale, pursuant to Rule 59 or alternatively Rule 60, SCRPC, on the grounds "that the plaintiff presented a false, misrepresentative or fraudulent, and fatally defective affidavit of due diligence to the court in obtaining the court's

order for service of the summons and complaint by publication. The affidavit lacked evidentiary support. The address of the defendant's residence was readily available to the Plaintiff and a matter of public record."

ANALYSIS

I. Purchasers at Sale are Bona Fide Purchasers for Value.

"South Carolina Code section 15-39-870 provides as follows: 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 that 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 Ann. § 15-39-870 (2005). The rationale for the statute is the well established public policy of protecting good faith purchasers and upholding the finality of a judicial sale." Robinson v. Estate of Harris, 378 S.C. 140 662 S.E.2d 420 (Ct. App. 2008) A purchaser may assert a plea in equity of a bona fide purchaser for value, without notice of defect in his title, by showing (1) he has actually paid in full the purchase money (giving security for the payment is not sufficient, nor is past indebtedness a sufficient consideration); (2) he purchased and acquired the legal title, or the best right to it; and (3) he purchased bona fide, i.e., in good faith and with integrity of dealing, without notice of a lien or defect. The bona fide purchaser must show all three conditions — actual payment, acquiring of legal title, and bona fide purchase — occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property. Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006).

In this case the Purchasers at Sale are Bona Fide Purchasers, who timely paid the full price of the winning bid, purchased and acquired legal title or the best right to it, and did so in

good faith without notice of a title defect or other adverse claim, lien, or interest in the property. Defendant did not file his motion to vacate until after the Purchasers at Sale had paid in full and Court had noted on the record that the deed had been issued to the Purchasers at Sale. The Third Party Purchasers have extended funds to secure insurance upon the property, have retained legal counsel to acquire title insurance upon the property, as well as expended time and effort in researching and acquiring the property, the flood and hazard insurance necessary and time and effort in responding to this matter. The Third Party Purchasers would be greatly prejudiced by vacating the final sale. By contrast Defendant has the means to seek recourse for any alleged loss caused by Plaintiff by recovery of money damages. The Third Party Purchasers do not have a cause of action available to them which could allow for the recovery of money damages to recover their loss if the sale were vacated.

II. Defendant's Motion Pursuant to Rule 59, SCRPC, is Untimely and Should be Denied.

"A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59, SCRPC. The established case law is that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed. In re Beard, 597 S.E.2d 835 (Ct. App. 2004) (Citing Pitman v. Republic Leasing Co., 351 S.C. 429, 579 S.E.2d 187 (Ct. App. 2002); Ness v. Eckerd Corp., 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002) ("Although trial judges retain jurisdiction to alter judgments on their own initiative for ten days if a Rule 59(e) SCRPC, motion is filed, after ten days that jurisdiction is lost.")). In this case the Court filed the Order of Foreclosure and Sale on April, 8, 2014. Defendant did not file a Motion its Motion under Rule 59, SCRPC until May 19, 2014, nearly a month and a half after the Order of Foreclosure. The Court has not retained jurisdiction

to hear Alter a Judgment pursuant to a Rule 59, SCRPC, and therefore the Defendant's Motion must be denied.

III. Defendant Has Not Provided Evidence Sufficient to Grant a Motion Pursuant to Rule 60, SCRPC, and Thus the Motion Should be Denied.

Defendant in his Motion states that the Motion is made "pursuant to SCRPC Rule 59 or alternatively Rule. . . The grounds for this motion are that the plaintiff presented a false, misrepresentative or fraudulent, and fatally defective affidavit of due diligence to the court in obtaining the court's order for service of the summons and complaint by publication." (Defendant's Motion to Vacate). "Furthermore, it is significant to note that when considering whether to grant relief from final judgments, "a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute. We recognized in *Chewning* both this Court's longstanding policy towards final judgments and that important benefits are achieved by preservation of final judgments." Raby Construction, L.L.P. v. Orr, 358 S.C. 10, 594 S.E.2d 478 (2004); Bryan v. Bryan, 220 S.C. 164, 66, S.E.2d 609 (1951); Citing: Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003).

Rule 60(b)(3) states: [o]n 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: fraud, misrepresentation, or other misconduct of an adverse party." Rule 60(b)(3), SCRPC. "Under Rule 60(b) the Court has the discretion to grant relief as justice requires, but such relief is extraordinary and may only be granted in exceptional circumstances.) (Order of the Honorable Mikell R. Scarborough, Denying a Motion to Vacate an Order of Foreclosure and Stay Further Sale Proceedings, filed January 6, 2011 in Case Number 2010CP1001849 (citing Mr. T v. Ms. T, 378 S.C. 127, 662 S.E.2d 413 (Ct. App. 2008).

“Historically this Court has held that in order to obtain equitable relief from a judgment based on fraud, the fraud must be extrinsic.” Raby Construction, L.L.P. v. Orr, 358 S.C. 10, 594 S.E.2d 478 (2004); Bryan v. Bryan, 220 S.C. 164, 66, S.E.2d 609 (1951); Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003). “Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Intrinsic Fraud, on the other hand, is fraud which, misleads a court in determining issues and induces the court to find for the party perpetrating the fraud. The classic case of intrinsic fraud is perjured testimony or presenting forged documents at trial. Allegations that a party failed to disclose documents also generally amount to intrinsic, rather than extrinsic fraud. Relief is granted for extrinsic but not intrinsic fraud on the theory that the latter deceptions should be discovered during the litigation itself, and to permit such relief undermines the stability of all judgments.” Orr, 358 S.C. at 20 (Citations Omitted).

In this case Defendant asserts “plaintiff presented a false, misrepresentative or fraudulent, and fatally defective affidavit of due diligence to the court.” (Defendant’s Motion to Vacate). The key words in the assertion are *presented to the court*, the Affidavit of Publication about which Defendant complains was filed with the Court, and was one of the documents within the Court’s purview when the court gave its Order of Publication, and wells as the Order of Foreclosure and Sale. It was within the Courts means and ability to discovery any misrepresentation, deception, or defective nature within the affidavit. If fraud is present as to the Affidavit (which the Purchasers at Sale would contend it is not), then it is intrinsic fraud and not extrinsic. A motion under Rule 60(b) cannot be granted for instances of intrinsic fraud. Therefore, Defendants Motion under Rule 60, should be denied.

IV. Defendant has Not Met the Standard to Overturn an Order of Publication.

An order for service by publication may be issued pursuant to Section 15-9-710 of the South Carolina Code when an affidavit, satisfactory to the issuing officer is made stating that the defendant, a resident of the state, cannot, after the exercise of due diligence, be found, and that a cause of action exists against him. S.C. Code Ann. 15-9-710(3). "We hold the trial court [is] without authority to overrule the find of the clerk of court that the [defendant] could not after due diligence be found in the County and State of their last known residence. *Yarbrough* makes it clear that in absence of fraud or collusion, the decision of the officer ordering service by publication is final. Therefore, to the extent the trial court concluded the publication was invalid, we reverse." Montgomery v. Mullins, 480 S.E.2d 467 (Ct. App. 1997). "Generally absent fraud or collusion, once the issuing officer is satisfied with the supporting affidavit, the decision to order service by publication is final unless the order of publication is premised upon a facially defective affidavit. Brown v. Malloy, 546 S.E.2d 195 (Ct App 2001) (Citing: Wachovia Bank of S.C. v. Player, 341 S.C. 424, 535 S.E.2d 128 (2000); See Roberson v. White, Opinion No. 2008-UP-224 (Quoting *Brown* and *Player* while affirming the Order of the Honorable Mikell R. Scarborough denying a motion to vacate the order of foreclosure and set aside the sale on the grounds relating to service of process by publication.)

In *Player*, the Petitioner was held in default in a cause of action for foreclosure. The Petitioner sought to over turn the Order of Foreclosure and Sale pursuant to Rule 60, SCRPC. The "motion was predicated on [Petitioner's] claim that substituted service by publication was improper, and thus the court did not have personal jurisdiction over him. *Petitioner claims the process server did not use "actual" due diligence because if she had, she would have easily found him.* He also points out that the petition for an order of publication contains an untrue statement . . . It is clear from reading the two documents together that the petition is inaccurate,

but that the process server's affidavit reflects due diligence by her." The master denied the petitioners motion holding that the petitioner failed to present evidence of fraud or collusion in obtaining the order for service by publication. The Supreme Court affirmed the master's order.

Fraud claims require proof by clear and convincing evidence. Turner v. Milliman, 392 S.C. 116, 125, 708 S.E.2d 766, 770 (2011). To establish a claim for fraud a party must establish 1) a representation; 2) its falsity; 3) its materiality; 4) either knowledge of its falsity or a reckless disregard of its truth or falsity; 5) intent that the representation be acted upon; 6) the hearer's ignorance of its falsity; 7) the hearer's reliance on its truth; 8) the hearer's right to rely thereon; 9) the hearer's consequent and proximate injury. Id.

This case is analogous *Player*, as in *Player* here Defendant asserts that the Process Server did not perform due diligence in the search because his address was readily available in the public record. In this case Defendant has made no assertion or allegation as to the presence of collusion in relation to the affidavit of publication and subsequent order of publication. By contrast the Defendant in its motion did give lip service to an assertion of fraud on the part of Plaintiff in relation to the affidavit of publication. However, Defendant has provided no evidence to support that lip service, nor has Defendant provide clear and convincing evidence that a fraud was present under which there would be ground to grant a Rule 60(b) Motion. Defendant's Motion to Vacate the Order of Foreclosure and subsequent sale of the property on the basis the affidavit of publication was misrepresentative or fraudulent should be denied.

V. The Sale Should Not be Overturned.

A.) Defendant Has Not Sought Nor is He Entitled to Appraisal Rights.

"In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within 30 days

after the sale of the mortgage property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal." South Carolina Code 29-3-680(A).

In this case the appraisal rights are not applicable be the foreclosure is not based upon a Mortgage. Further a deficiency judgment has not been entered against Defendant in this matter. Finally, even if appraisal rights were applicable in this case, which they are not, Defendant still only had thirty days from the date of the sale to move before the Court for and order of appraisal. To date Defendant has not moved for an order of appraisal, and more nearly 60 days has lapsed since the day of sale.

B.) The Sale Price is Not so Gross as to Shock the Conscience.

"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. 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. Our courts zealously insure judicial sales be openly and freely conducted and nothing be allowed to chill the bidding. 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. 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. Where unfair means have not been employed to prevent competition at a judicial sale, mere inadequacy of price is no ground for setting the sale aside. Thus, a judicial sale can be set aside for two reasons: (1) if the inadequacy of the price is

so gross as to shock the conscience of the court; or (2) if the price is inadequate and this inadequacy is accompanied by other circumstances that warrant the interference of the court.” Ex Parte Eastern Savings Bank, FSB v. Sanders, 373 S.C. 349, 644 S.E.2d 802 (Ct. App. 2007); Wells Fargo Bank, NA v. Turner, 378 S.C. 147, 662 S.E.2d 424 (2008).

“The circumstances impeaching the fairness of the transaction should relate to the conduct of the officer making the sale ... or to the conduct of the purchaser participating in the attempt to stifle competition or affected with notice thereof.” Sanders, 373 S.C. at 356. “South Carolina has not established a bright line rule for what percentage the sale value must be with respect to the actual value in order to shock the conscience of the court. However, a search of South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a property's actual value, have our courts consistently held the discrepancy to shock conscience of the court.” Id. At 359. In *Sanders*, the Court held that a sale price which was a third of the value of the property was not so grossly inadequate as to shock the conscience of the court. Id. at 358. In this case, Defendant has made no assertion circumstances of the impeached the fairness of the transaction, and though Defendant appears to be arguing the inadequacy of the sale price. The Sale price of \$100,000 on an HOA Lien, in relation to the tax value of \$240,000 as asserted by Defendant is greater then the 30% deemed sufficient in *Sanders* and far greater than less then 10% which is generally the accepted line for shocking the conscience. Therefore, Defendant’s Motion to Vacate the Sale should be denied.

RESPECTFULLY SUBMITTED



D. Conor Keys
843 Robert E. Lee Blvd.
Charleston, SC 29412
Phone: 843-906-3998

Attorney for Third Party Purchasers

July 3, 2014
Charleston, SC

CERTIFICATE OF SERVICE

I certify that on this 3 day of July 2014, a copy of the within Third-Party Purchasers Memorandum in opposition to Defendants Motion to Vacate was delivered by hand, addressed to opposing counsels as follows:

Amanda Reece
Reece Law Firm, LLC
871 Low Country Blvd. #200
Mt. Pleasant, SC 29464

Stephanie C. Trotter
140 Stoneridge Drive Suite 650
Columbia, SC 29210
P.O. Box 212069
Columbia SC 29221

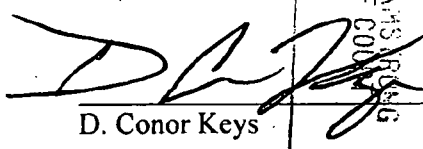
FILED
2014 JUL -3 AM 10:02
JULIE J. AMES ROSS
CLERK OF COURT
BY 
D. Conor Keys

EXHIBIT A

337

RECORD 333

CHARLESTON COUNTY

Auditor

- MAIN MENU
- EXIT

Péter Tecklenburg

Parcel ID
5370700058

Sub-Division
THE VERANDA

Tax District
21, Town of Mt. Pleasant

Legal Description : LOT 378 PHASE A1-1

Acreage High: Marsh: Swamp: Water: Total: 0

Jurisdiction: CNTY-ASSESSR

Property Address : 378 JARDINERE WALK

Mailing Address : 1144, 3100 TRADITION CIR, MT PLEASANT - SC, 29466

Current Owner - 1	Current Owner - 2	Owner 1 as of Jan 1	Owner 2 as of Jan 1	Deed	Deed Date	Sale Date	Sale Price
-	-	MURRAY JOHN E	MURRAY GLORIA C	H643-075	11/06/2007	10/29/2007	\$275,900.
MIDDLETON RICHARD WILLIAM	-	BREITBELL STEPHEN J	AND JEANNE E	T416-858	08/30/2002	08/29/2002	\$173,000.
-	-	BREITBELL STEPHEN J	AND JEANNE E	O236-811	12/23/1993	12/22/1993	\$89,220
-	-	RYLAND GROUP INC THE	-	M232-099	09/28/1993	09/24/1993	\$120,000
-	-	BELLE HALL JOINT VENTURE	-	Z228-027	07/02/1993	06/24/1993	\$243,681

CARD
IMAGE

PLAT
COMMENT

OWNER
COMMENT

For Plat Comment and Owner Comment information on plats and deeds recorded prior to 01/05/2004, please click on Card Image button.

Basic deed transfer information is complete back to 1991.

For records and transactions preceding that date, please click on Card Image button.

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E-mail your comments or questions about this site to publicinfo@charlestoncounty.org
Report technical problems with this site to webmaster@charlestoncounty.org

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RECORD 334

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Belle Hall Plantation Homeowner's
Association, Inc.)

Plaintiff,)

John A Murray, Trustee of John E. Murray)
Gloria C. Murray Family Trust,)

Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-4248

Opposing Affidavit of
Amanda Reece
SCRCP Rule 59

FILED
2014 AUG 14 PM 12:07
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED before me, Amanda Reece, who, after being sworn, deposes and says as follows:

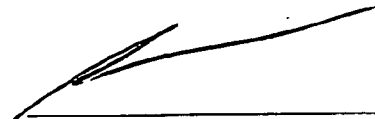
1. My name is Amanda Reece and I represent John A. Murray in this action.
2. On May 13th, 2014 I left a message for Mary Leigh Arnold of Mary Leigh Arnold, P.A. , in hopes of requesting her consultation on a few issues of law, including this action.
3. On May 15th, 2014, I served a Motion to Vacate the Judgment and Set Aside the Sale by USPS first class mail to Plaintiff's and Third Party Purchaser's counsel.
4. On the morning of May 15th, 2014, I received a return call from Mary Leigh Arnold and we briefly discussed a host of legal developments and case law.
5. During that phone call I reported having been retained by a client who had lost a property to foreclosure that was otherwise free and clear in an action by a Homeowners Association.
6. Ms. Arnold recognized the fact pattern and inquired as to whether it was a Belle Hall property.
7. I confirmed that it was and confirmed my client was the named Defendant.
8. Ms. Arnold reported that a gentleman who worked in her office was the successful bidder at the sale.
9. We then changed the subject and discussed other issues of the law.
10. On May 16th, 2014, I emailed the Defendant's motion to Attorney David Conor Keys, the Third Party Purchaser.
11. On August 7th, 2014, I had a telephone conversation with Mr. Keys in which he acknowledged

339

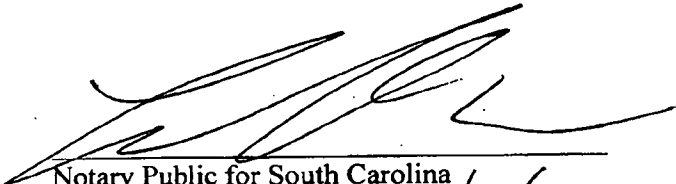
RECORD 335

that he had learned of my representation of Defendant from Ms. Arnold prior to tendering to the Master the balance owing on the bid on May 16th, 2014.

FURTHER AFFIANT SAYETH NAUGHT


Amanda Reece

Sworn before me this 14th
Day of August, 2014


Notary Public for South Carolina
My Commission Expires: 2/3/21



CERTIFICATE OF SERVICE

Case no. 2013-CP-10-10-4248

This is to certify that the undersigned has, on this 14th day of August, 2014 served the attached *Affidavit of Amanda Reece* in the above-captioned action on Plaintiff's counsel and Third Party Purchaser's counsel as indicated below by depositing a copy hereof, postage prepaid, the United States mail to the following addresses:

Stephanie C. Trotter, Esq.
140 Stoneridge Drive Suite 650
Columbia, SC 29210

David Conor Keyes, Esq.
843 Robert E. Lee Blvd.
Charleston, SC 29412

FILED
2014 AUG 14 PM 12:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Amanda Reece (SC Bar #81252)
Reece Law Firm, LLC
871 Lowcountry Blvd. #200
Mount Pleasant, SC 29464

August 14th, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Belle Hall Plantation Homeowner's)
Association, Inc.)
)
Plaintiff,)
)
John A Murray, Trustee of John E. Murray)
Gloria C. Murray Family Trust,)
)
Defendants.)
)
_____)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-4248

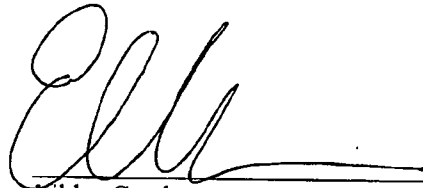
Affidavit of Libby Castle

FILED
2014 AUG 14 PM 12:07
JULIE J. ARMSTRONG
CLERK OF COURT

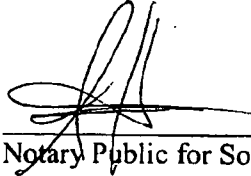
Personally before me appeared, Libby Castle, Paralegal to Beatrice E. Whitten, Esquire, who after being sworn deposes and says the following:

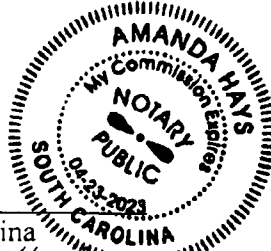
1. In an effort to probate the Estate of John E. Murray, I, under Ms. Whitten's supervision, prepared the deed transferring title from John A. Murray, as Trustee of the John E. Murray and Gloria C. Murray Family Trust to John A. Murray.
2. Our office caused the recording of that deed with the RMC of Charleston County in Book 0380 at Page 338 on December 23rd. 2013 and reflects the tax mailing address 1574 Hidden Bridge Drive, Mount Pleasant, SC, 29464
3. This is the only document prepared by the office of Bea Whitten which is recorded in the chain of title relative to the property located at 378 Jardinere Walk, Mount Pleasant, SC 29464.
4. On or about May 13, 2014, I received the following message from Bill Jordan: "He is checking title on the property in which you did on December 19, 2013. Grantor is John A. Murray, as trustee for John E. Murray and Gloria Murray. He can't find any evidence of the trust naming John A. Murray - do you have a copy in the file? His cell is 276-5033".
5. I returned Mr. Jordan's call, and I left him a voicemail which went unreturned.

FURTHER AFFIANT SAYETH NAUGHT


Libby Castle

Sworn before me this 8
day of August, 2014





Notary Public for South Carolina
My Commission Expires: 4/23/23

CERTIFICATE OF SERVICE

Case no. 2013-CP-10-10-4248

This is to certify that the undersigned has, on this 14th day of August, 2014 served the attached *Affidavit of Libby Castle* in the above-captioned action on Plaintiff's counsel and Third Party Purchaser's counsel as indicated below by depositing a copy hereof, postage prepaid, the United States mail to the following addresses:

Stephanie C. Trotter, Esq.
140 Stoneridge Drive Suite 650
Columbia, SC 29210

David Conor Keyes, Esq.
843 Robert E. Lee Blvd.
Charleston, SC 29412

FILED
2014 AUG 14 PM 12:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Amanda Reece (SC Bar #81252)
Reece Law Firm, LLC
871 Lowcountry Blvd. #200
Mount Pleasant, SC 29464

August 14th, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Belle Hall Plantation Homeowner's)
Association, Inc.)
)
Plaintiff,)
)
John A Murray, Trustee of John E. Murray)
Gloria C. Murray Family Trust,)
)
Defendants.)
_____)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-4248

Affidavit of Anna Howell

FILED
2014 AUG 14 PM 12:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Personally before me appeared, Anna Howell, Paralegal for Beatrice E. Whitten, Esquire, who after being sworn deposes and says the following:

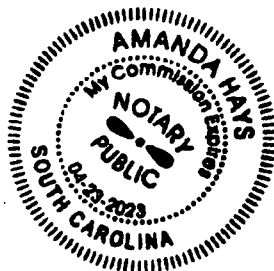
1. I answered the phone on or about May 13, 2014, at 12:21 PM
2. Bill Jordan was calling inquiring about a deed which our office recorded December 19, 2013, on behalf of John A. Murray.
3. Libby Castle was the paralegal tasked with Mr. Murray's matter. She was unavailable to take the call.
4. I took the following message from Bill Jordan: "He is checking title on the property in which you did on December 19, 2013. Grantor is John A. Murray, as trustee for John E. Murray and Gloria Murray. He can't find any evidence of the trust naming John A. Murray - do you have a copy in the file? His cell is 276-5033".

FURTHER AFFIANT SAYETH NAUGHT

Anna Howell

Sworn before me this 8
day of August, 2014

[Signature]



Notary Public for South Carolina
My Commission Expires: 4/23/23

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RECORD 341

CERTIFICATE OF SERVICE

Case no. 2013-CP-10-10-4248

This is to certify that the undersigned has, on this 14th day of August, 2014 served the attached *Affidavit of ~~Jenny~~ ^{ANNA} Howell* in the above-captioned action on Plaintiff's counsel and Third Party Purchaser's counsel as indicated below by depositing a copy hereof, postage prepaid, the United States mail to the following addresses:

Stephanie C. Trotter, Esq.
140 Stoneridge Drive Suite 650
Columbia, SC 29210

David Conor Keyes, Esq.
843 Robert E. Lee Blvd.
Charleston, SC 29412

FILED
2014 AUG 14 PM 12:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____


Amanda Reece (SC Bar #81252)
Reece Law Firm, LLC
871 Lowcountry Blvd. #200
Mount Pleasant, SC 29464

August 14th, 2014

REECE LAW FIRM, LLC
871 LOWCOUNTRY BLVD., SUITE 200
MT. PLEASANT, SC 29464
TELEPHONE 843•209•9830
FACSIMILE 843•628•3466

AMANDA REECE
amanda@reecelawfirm.com
www.reecelawfirm.com

Honorable Julie J. Armstrong
Clerk of Court
100 Broad Street, #106
Charleston, South Carolina, 29401

Re: ***Belle Hall Plantation Homeowner's Association, Inc. vs. John A. Murray, et al***
2013-CP-10-4248

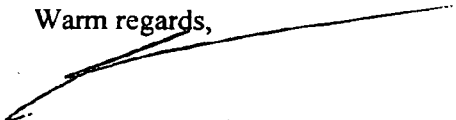
Dear Ms. Armstrong,

August 18th, 2014

Enclosed please find, in duplicate the Affidavits of Amanda Reece, Libby Castle, and Anna Howell pursuant to SCRCF 59(c) and Certificates of Service of the same.

Please file and return a clocked copy of each to me.

Warm regards,



Amanda Reece

Cc: Stephanie Trotter, Esq.
D. Conor Keys, Esq.

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RECORD 343

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Belle Hall Plantation Homeowner's
Association, Inc.)

Plaintiff,)

John A Murray, Trustee of John E. Murray)
Gloria C. Murray Family Trust,)

Defendants.)

David Conor Keys and Karen Keys)

Third Party – Purchasers)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-4248

**Defendant's Memorandum in Support of
Motions**

FILED
2014 AUG 18 PM 2:52
JULIE S. HARRIS
CLERK OF COURT
BY 

FACTS

1. On October 26, 2011, John E. Murray and Gloria C. Murray, by their attorney-in-fact John A. Murray, transferred title of 378 Jardinere Walk, Mt. Pleasant, SC 29464 to John A Murray, Trustee of the John E. Murray and Gloria C. Murray Family Trust.
2. On May 17, 2012, Plaintiff executed a Notice of Lien against John E. Murray and Gloria C. Murray which was recorded on May 23, 2012, in Book 0253, Page 549, in the RMC Office for Charleston County.
3. On July 22, 2013, Plaintiff filed a Lis Pendens, Summons and Complaint against Defendant.
4. On July 27, 2013, pursuant to Plaintiff's Affidavit for Order of Publication, service on Defendant was attempted at 3100 Tradition Circle – a "...guarded assisted living apartment complex..."

5. On August 2, 2013, pursuant to Plaintiff's Affidavit for Order of Publication, service on Defendant was attempted at 378 Jardinere Walk where the "...resident stated John A. Murray does not live there, they rent this house from him..."
6. On August 9, 2013, pursuant to Plaintiff's Affidavit for Order of Publication, service on Defendant was attempted at 937 Bowman Road - "...this is the Palms of Mt. Pleasant (a senior living community)..."
7. On September 30, 2013, Plaintiff filed an Affidavit for Order of Publication (Exhibit A of this Affidavit is attached hereto as Exhibit A) which states "After due diligence, as demonstrated by the attached Exhibit A which is incorporated herein by reference, Plaintiff's counsel has been unable to ascertain the location of Defendant, John A. Murray, Trustee of John E. Murray and Gloria C. Murray Family Trust."
8. Plaintiff's Exhibit A attached to its Affidavit for Order of Publication is a Westlaw search for a John E. Murray which is dated September 25, 2013. This Westlaw search lists five (5) potential addresses for John E. Murray.
9. On October 4, 2013, The Clerk of Courts for Charleston County executed an Order of Publication.
10. On October 16, 2013, Plaintiff filed a Certificate of Mailing of the Summons and other pleadings (the Certificate of Mailing is attached hereto as Exhibit B). The Certificate of Mailing was mailed to John A. Murray, trustee of the John E. Murray and Gloria C. Murray Family Trust, 1090 Loyalist Lane, Mt. Pleasant, SC 29464.
11. 1090 Loyalist Lane was not an address where service was attempted.
12. By way of Affidavit of Plaintiff's Counsel dated June 30, 2014, Plaintiff claims the last known address of Defendant to be 3100 Tradition Circle.

13. On December 18, 2013, Plaintiff filed an Affidavit of Default against Defendant.
14. On December 23, 2013, Defendant, as a result of the dissolution of the Trust and unaware of this pending litigation, Defendant transferred title from John A. Murray, Trustee of the John E. Murray and Gloria C. Murray Family Trust to John A. Murray.
15. On December 27, 2013, an Order of Reference is issued.
16. On March 5, 2014, Plaintiff files a Notice of Hearing and Certificate of Mailing (the Notice of Hearing is attached hereto as Exhibit C). The Notice of Hearing was mailed to John A. Murray, Trustee of the John E. Murray and Gloria C. Murray Family Trust 1090 Loyalist Lane, Mt. Pleasant, SC 29464, and to John A. Murray, Trustee of the John E. Murray and Gloria C. Murray Family Trust 378 Jardinere Walk, Mt. Pleasant, SC 29464
17. On March 18, 2014, the final foreclosure hearing was held.
18. On or around March 26, 2014, Defendant receives at his doorstep the Notice of Hearing which presumably had been mailed to 378 Jardinere Walk, Mt. Pleasant, SC 29464.
19. On or around March 26, 2014, Defendant telephones and emails Plaintiff's Counsel regarding this matter stating that he is responsible for this property and has funds to pay any debts owed.
20. On April 8, 2014, the Order of Foreclosure was filed.
21. On or about April 24, 2014, per Third Party Purchaser's testimony during the July 3rd hearing and his own Memorandum in Opposition to Defendant's Motion to Vacate Default and Judgment and to Set Aside the Sale, Third Party Purchaser searched the outdated Property Card Records found on the Charleston County website (Exhibit A of Third Party Purchaser's Memorandum as well as recent screen shots from the Charleston County website are attached hereto as Exhibit D).

22. On May 6, 2014, the subject property was auctioned at a Master's sale. Third Party Purchaser was the successful bidder.
23. On May 13, 2014, pursuant to the affidavits of Libby Castle and Anna Howell (attached here to as Exhibits E and F) Bill Jordan's office contacted Bea Whitten's office regarding the December 2013 deed she caused to be recorded.
24. On May 15, 2014, per Defendant's Counsel's affidavit (attached here to as Exhibit G) Defendant's Counsel contacted Mary Leigh Arnold to consult on various cases including this matter. During this call Defendant's Counsel learned that Third Party Purchaser worked in Ms. Arnold's office.
25. On May 15, 2014, per exhibit G, Defendant's Counsel served via US First Class Mail the Motion to Vacate the Entry of Default and Judgment to Set Aside Sale.
26. On May 16, 2014, per Exhibit G, Defendant's Counsel emailed a copy of the same Motion to Third Party Purchaser.
27. On May 16, 2014, per Third Party Purchaser's Motion to Reconsider the Order Vacating the Judgment of Foreclosure and Setting Aside the Sale, Third Party Purchaser tendered the remaining portion of the purchase price to the Court.
28. On May 16, 2014, per Third Party Purchaser's Motion to Reconsider the Order Vacating the Judgment of Foreclosure and Setting Aside the Sale, the Court executed the deed transferring title to the Third Party Purchaser.
29. On May 19, 2014, Defendant's Motion to Vacate the Entry of Default and Judgment and to Set Aside the Sale is filed.
30. On May 23, 2014, pursuant to his Motion to Reconsider the Order Vacating the Judgment of Foreclosure and Setting Aside the Sale, Third Party Purchaser accepts the deed from

the Court and causes it to be recorded in the RMC Office for Charleston County.

31. On July 3, 2014, a hearing was held on Defendant's Motion to Vacate the Entry of Default and Judgment to Set Aside Sale.
32. On July 11, 2014, the Court informed the parties via teleconference that the Motion would be granted, the sale would be unwound, and that the Defendant would reimburse Third Party Purchaser for any and all expenses he had incurred as a result of the purchase.
33. During the week of July 14-18, 2014, Defendant's Counsel spoke with and emailed Plaintiff's Counsel and Third Party Purchaser, to confirm all expenses associated with the Court's decision.
34. On July 22, 2014, the Court files an Order vacating the Foreclosure and voiding the sale of the subject property.

LEGAL ARGUMENTS

Third Party Purchasers are not Bona Fide Purchasers for Value

The Third Party Purchasers are not bona fide purchasers for value. To achieve the status of a bona fide purchaser for value a purchaser must show "(1) he has actually paid in full the purchase price (giving security for the payment is not sufficient...) (2) he purchased and acquired legal title, or the best right to it; and (3) he purchased bona fide, i.e., in good faith and with integrity of dealing, without notice of lien or defect." The bona fide purchaser must show that all three conditions-actual payment, acquiring of legal title, and bona fide purchase occurred before he had notice of title defect or other adverse claim, lien, or interest in the property are

met.”¹

The Third Party Purchaser made the bid with notice of an adverse claim as evidenced by his own assertions. Mr. Keys offered into evidence, by way of exhibit and testimony at the hearing of July 3rd, 2014 that he conducted a search of the Charleston County Tax Records relative to the property on April 24, 2014, prior to making the successful bid at the Sale of May 6th, 2014. His offered (Exhibit A) is reattached as Defendant's (Exhibit D). That search purported to be relied on by Mr. Keys to place the bid at the Master's sale on May 6th, 2014 plainly reflects that title is held by John E. Murray and Gloria C. Murray. John E. Murray and Gloria C. Murray are not named Defendants in this action. Mr. Keys claims this search as his due diligence. Defendant asserts that, while not the actual state of title on April 24th, 2014, this search revealing title in the name of parties not the named as Defendants is sufficient to put the Third Party Purchaser on actual notice of a lien or defect to the title he is sought to acquire at the sale. A reasonable person would conclude from this search that John E. Murray and Gloria C. Murray had an adverse claim by virtue of not being named as necessary parties in the action of foreclosure.

The Third Party Purchaser had actual notice of The Defendant's adverse claim before he paid the balance of the bid seventeen days before it was due and induced the Court to issue the deed. As evidenced per the attached Affidavit (Exhibit G) of the Defendant's counsel, Mr. Keys was well aware that the Defendant had retained counsel in this action prior to tendering the balance of his bid on May 16th. The Third Party Purchaser's renditions of the facts to date have been disingenuous. His rendition omits that the Defendant's counsel served the Motion to Vacate and to Set Aside the Sale on May 15th and only refers to the date it was actually filed by The Clerk of Courts on May 19th. It is unknown to the Defendant if The Third Party Purchaser knows actually received the Motion in the mail before they went to the court to pay the balance of the bid on May 16th. The payment was suddenly tendered 17 days earlier than what was required under the terms of the Master's Sale. It is undisputed that The Third Party Purchaser knew that counsel had been retained. The early tender of the balance of the bid immediately upon learning that Defendant had retained counsel certainly does not appear to be an action taken

¹ *Spence v Spence*, 368 S.C.106,117,628 S.E. 2d 869,874-5 (2006);; *Robinson v. Estate of Harris, LLC*

“in good faith and with integrity of dealing”². Conversely, the action gives the appearance of impropriety. It appears calculated in an attempt facilitate the Third Party Purchaser’s claim to be a bona fide purchaser for value.

The Third Party Purchaser had constructive notice that John A. Murray had an adverse claim. “(C)onstructive notice is a legal inference that substitutes for actual notice. It is notice imputed to a person whose knowledge of the facts is sufficient to put him on inquiry; if these facts were to be pursued with due diligence, they would lead to other undisclosed facts. Therefore, this person is presumed to have actual knowledge of the undisclosed facts”.³ Defendant reiterates its argument made at the hearing on July 3rd, 2014 that the site producing the results attached in (Exhibit D) plainly discloses in red font that it has not been updated since June of 2011 And refers to the Affidavit of the Charleston County Auditor stating that the tax mailing address was that of the Defendant and properly reflected in the system as of exactly March 15th. The Third Party Purchaser is a licensed attorney who has experience in the area of foreclosure defense. Due diligence would include a review of the pleadings in the case. A cursory review of the pleadings reveal the claimed amount of the debt owed the Plaintiff was a mere \$1,590.31 and that no other defendants were named as junior lien holders. The fact the defendant made no appearance with such a large amount of equity at stake, would lead a reasonable attorney with practical experience in foreclosure defense to review the due diligence of the Plaintiff in effecting service. Furthermore, the Third Party Purchaser had record notice of the Defendants correct tax mailing address of the Defendants pursuant to the Deed recorded December 23, 2013 and should have known that the residence of John A. Murray had not been served.

Relief from Judgment SCRPC (60)(b)(1)

To Defendant met the burden of proof for relief from judgment due to mistake, inadvertence, surprise, or excusable neglect under SCRPC 60 (b) (1). In making this determination the following factors are relevant; “(t)he, promptness with which relief is sought, the reasons for the failure to act promptly, the existence of (a) meritorious defense, and the

² *Id*

³ Spence, citing to Strother

prejudice to the other party.”⁴ Plaintiff was awarded default judgment by default on March 18th, 2014 and Defendant’s motion was served on May 15th, 2014. SCRCP Rule (60) (b) allows for motions for relief “within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment”.

Any perception of Defendant’s failure to act promptly is excusable due to multiple factors. He had no knowledge of the judgment against him until on or about March 26th. The passing of the Defendants parents and the attendant probating of the estate was a hectic time of stress. The Defendant, upon discovery of the action, immediately attempted by phone and email to contact Plaintiff’s counsel to discuss the nature of the action and to pay any amounts he owed. The Defendant had the ability to pay the debt.

Once receiving no response to his inquiry after a reasonable time, he began to consult with attorneys and filed the motion within a reasonable time thereafter given the nature of the case.

Due to the facts of the case, the Defendant is not privy to all of the Plaintiff’s collection efforts prior to the filing of the action. As such, the Defendant is not possible for the Defendant to be fully aware of available meritorious defenses, and cannot know without further development of the record. The Defendant asserts that this prong is moot to the extent he would have paid any bona fide amount owed. On information and belief, the defendant had meritorious defenses amongst which were Plaintiff’s failure to mitigate damages, violations of collection statutes, payment. The “other party in the action” being the Plaintiff has not been prejudiced as they have been paid the full value of their claim.

The Defendant is entitled to relief from judgment under SCRCP 60 (b)(1)

Relief from Judgment Independent Action SCRCP Rule 60

In *Mr. T v. Ms T* 662, S.E. 2d 413, 378 S.C. 127 (2008), the Court Opines that Rule 60 explicitly indicates that in no way limits the court’s power to entertain an independent action “to relieve a party from a judgment...’or’ to set aside a judgment for fraud upon the court (emphasis

⁴ *Hill v. Dotts* 547 S.E.2d 894, 345 S.C. 304, citing to *New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E. 2d 377, 379 (Ct. App. 1993)(quoting Harry M. Lightsey & *310 James F. Flanagan, South Carolina Civil Procedure 82 (1985)

added). While the most common ground for an independent action is for fraud, the rule is not restricted to only that ground. The structure of this rule and its use of the word "or" indicated to this court two potential independent action attacks on a judgment, order or proceeding: 1) one based on such rare, special, exceptional or unusual circumstances that may warrant equitable relief, including accident or mistake or 2) one based on equity for fraud upon the court."⁵

Public Policy Preclusion of Res Judicata

If the Court rules that the Third Party Purchaser in this action is a bona fide purchaser for value, then exceptions to the preclusion doctrines of apply. In Mr. T v. Ms T 662, S.E. 2d 413, 378 S.C. 127 (2008) the court recognized that "...the application of res judicata and collateral estoppels 'may be precluded where unfairness or injustice results, or public policy requires it.'"⁶

The Court also cites to its own opinion in Pye v. Aycock⁷ adopting the Restatement (Second) of Judgments SEC 28 (1982) as an authority in not precluding relitigation of the issue in the following circumstances...

"... (5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties to the action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of the subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action."

Defendant argues that the preposterous precedent that would be set if the Order to Vacate in the instant action was disturbed, would be injurious to the entire class of distressed homeowner's of the current foreclosure crisis. The competing public policy to protect bona fide purchasers for value is well recognized. However, in the context of a foreclosures and the balancing of equities between the Bona Fide Purchaser and the more vulnerable class of innocent homeowners, favoring the bona fide purchaser would create an absurd result. The facts of the

⁵ Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure §2868 (2d ed. 1995)

⁶ *Id* (citing to Nelson v. QHG, 354 S.C. 290, 315, 580 S.E.2d 171, 184 (Ct.App.2003) *rev'd in part*, 362 S.C. 421, 608 S.E.2d 855 (2005) citing State v. Bacote 331 S.C. 328, 331, 503 S.E. 2d 161, 163 (1998); Carrigg v. Cannon 347 S.C. 75, 552 S.E. 2d 767 (Ct. App. 2001)

⁷ 325 S.C. 426, 437-38, 480 S.E. 2d 455, 460-61 (Ct.App. 1997)

case show that the Plaintiff made no attempt to serve the actual Defendant in the case. If the foreclosure judgment and subsequent sale were to be upheld, the Court would be establishing a precedent that to foreclose on a "John A." a Plaintiff needs only to show that there existed some attempt to locate "John E."

Violation of Publication Statute

Pursuant to S.C. Code Ann. § 15-9-710 (3) "when the defendant is a resident of this State and after a diligent search cannot be found". Based on the Plaintiff's Affidavit of Service, see Exhibit A, Plaintiff's due diligent search was of a John E. Murray *NOT* John A. Murray. Both Plaintiff's Counsel and Third Party Purchaser indicated during the July 3, 2014, hearing that they searched the Charleston County records and found the property owner to be John E. Murray whose last address was 3100 Tradition Circle. The method Plaintiff's Counsel and Third Party Purchaser used to search the public record is outdated as of June 2011. Exhibit D contains the screenshots from the Charleston County website illustrating the method used by Plaintiff's Counsel and Third Party Purchaser to search the Charleston County Records. Notice the indicated section at the top of the second screen (which when you pull it up on-line is actually in red) the notation that the Property Cards have not been updated as of June 29, 2011, and the direction to the proper location of the accurate records. Per the Affidavit of Peter Tecklenberg, Charleston County Auditor, 1574 Hidden Bridge was the address of record for the subject property beginning March 15, 2013. Had Plaintiff's Counsel and Third Party Purchaser followed this direction, they would have easily found John A. Murray. Service by Publication was set aside in Caldwell v. Wiquist 471 S.E. 2d 583, because "South Carolina courts have repeatedly required strict compliance with publication statutes". In this case the Affidavit requesting publication is defective on its face because the due diligence was for John E. Murray, not John A. Murray.

Service by Publication is additionally flawed pursuant to S.C. Code Ann. § 15-9-740 and Plaintiff's Counsel violates the Order for Service Via Publication which states "a copy of the Summons Complaint in accordance with the statute be forwarded to the Defendant by depositing the same in the United States mail, postage prepaid, addressed to the last known address of the Defendant(s)." Plaintiff's Counsel relied on its improper due diligence search of a John E. Murray, mailing a copy of the Summons to 1090 Loyalist Lane (see Exhibits A and B). Plaintiff's Counsel's testimony during the July 3, 2014, hearing indicated that her search of the Charleston County tax record showed a last address of 3100 Tradition Circle. Again, had Plaintiff's Counsel properly searched the Charleston County Records for the subject property an address of 1574 Hidden Bridge would have been reflected as the address of record for the subject property. Again, Caldwell v. Wiquist calls for "strict compliance with publication statutes" which here again did not occur.

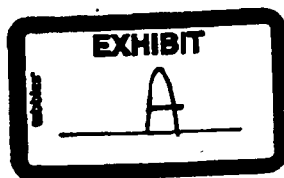
 5/18/11

Amanda Reece, Esq.
Bar # 81252
Reece Law Firm, LLC
871 Lowcountry Blvd
Suite 200
Mt. Pleasant, SC 29464
Tel: 843.209.9830
Email: amanda@reecelawfirmllc.com

EXHIBIT A

359

RECORD 355



JOHN E MURRAY
 937 BOWMAN RD APT 261
 MOUNT PLEASANT, SC 29464-3227

Send to Timeline
 Generate a graphical timeline
 of your report.

SSN: [REDACTED] X
 SSN issued in NY in 1956-1959
 Year of Birth: 1923
 Age: 89
 RiskFlags!

Permissible Use(s)

Permissible Use Selection - For use in complying with a properly authorized civil, criminal, or regulatory investigation, subpoena, or summons by federal, state, or local authorities - GLB
 Permissible Use Selection - To verify or correct information provided to you by a person in order to prevent fraud, pursue legal remedies or recover a debt; skip tracing - DPPA
 Permissible Use Selection - Use in connection with a non-commercial purpose - VOTERS

Possible Name Variations

JOHN, MURRAY
 MURRAY, JOHN E
 MURRAY, JOHN

Possible Previous/Other Addresses

937 BOWMAN RD APT 261	MOUNT PLEASANT, SC 29464	
378 JARDINERE WALK	MOUNT PLEASANT, SC 29464	
3100 TRADITION CIR APT 1144	MOUNT PLEASANT, SC 29466	
1574 HIDDEN BRIDGE DR	MT PLEASANT, SC 29464	
1090 LOYALIST LN	MT PLEASANT, SC 29464	
378 JARDINERE WA	MOUNT PLEASANT, SC 29464	843-884-2498
1090 LOYALISTLN	MOUNT PLEASANT, SC 29464	843-884-2498

Possible Phone Records

Source:	Phone:
People Find Trans Union	(843) 884-2498
Work Affiliations	
People Find Trans Union	884-2498
People Historical	

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
DOCKET NO. 2013-CP-10-4248

Belle Hall Plantation Homeowners Association, Inc.,

Plaintiff,

v.

John A. Murray, Trustee of John E. Murray and
Gloria C. Murray Family Trust

Defendant(s).

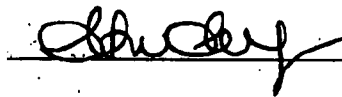
CERTIFICATE OF MAILING

FILED
2013 OCT 16 PM 1:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I, Sheri Self, an employee of McCabe, Trotter & Beverly, P.C., attorneys for Plaintiff, certify that I mailed a copy of the Order For Service Via Publication, Lis Pendens, Summons, and Complaint in the above referenced matter via U.S. Mail, postage prepaid, to the following:

Parties Served:

***John A. Murray, Trustee of John E. Murray and Gloria C. Murray Family Trust
1090 Loyalist Lane
Mt Pleasant SC 29464***



Sheri Self

October 8, 2013

361

RECORD 357

EXHIBIT C

362

RECORD 358

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

DOCKET NO. 2013-CP-10-4248

Belle Hall Plantation Homeowners Association, Inc.,

Plaintiff,

NOTICE OF HEARING

v.

John A. Murray, Trustee of John E. Murray and
Gloria C. Murray Family Trust,

Defendant(s).

FILED
2014 MAR -5 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

TO:

John A. Murray, Trustee of John E. Murray
and Gloria C. Murray Family Trust
1090 Loyalist Lane
Mt Pleasant SC 29464

John A. Murray, Trustee of John E. Murray
and Gloria C. Murray Family Trust
378 Jardinere Walk
Mt Pleasant, SC 29464

Please take notice that a Foreclosure Hearing in the above-referenced matter has been scheduled with the Charleston County Master in Equity, The Honorable Mikell R. Scarborough, to take place on 03/18/2014 at 02:00 pm, at:

100 Broad Street

Suite 266

Charleston, South Carolina 29401

at which time and place you are notified to appear and take such part as you deem to be appropriate.


Stephanie C. Trotter
McCabe, Trotter & Beverly, P.C.
P. O. Box 212069
Columbia, SC 29221
Telephone: 803-724-5000
Fax: 803-724-5001
Email: Stephanie.Trotter@mccabetrotter.com
Attorneys for Plaintiff

February 27, 2014
Columbia, South Carolina

363

RECORD 359

EXHIBIT D

364

RECORD 360

4/24/2014

* Charleston County PRC System

CHARLESTON COUNTY Auditor

Peter Tecklenburg

- MAIN MENU
- EXIT

Parcel ID
5370700058

Sub-Division
THE VERANDA

Tax District
21, Town of Mt. Pleasant

Legal Description : LOT 378 PHASE A1-1

Acreage High: Marsh: Swamp: Water: Total: 0

Jurisdiction: CNTY-ASSESSR

Property Address : 378 JARDINERE WALK

Mailing Address : 1144 3100 TRADITION CIR, MT PLEASANT - SC, 29466

Retirement Community

Current Owner - 1	Current Owner - 2	Owner 1 as of Jan 1	Owner 2 as of Jan 1	Deed	Deed Date	Sale Date	Sale Price
-	-	MURRAY JOHN E	MURRAY GLORIA C	H843-075	11/08/2007	10/29/2007	\$275,900.
MIDDLETON RICHARD WILLIAM	-	BREITBELL STEPHEN J	AND JEANNE E	T416-858	08/30/2002	08/29/2002	\$173,000.
-	-	BREITBELL STEPHEN J	AND JEANNE E	O238-811	12/23/1993	12/22/1993	\$88,220
-	-	RYLAND GROUP INC THE	-	M232-099	09/28/1993	09/24/1993	\$120,000
-	-	BELLE HALL JOINT VENTURE	-	ZZ28-027	07/02/1993	06/24/1993	\$243,681

CARD
IMAGE

PLAT
COMMENT

OWNER
COMMENT

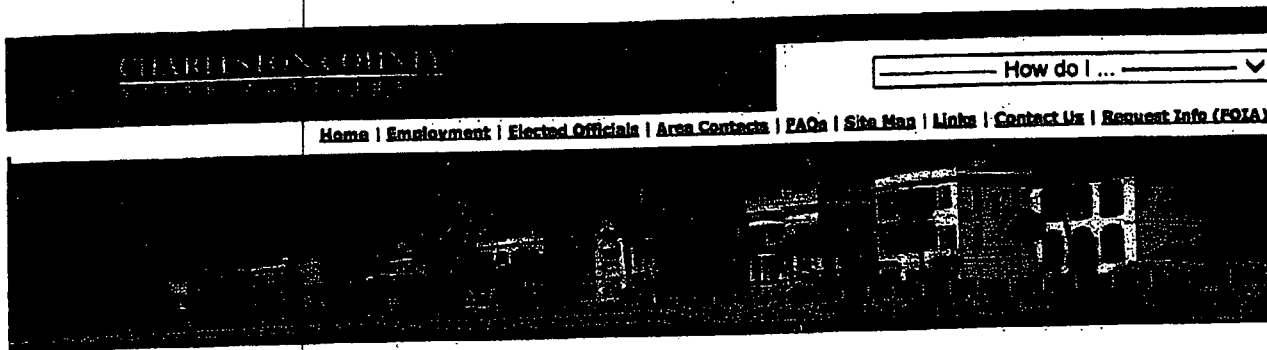
For Plat Comment and Owner Comment information on plats and deeds recorded prior to 01/08/2004, please click on Card Image button.

Basic deed transfer information is complete back to 1991.
For records and transactions preceding that date, please click on Card Image button.

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E-mail your comments or questions about this site to publicinfo@charlestoncounty.org
Report technical problems with this site to webmaster@charlestoncounty.org

*Exhibit to Third Party Purchaser
July 3rd Memorandum in Opposition*

365



WITH SEARCH

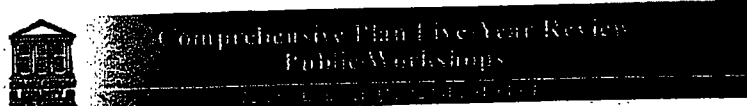


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 - County State
 - Site Map
 - Links

- ADDITIONAL RESOURCES
- Arts & Entertainment
 - CARTA Transit System
 - County Library
 - County Parks
 - Elections / Voter Registration
 - Greenbelt
 - School District
 - Sex Offenders Search
 - Sheriff's Office
 - Traffic Cam
 - Transportation Sales Tax
 - United Way 24-hour hotline
 - Visitor Information
 - Zoning & Planning

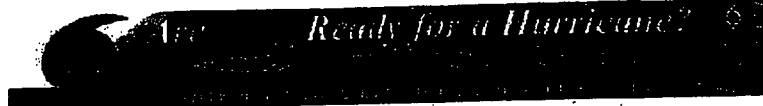
- MUNICIPALITIES
- City of Charleston
 - City of Folly Beach
 - City of Isle of Palms
 - City of North Charleston
 - Town of Awendaw
 - Town of Hollywood
 - Town of James Island

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Our Mission: We will promote and protect the quality of life in Charleston County by delivering services of value to the community.



Let Us Know How We Are Doing
Click here for the Charleston County Customer Satisfaction Survey

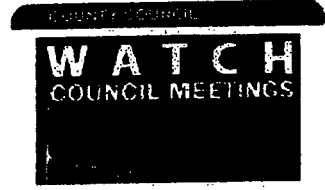
HAVE YOU SEEN OUR DIVERSITY PHILOSOPHY?



ONLINE SERVICES NEWS RELEASES WHAT'S NEW

- **GIS:**
View property information, parcel history, recycling routes, council members, licensing agreement
- **RMC:**
Search deeds, mortgages, plats and state/federal/UCC liens
- **AUDITOR:**
View property record cards
Out of State Tag Reporting Form
2013 Millage Card
2013 Millage Breakdown
- **TREASURER:**

Pay taxes online or search records for real and personal properties.
- **CLERK OF COURT:**
Search court records of Clerk of Court, Circuit and Master-in-Equity ...



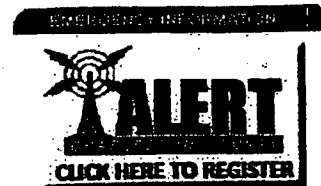
- Agenda
- Meetings Calendar
- Council Minutes
- Council Members
- County Ordinances
- County Zoning Ordinance
- Boards/Commissions
- District Maps
- Find your Council Member
- Department Information

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RECORD 362

- [Town of Kiawah Island](#)
- [Town of Lincolnville](#)
- [Town of McClellanville](#)
- [Town of Meggett](#)
- [Town of Mount Pleasant](#)
- [Town of Ravenel](#)
- [Town of Rockville](#)
- [Town of Seabrook Island](#)
- [Town of Sullivan's Island](#)

- **SHERIFF'S OFFICE:**
[Current inmates search](#)
- **MAGISTRATES:**
[Search magistrate records](#)
[Online payments](#)
- **MASTER-IN-EQUITY:**
[Foreclosure Auction List](#)
[Online Referral Form](#)
[Contested Roster](#)
[Uncontested Roster](#)
- **PROBATE COURT:**
[Search Marriage License or Estate/Will and Conservatorship/Guardianship records](#)
- **BUILDING INSPECTION SERVICES:**
[Apply For/Check Status of a Building Permit](#)
[Request Inspections and Renew Contractor Licenses](#)
- **BUSINESS LICENSE:**
[Renew your business license for Charleston County, North Charleston, McClellanville, Awendaw and Rockville ...](#)
- **PROCUREMENT:**
[Open Solicitations](#)
[Procurement Ordinance](#)
[Small Business Enterprise Program](#)
- **RECYCLING:**
[Check the BiWeekly Curbside Pickup Schedule for your address](#)



- [Level descriptions](#)
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Feedback:

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• [Transportation Sales Tax](#)



[CERT Program](#)



• [Zoning & Planning](#)



• [SCDOT I-526](#)



367

RECORD 363

CHARLESTON COUNTY *Auditor*

- [MAIN MENU](#)
- [HELP](#)
- [EXIT](#)

Peter Tecklenburg

PRCWEB data is undergoing upgrade and data is current as of Wednesday Jun 29, 2011. Updates to data will resume after the upgrade. We apologize for the inconvenience.

"All current ownership information and ownership history is available at the new Charleston County government [Tax Site](#)."

[Help with ActiveX Installation.](#)

Search by Name

Last Name	First Name	Middle Name	
			Search

Search by Address

Street Number (for example: 4045)

Street Name (For best results, do not enter the street type e.g., St., Ave, etc.)

Search by Parcel ID (TMS)

Parcel ID (TMS) (for example: 4120000035)

Search by Sales Date

[Click here](#) to search by sales date.

Basic deed transfer information online is complete back to 1991.

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368

RECORD 364

CHARLESTON COUNTY

Auditor

- MAIN MENU
- HELP
- ABOUT

Peter Tecklenburg

PRCWEB data is undergoing upgrade and data is current as of Wednesday Jun 29, 2011. Updates to data will resume after the upgrade. We apologize for the inconvenience.

"All current ownership information and ownership history is available at the new Charleston County government Tax Site"

Help with ActiveX Installation.

Search by Name

Last Name	First Name	Middle Name	
			Search

Search by Address

Street Number (for example: 4045)

Street Name (For best results, do not enter the street type e.g., St., Ave, etc.)

Search by Parcel ID (TMS)

Parcel ID (TMS) (for example: 4120000035)

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Basic deed transfer information online is complete back to 1991.

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369

RECORD 365

CHARLESTON COUNTY

Auditor

Peter Tecklenburg

- Search Results
- Search

Street #	Street Name	Current Owner - 1	Current Owner - 2	Owner 1 as of Jan 1	Owner 2 as of Jan 1	Parcel Id (TMS)
378	JARDINERE WALK			MURRAY JOHN E	MURRAY GLORIA C	8379700000

Basic deed transfer information online is complete back to 1991.

[New Search](#)

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370

RECORD 366

[Address Search Result.asp](#)

8/11/2014

371

RECORD 367

1 - CharlestonCounty.org/Address Search Result.asp

8/11/2014

CHARLESTON COUNTY

Auditor

Peter Teckdenburg

- 2000 10000
- 1000

Parcel ID
6370700058Sub-Division
THE VERANDATax District
21, Town of Mt. Pleasant

Legal Description : LOT 378 PHASE A1-1

Acreage High : Marsh : Swamp :

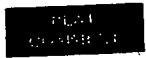
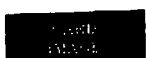
Water : Total : 0

Jurisdiction : CNTY-ASSESSR

Property Address : 378 JARDINERE WALK

Mailing Address : 1144 3100 TRADITION CIR, MT PLEASANT - SC, 29466

Current Owner - 1	Current Owner - 2	Owner 1 as of Jan 1	Owner 2 as of Jan 1	Deed	Deed Date	Sale Date	Sale Price
-	-	MURRAY JOHN E	MURRAY GLORIA C	H843-078	11/08/2007	10/28/2007	\$275,800
-	-	BRETTBELL STEPHEN J	AND JEANNE E	T416-688	08/30/2002	08/28/2002	\$173,000
MIDDLETON RICHARD WILLIAM	-	BRETTBELL STEPHEN J	AND JEANNE E	O238-811	12/23/1993	12/22/1993	\$89,220
-	-	BRETTBELL STEPHEN J	-	M233-068	09/23/1993	09/24/1993	\$120,000
-	-	RYLAND GROUP INC THE	-	Z228-027	07/02/1993	06/24/1993	\$243,881
-	-	BELLE HALL JOINT VENTURE	-	-	-	-	-



For Plat Comment and Owner Comment information on plats and deeds recorded prior to 01/05/2004, please click on Card Image button.

Basic deed transfer information is complete back to 1891.
For records and transactions preceding that date, please click on Card Image button.

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372

RECORD 368

<http://www.charlestoncountytv.org/mainAssessor.asp?parcelid=5370700058>

8/11/2014

EXHIBIT E

373

RECORD 369

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Belle Hall Plantation Homeowner's
Association, Inc.

Plaintiff,

John A Murray, Trustee of John E. Murray
Gloria C. Murray Family Trust,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-4248

Affidavit of Libby Castle

FILED
2014 AUG 14 PM 12:07
JULIE ARMSTRONG
CLERK OF COURT

Personally before me appeared, Libby Castle, Paralegal to Beatrice E. Whitten, Esquire, who after being sworn deposes and says the following:

1. In an effort to probate the Estate of John E. Murray, I, under Ms. Whitten's supervision, prepared the deed transferring title from John A. Murray, as Trustee of the John E. Murray and Gloria C. Murray Family Trust to John A. Murray.
2. Our office caused the recording of that deed with the RMC of Charleston County in Book 0380 at Page 338 on December 23rd. 2013 and reflects the tax mailing address 1574 Hidden Bridge Drive, Mount Pleasant, SC, 29464
3. This is the only document prepared by the office of Bea Whitten which is recorded in the chain of title relative to the property located at 378 Jardinere Walk, Mount Pleasant, SC 29464.
4. On or about May 13, 2014, I received the following message from Bill Jordan: "He is checking title on the property in which you did on December 19, 2013. Grantor is John A. Murray, as trustee for John E. Murray and Gloria Murray. He can't find any evidence of the trust naming John A. Murray - do you have a copy in the file? His cell is [REDACTED] 9099".
5. I returned Mr. Jordan's call, and I left him a voicemail which went unreturned.

FURTHER AFFIANT SAYETH NAUGHT


Libby Castle

Sworn before me this 8
day of August, 2014





Notary Public for South Carolina
My Commission Expires: 4/23/25

CERTIFICATE OF SERVICE

Case no. 2013-CP-10-10-4248

This is to certify that the undersigned has, on this 14th day of August, 2014 served the attached *Affidavit of Libby Castle* in the above-captioned action on Plaintiff's counsel and Third Party Purchaser's counsel as indicated below by depositing a copy hereof, postage prepaid, the United States mail to the following addresses:

Stephanie C. Trotter, Esq.
140 Stoneridge Drive Suite 650
Columbia, SC 29210

David Conor Keyes, Esq.
843 Robert E. Lee Blvd.
Charleston, SC 29412

FILED
2014 AUG 14 PM 12:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____


Amanda Reece (SC Bar #81252)
Reece Law Firm, LLC
871 Lowcountry Blvd. #200
Mount Pleasant, SC 29464

August 14th, 2014

EXHIBIT F

377

RECORD 373

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Belle Hall Plantation Homeowner's
Association, Inc.

Plaintiff,

John A Murray, Trustee of John E. Murray
Gloria C. Murray Family Trust,

Defendants.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-4248

Affidavit of Anna Howell

BY

2014 AUG 14 PM 12:07
JULIE J. ARMSTRONG
CLERK OF COURT
FILED

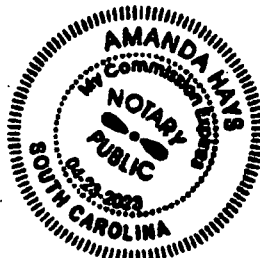
Personally before me appeared, Anna Howell, Paralegal for Beatrice E. Whitten, Esquire, who after being sworn deposes and says the following:

1. I answered the phone on or about May 13, 2014, at 12:21 PM
2. Bill Jordan was calling inquiring about a deed which our office recorded December 19, 2013, on behalf of John A. Murray.
3. Libby Castle was the paralegal tasked with Mr. Murray's matter. She was unavailable to take the call.
4. I took the following message from Bill Jordan: "He is checking title on the property in which you did on December 19, 2013. Grantor is John A. Murray, as trustee for John E. Murray and Gloria Murray. He can't find any evidence of the trust naming John A. Murray - do you have a copy in the file? His cell is [REDACTED]".

FURTHER AFFIANT SAYETH NAUGHT

Anna Howell

Sworn before me this 8
day of August, 2014



Notary Public for South Carolina

My Commission Expires: 9/23/23

378

RECORD 374

CERTIFICATE OF SERVICE

Case no. 2013-CP-10-10-4248

This is to certify that the undersigned has, on this 14th day of August, 2014 served the attached *Affidavit of ~~Julie J. Armstrong~~ ^{ANNA} Howell* in the above-captioned action on Plaintiff's counsel and Third Party Purchaser's counsel as indicated below by depositing a copy hereof, postage prepaid, the United States mail to the following addresses:

Stephanie C. Trotter, Esq.
140 Stoneridge Drive Suite 650
Columbia, SC 29210

David Conor Keyes, Esq.
843 Robert E. Lee Blvd.
Charleston, SC 29412

FILED
2014 AUG 14 PM 12:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____


Amanda Reece (SC Bar #81252)
Reece Law Firm, LLC
871 Lowcountry Blvd. #200
Mount Pleasant, SC 29464

August 14th, 2014

EXHIBIT G

380

RECORD 376

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Belle Hall Plantation Homeowner's
Association, Inc.)

Plaintiff,)

John A Murray, Trustee of John E. Murray
Gloria C. Murray Family Trust,)

Defendants.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-4248

Opposing Affidavit of
Amanda Reece
SCRCP Rule 59

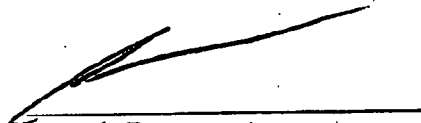
FILED
2014 AUG 14 PM 12:07
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED before me, Amanda Reece, who, after being sworn, deposes and says as follows:

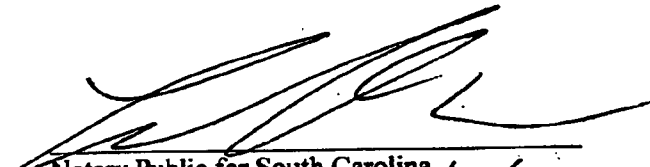
1. My name is Amanda Reece and I represent John A. Murray in this action.
2. On May 13th, 2014 I left a message for Mary Leigh Arnold of Mary Leigh Arnold, P.A. , in hopes of requesting her consultation on a few issues of law, including this action.
3. On May 15th, 2014, I served a Motion to Vacate the Judgment and Set Aside the Sale by USPS first class mail to Plaintiff's and Third Party Purchaser's counsel.
4. On the morning of May 15th, 2014, I received a return call from Mary Leigh Arnold and we briefly discussed a host of legal developments and case law.
5. During that phone call I reported having been retained by a client who had lost a property to foreclosure that was otherwise free and clear in an action by a Homeowners Association.
6. Ms. Arnold recognized the fact pattern and inquired as to whether it was a Belle Hall property.
7. I confirmed that it was and confirmed my client was the named Defendant.
8. Ms. Arnold reported that a gentleman who worked in her office was the successful bidder at the sale.
9. We then changed the subject and discussed other issues of the law.
10. On May 16th, 2014, I emailed the Defendant's motion to Attorney David Conor Keys, the Third Party Purchaser.
11. On August 7th, 2014, I had a telephone conversation with Mr. Keys in which he acknowledged

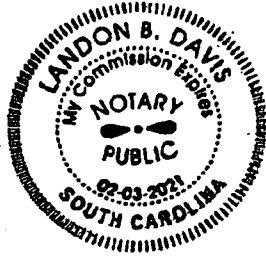
that he had learned of my representation of Defendant from Ms. Arnold prior to tendering to the Master the balance owing on the bid on May 16th, 2014.

FURTHER AFFIANT SAYETH NAUGHT


Amanda Reece

Sworn before me this 14th
Day of August, 2014


Notary Public for South Carolina
My Commission Expires: 2/3/21



CERTIFICATE OF SERVICE

Case no. 2013-CP-10-10-4248

This is to certify that the undersigned has, on this 14th day of August, 2014 served the attached *Affidavit of Amanda Reece* in the above-captioned action on Plaintiff's counsel and Third Party Purchaser's counsel as indicated below by depositing a copy hereof, postage prepaid, the United States mail to the following addresses:

Stephanie C. Trotter, Esq.
140 Stoneridge Drive Suite 650
Columbia, SC 29210

David Conor Keyes, Esq.
843 Robert E. Lee Blvd.
Charleston, SC 29412

FILED
2014 AUG 14 PM 12:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Amanda Reece (SC Bar #81252)
Reece Law Firm, LLC
871 Lowcountry Blvd. #200
Mount Pleasant, SC 29464

August 14th, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Belle Hall Plantation Homeowner's)
Association, Inc.)
Plaintiff,)
vs.)
John A Murray, Trustee of John E. Murray)
Gloria C. Murray Family Trust,)
Defendant(s))

David Conor Keys & Karen Keys)
Third Party – Purchasers)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-4248

**MEMORANDUM IN SUPPORT OF
THE THIRD-PARTY PURCHASERS'
MOTION TO RECONSIDER THE
MASTER'S AMENDED ORDER FILED
FEBRUARY 10, 2015**

FILED
APR - 7 PM 1:56
JULIE J. ARMSTRONG
CLERK OF COURT

TO: AMANDA REECE, ATTORNEY FOR THE DEFENDANT AND STEPHANIE C
TROTTER ATTORNEY FOR PLAINTIFF:

The Third-Party Purchasers, David Conor Keys and Karen Keys (hereinafter "Third-Party Purchasers"), respectfully submit, through their under signed council, this Memorandum in support the Third-Party Purchasers' Motion to Reconsider filed February 18, 2015.

Third-Party Purchasers would assert that their Motion to Reconsider contains the relevant facts and case law which Third-Party Purchasers contend address errors of law and fact found in the Order filed by the Master on February 10, 2015, and therefore Third-Party Purchasers would request that the Master rules as to all of Third-Party Purchasers objections as set forth in their Motion to Reconsider.

Third Party Purchasers' additionally submit this memorandum to the Court because the Order of February 10, 2015 states: "In light its ruling the Court does not find it necessary. . . to rule on the Third-Party Purchaser's disputed status as a Bona Fide Purchaser for Value. The

Court, however, as expressed at the hearing to the parties, stands prepared to make a ruling as to the Bona Fide Purchaser for Value issue with the further briefing on the matter.” Therefore this memorandum is being presented pursuant to the Master’s request for further briefing on the issue of Bona Fide Purchaser for Value (hereinafter “BFPV”).

Initially the Third-Party Purchasers would respectfully assert that they have previously asserted, argued and briefed the Master as to the Third-Party Purchasers’ status as Bona Fide Purchasers for Value. Third-Party Purchasers filed a Memorandum on July 3, 2014, asserting that they were Bona Fide Purchaser’s for Value (hereinafter “BFPV”). During the July 3, 2014, hearing Third-Party Purchasers asserted that they were BFPV. The Master’s Order on July 22, 2014, did not address whether Third-Party Purchasers are BFPV. On August 1, 2014, Third-Party Purchasers filed a Motion for Reconsideration of the Order of July 22, 2014, and again asserted that they are BFPV. During the August 18, 2014, hearing on Third-Party Purchasers’ Motion for Reconsideration they again asserted they were BFPV. On August 20, 2014, the Master filed an Order denying Third-Party Purchasers Motion to Reconsider and granting the Defendant’s Motion to Amend the Order. On September 2, 2014, Third-Party Purchasers filed a Motion to Reconsider the Order of August 20, 2014. Third-Party Purchasers attached to the Motion to Reconsider a copy of Bloody Point Property Owners Association, Inc. v. Ashton, 410 S.C. 62, 762 S.E.2d 729 (2014) which was filed by the Court of Appeals the same day the Master filed his Order denying Third-Party Purchasers Motion to Reconsider. Third-Party Purchaser’s would assert that Ashton directly answers the question the Master asked the parties to brief him on when he said “If the notice is defective I don’t know what that means to a BFE for value. I don’t know. If you-all can get me up to speed on that I’ll give you a ruling on it.” (8/18/14, Tran., p. 40, line 11 – p. 41, line 1). The Master denied the Appellants’ September 2, 2014,

Motion to Reconsider by Order filed on September 19, 2014. Attached to the Master's September 19, 2014, Order is a copy of Ashton. Therefore Third-Party Purchasers would respectfully assert that they have previously briefed the Master on the relevant case law as to BFPV, but nonetheless at the Master's request present this memorandum in further briefing and support of the assertion that Third-Party Purchasers are BFPV.

THIRD-PARTY PURCHASERS' ARE BONA FIDE PURCHASERS FOR VALUE.

The Court in Robinson stated:

"South Carolina Code section 15-39-870 provides as follows: 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 that 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 Ann. § 15-39-870 (2005). The rationale for the statute is the well established public policy of protecting good faith purchasers and upholding the finality of a judicial sale." Robinson v. Estate of Harris, 378 S.C. 140 662 S.E.2d 420 (Ct. App. 2008)

"A purchaser may assert a plea in equity of a bona fide purchaser for value, without notice of defect in his title, by showing (1) he has actually paid in full the purchase money (giving security for the payment is not sufficient, nor is past indebtedness a sufficient consideration); (2) he purchased and acquired the legal title, or the best right to it; and (3) he purchased bona fide, *i.e.*, in good faith and with integrity of dealing, without notice of a lien or defect. The bona fide purchaser must show all three conditions — actual payment, acquiring of legal title, and bona fide purchase — occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property". Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006).

Equity follows the law. Regions v. Wingard Properties, 394, S.C. 241, 715 S.E.2d 349 (Ct App. 2011). "When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Id. at 254.

1. Prior to the Master's Order Defendant Did not Raise a Defense to Third-Party Purchasers' Assertion of BFPV Therefore the Defense's Defenses on this Issue are Not Preserved.

The Defendant, John A. Murray Trustee of John E. Murray and Gloria C. Murray Family Trust (hereinafter "Defendant") did to raise a defense to Third-Party Purchasers assertion that they are BFPV, until after the Order of July 22, 2014. A party cannot raise a defense to an asserted issue by way of a Rule 59(e) motion which could been raised prior to the order. See Patterson v. Reid, 456 S.E. 2d 436 (Ct. App. 1995); In re Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004) (quoting Patterson); Gainey v. Gainey, 382 S.C. 414 675 S.E.2d 792 (Ct. App. 2009) (citing Patterson). Defendant first appears to raise a defense to the Third-Party Purchasers' assertion of BFPV on August 4, 2014, with the filing of the Defendant's Motion to Amend the Order of July 22, 2014. Thereafter the Defendant sought to provide alleged evidence in support of its untimely asserted defense with the filing of Affidavits on August 14, 2014; and the filing of a "Memorandum in Support of Motions" on August 18, 2014. Defendant appears to assert Third-Party Purchasers had notice of the Defendant's alleged adverse claim to title prior to the Appellants tendering payment in full to the Court. During the hearing on August 18, 2014, the Defendant states: To the extent that this should have been addressed at the last hearing I would argue that it was newly discovered evidence. While I attempted to find out when Mr. Keys had actually paid for the deed, some people in your office might be able to tell you that. I could not obtain that. I obviously could tell when it was executed. . ." (8/18/14, Tran, p. 21, lines 16-24).

In this case the Defendant had constructive and actual knowledge of the facts asserted in support of Defendant's alleged defense to Third-Party Purchasers' assertion of BFPV, but the Defendant did not raise the issue until after the Master's Order of July 22, 2014. To the extent the statement "I obviously could tell when it was executed" refers to the executed Master's Deed,

then deductive reasoning would establish that the Third-Party Purchasers' paid in full prior to the Master executing the Deed on May 16, 2014. Additionally, a notation in the public index for this matter states that the sale amount was paid in full May 16, 2014 at 12:03, and that the Deed was subsequently executed at 13:16. The Defendant is certainly deemed to have constructive notice of the public record of an action in which it has made an appearance. Spence, 368 S.C. 106; 628 S.E.2d 869. The alleged evidence the Defendant asserted in defense to Third-Party Purchasers' assertion that they are BFPV is not new evidence. The Defendant new or had reason to know of the information prior to the July 3, 2014 hearing, but failed to raise a defense to Appellants' assertion until after the Order of July 22, 2014. The defenses are not preserved.

2. The Unpreserved Defenses Raised by the Defendant are Without Merit.

Nonetheless, for the sake of argument assuming that the Defendant preserved its defenses to Third-Party Purchaser's assertion that they are BFPV, Third-Party Purchasers would still assert that the Defendant's defenses are without merit.

a. Trustee's Claim to Title is Not Adverse to that of Third-Party Purchasers'.

The Defendant's assertion that the Trustee, John A. Murray individually (hereinafter "Trustee") has a claim to title of the Property that is adverse to the Third-Party Purchasers' is without merit. S.C. Code Ann. § 29-3-400, states:

"Upon the filing of the petition in the office of the clerk of court of common pleas, the clerk shall immediately enter it in the index to lis pendens affecting real property and from the time of the filing the pendency of the action or special proceedings is constructive notice to an assignee, pledgee, purchaser, or encumbrancer of the mortgage, and every person whose purchase, encumbrance, assignment, pledge, or hypothecation is subsequently executed or subsequently recorded is considered a subsequent purchaser or encumbrancer and is bound by all proceedings taken after the filing of the petition to the same extent as if he were made a party to the action or special proceedings taken after the filing of the

petition to the same extent as if he were made a party to the action or special proceeding.” S.C. Code Ann. § 29-3-400.

In this Case, On July 22, 2013, Belle Hall filed a Lis Pendens, Summons and Complaint, in this action against Defendant. (L. P., Sum., Compl.). On December 23, 2013, Defendant transferred the Property to the Trustee by quit claim deed which was recorded in the RMC office for Charleston County (12/23/13 Deed). However, as S.C. Code Ann. § 29-3-400, makes clear, because the Defendant transferred the Property to the Trustee, after the Lis Pendens was filed the Trustee “is considered a subsequent purchaser or encumbrancer and is bound by all proceedings taken after the filing of the petition to the same extent as if he were made a party to the action.”

Id. The Trustee’s claim to title is not adverse to that of Third-Party Purchasers, because the Order of Foreclosure extinguished the Defendant’s right to transfer title to the Trustee and therefore the Trustee’s Deed is void. Third-Party Purchasers’ raised this issue at the hearing on August 18, 2014, when they stated: “the lis pendens freezes the title at that point in time. There’s an issue that she asserts that I referenced or knew of the December 23rd, 13 title where he transfers as trustee out of the trust to himself. I did know about that prior to the sale, Your Honor. I would assert that that’s not a notice of defect in title. The lis pendens predates it. The lis pendens freezes everything in time and puts him on constructive notice. He should have looked when he filed that December 23rd deed. He would have known about this at that time. It puts him on notice that if this action were successful that that deed, that subsequent transfer after the lis pendens could be voided.” (8/18/14, Tran., p 19, line 9 – p. 20, line 13.)

b. The Third-Party Purchasers Tendered Purchase Money Prior to Notice of Any Alleged Defect in Title.

May 6, 2014, the date of sale, is the relevant date for determining whether the Third-Party Purchasers’ meet the payment element of BFPV. S.C. Code § 15-39-720 in collaboration with §

15-39-760 provide that where a Plaintiff waives the right to a deficiency judgment prior to sale the bidding will not remain open and the sale will be closed the day of the auction. Bankruptcy Courts in South Carolina as well as the District Court of South Carolina have held "the actual foreclosure sale as the cut-off date for curing mortgage defaults." In re Watts, 273 B.R. 471, 476 (Bankr. D.C. 2000). *In re Watts*, speaking of the debtors right to cure or redemption noted: "The Court acknowledges that the foreclosure process may require steps following the auction sale in order to conclude the sale and make it effective; however, . . . [p]recedent in this Court and this District has found that upon the falling of the gavel, the debtor is left with bare legal title; thus, the fact that the sale procedure has yet to be completed does not alter the fact that the only right that debtor is left with is the right to raise questions regarding the sale procedure." *Id.* The court went on to state: "[a]s the court in In re Bobo emphasized, [w]hatever process is used to bid up the property, the property is sold at the foreclosure sale once the rights and obligations vest in an entity to acquire the property as a result of making the highest bid. The additional steps of obtaining court approval . . . paying the purchase price, and recording the deed may be necessary to consummate the sale, but that does not alter the fact that the purchaser's right to acquire the property has intervened - - that the property has been sold at a foreclosure sale - - to the detriment of the debtor." *Id.* (quoting In re Bobo, 246 B.R. 453, 456 (Bankr. D.C. 2000)). Our Bankruptcy Court has continually held "the sale is over when the hammer falls." In re Riverfront Props., LLC, 405 B.R. 570, 573 (Bankr. D.C. 2009) (Citing : In re Watts; In re Holmes, C/A No. 99-08796-W (Bankr. D. S.C. 11/23/1999); In re Brown, C/A No. 87-02507-B, Adv. Pro. 87-0281-B (Bankr. D. S.C. 1/28/1988); In re Agripen Grain Co., C/A No. 83-03606; Adv. Pro. 86-0413-D (Bankr. D.S.C. 7/31/1987).

In this case Third-Party Purchasers' purchased the property from the Master at a public judicial auction on May 6, 2014, at which time Third-Party Purchasers tendered the initial required purchase-money deposit to the Court. On May 6, 2014, Third-Party Purchasers had no knowledge that the Defendant intended to file a motion to vacate or knowledge of any other alleged defect in the Third-Party Purchasers' title to the subject property.¹

c. The Defendant's Motion to Vacate did Not Constitute a Notice to Third-Party Purchasers of a Defect in their Title.

The Defendant asserts that its Motion to Vacate served as a notice to Third-Party Purchasers of a defect in Third-Party Purchasers title because it alleged that the Defendant had never properly been served.² This argument is without merit. There is a distinction between a defect in title to real property and an alleged defect in the procedure of a legal action.

A purchaser of property at a public foreclosure sale is entitled to a presumption that the court considered and properly adjudicated issues of service.³ "It must be presumed from the

¹ The Defendant did not even retain counsel with regard to this action until May 9, 2014, and did not file a Motion to Vacate until May 19, 2014. (7/3/14 Affid. Murray)

² Third-Party Purchasers gained knowledge of the Defendant's intent to file a motion to vacate on May 15, 2014. On May 16, 2014, at 12:03 p.m. Third-Party Purchasers tendered the balance of the purchase money to the Master. On May 16, 2014, at 1:16 p.m. the Master executed the Master's Deed to Appellants. On May 16, 2014, at 4:35 p.m. the Defendant's Counsel initially served Third-Party Purchasers a copy of the Defendant's Motion to Vacate via email. The Motion was filed on May 19, 2014. *Therefore it should be noted that prior to the Master's Deed being executed the only thing which Third-Party Purchasers had notice of was that the Defendant intended to file a Motion to Vacate.*

³ At the August 18, 2014 hearing Third-Party Purchasers stated: "I would say there is a large distinction between a defect in title to property and an alleged defect as referenced in a motion that is filed with the Court. Moreover, in this incident case, I was delivered title form the Court after the Court had knowledge of the motion which further supports my belief that the Court has given me a proper and valid order, a proper deed. If a motion is to be a defect in title then a purchaser at the judicial sale, what's the public policy argument on that, Your Honor? So upon the filing of a motion a judicial sale purchaser is to believe, well, the order of foreclosure must have been an invalidating [sic] practice. Somebody filed a motion. If a judicial purchaser is to presume that title it defected [sic] upon the filing of a motion then that's going to call into question every judicial sale where there is a motion ever filed later. It would go against the

judgment rendered that the Court considered and adjudicated the regularity and sufficiency of each and every step in the proceedings leading up to it, including the sufficiency of the complaint, the issuance and service of process upon the defendants, and the rights and interests of the parties to the action under the allegations and evidence; and although the conclusions with respect to those matters, or any them, might have been erroneous, so that they would have been reversed on appeal they do not make the judgment void collaterally.” Ashton, at 68. “A sound public policy requires that the validity of judicial sales be upheld, if in reason and justice it can be done. In the furtherance of this principle, our decisions have applied the general rule, applicable here, that a purchaser in good faith at a judicial sale is not affected by irregularities in the proceedings or even error in the judgment, under which the sale is made but is required at his peril only to make inquiry as to the jurisdiction of the court which ordered the sale, and whether all proper parties were before the court when the order was made.” Id. at 67 (quoting Cumbe v. Newberry, 251 S.C. 33, 159 S.E.2d 917 (1968))

In Ashton the Appellant asserted that the Third-Party Purchasers failed to properly inquire as to the jurisdiction of the court that ordered the foreclosure sale and properly and sufficiently inquire as to whether all parties were properly before the court when the order was made.

In this case Defendant has not made any such assertion. Additionally, Third-Party Purchasers are on record as having undertaken a title search of the property prior to the sale and

Supreme Court’s presumption of finality of judicial sales. Even saying that perhaps that is a defective title, which again I would argue that it is not, a defective title is not an alleged defect in the process of a civil action which is what they’re asserting, Your Honor, in the motion to vacate. . . I would have to presume in that situation that the Court’s Order of foreclosure and sale is valid. It’s enforceable.” (8/18/14, Tran., p 11, line 19 – p. 14, line 22.) Two days later the Court of Appeals issued is ruling in Ashton.

examine the pleadings of record in this matter.⁴ Finally, Defendant has made no assertion that the notice of service by publication in the Moultrie News was improper. In fact the evidence before the court clearly establishes that said notice was proper as the Moultrie News is a new paper which serves Mount Pleasant, South Carolina and Defendant resides in Mount Pleasant, South Carolina. Moreover the subject property is located in Mount Pleasant, in Charleston County, South Carolina the county in which this action was filed:

In this case Third-Party searched the title and reviewed the pleadings in this matter prior to the sale and relied upon the Court's Orders that the Court had determined that the Defendant had been properly served by publication. The Clerk of Court issued the Order of Publication and the Master issued the Order of Foreclosure which stated that service had been properly achieved. The Third-Party Purchasers were entitled to the presumption as stated in Ashton that the Court had adjudicated any issue of service prior to the sale. Therefore, Defendant's Motion did not constitute a notice of defect of title to Third-Party Purchasers.

CONCLUSION

In conclusion Third-Party Purchasers' paid in full, received title by way of the Master's Deed, and did so without notice of a defect in title. Third-Party Purchasers are BFPV and the subject foreclosure proceedings and sale were res judicata as to Third-Party Purchasers.

⁴ See: Third-Party Purchasers Memorandum filed July 3, 2014, which states: "On or about April. 24, 2014, the Purchaser at Sale, David Conor Keys, noticed the subject property, listed on the Master in Equities Auction List, and in conducting a due diligence title search on the property searched the Charleston County public tax records. . ." (See also Exhibit "A" to the Memo dated 4/24/14). See also "The Court: Let me ask this question: Just looking at your list, you didn't do a title search prior to attaining the bid, submitting the bid? Mr. Keys: I kind of undertook to do one myself. I [subsequently] hired a real estate Attorney who does that for a living. The Court: But you didn't do it prior to the sale? You just came to the sale and bid, right? Right. Other than my own - I did take my own undertakings to search." (8/18/14, Tran., p 14, line 5 - 17.)

RESPECTFULLY SUBMITTED,



D. Conor Keys

843 Robert E. Lee Blvd.

Charleston, SC 29412

Phone: 843-906-3998

dconorkeys@gmail.com

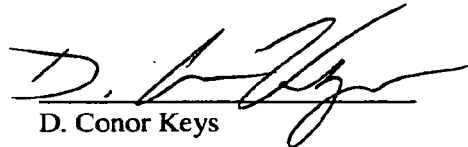
Attorney for Third Party Purchasers

CERTIFICATE OF SERVICE

I certify that on the 7 day of April 2015, a copy of the within Memorandum in Support of the Third-Party Purchasers Motion to Reconsider was emailed and delivered by mail, addressed to opposing counsels as follows:

Amanda Reece
Reece Law Firm, LLC
871 Low Country Blvd. #200
Mt. Pleasant, SC 29464

Stephanie C. Trotter
140 Stoneridge Drive Suite 650
Columbia, SC 29210
P.O. Box 212069
Columbia SC 29221



D. Conor Keys

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Belle Hall Plantation Homeowner's)
Association, Inc.)
)
Plaintiff,)
)
John A Murray, Trustee of John E. Murray)
Gloria C. Murray Family Trust,)
)
Defendants.)
)

David Conor Keys and Karen Keys)
)
Third Party – Purchasers)
_____)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-4248

**DEFENDANT'S MEMORANDUM IN
OPPOSITION**

FILED
2015 APR -9 AM 10:09
JULIE J. ARMSTRONG
CLERK OF COURT

FACTS

1. On May 6th, 2014, the Third Party Purchasers, David Conor Keys, Esquire and Karen Keys, ("Third Party Purchaser") became the successful bidders at the Master's sale of the property subject of this action.
2. The Third Party Purchaser did not retain the services of a professional abstractor to research the title prior to his bid.
3. The Third Party Purchaser conducted his own search of title of the subject property prior to making the May 6th, 2014 bid.
4. The Third party Purchaser's rudimentary search evidenced a party other than the Defendant was in title to the property (Exhibit "A" previously introduced as Third Party Purchaser's Exhibit "A" on July 22nd, 2014).
5. The Third Party Purchaser learned of the Defendant's adverse claim on May 15th, 2014.
6. The Third party Purchaser "received" the motion on May 16th, 2014.
7. On May 16th, 2014 and twenty days before it was due, the Third Party Purchaser tendered to the court the balance of the bid and induced the execution of a Master's deed conveying title to himself.
8. In the Third Party Purchaser's July 3, 2014 Memorandum in Opposition to Defendant's Motion to Vacate Default Judgment and to Set Aside the Sale, Third Party Purchaser

plead that he "...paid the full price of the winning bid, purchased and acquired legal title or the best right to it, and did so in good faith without notice of title defect, or other adverse claim, lien, or interest in the property."

9. In the July 3, 2014, hearing, Third Party Purchaser again claimed that "(he) purchased the property. (He) paid the full amount. ... (he) purchased prior to learning of any defect."¹
10. At the hearing of August 18, 2014 and upon the production of an affidavit of Defendant's counsel regarding a phone conversation with his employer relative to this case, the Third Party Purchaser supplements his testimony and acknowledges that on May 15, 2014, "(he) had knowledge (of this matter)."²
11. In the April 7, 2015, Memorandum in Support of The Third Party Purchasers' Motion to Reconsider the Master's Amended Order Filed February 10, 2015, Third Party Purchaser again amends his testimony stating "Third Party Purchasers gained knowledge of the Defendant's intent to file a motion to vacate on May 15, 2014."

Third Party Purchasers Are Not Bona Fide Purchasers For Value

The South Carolina Code §15-39-870 protects "... any and all bona fide purchasers for value without notice,...". In *Cumbe v. Newberry*, 251 S.C. 33, 159 S.E.2d 740 (1968) our Supreme Court states "...that a **purchaser in good faith** (emphasis added) at a judicial sale is not affected by irregularities in the proceeding".

The law of South Carolina is clear on this issue and states that "... A purchaser may assert a plea in equity of a Bona Fide Purchaser for Value without notice of defect in his title by showing (1) He actually paid the full purchase money (giving security for the payment is not sufficient...); (2) he purchased and acquired legal title, or the best right to it; and (3) he purchased bona fide, i.e. in good faith, with integrity of dealing, without notice of lien or defect. The bona fide purchaser must show all three conditions – actual payment, acquiring legal title and bona fide purchase – occurred before he had notice of a title defect or other adverse claim, lien or interest in the property." *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006) , *Robinson v. Estate of Harris*, 378 S.C.140, 662 S.E.2d 420 (Ct. App. 2008), *Bloody Point Property Owners Association, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (2014).

The facts of this case reveal that, prior to placing their winning bid at the judicial sale, Third Party Purchaser undertook his own rudimentary title search of out dated Charleston County tax records for the property (see Exhibit A). This "title search" plainly reflects a party

¹ 7/3/14, Tran., p 12, line 6-8

² 8/18/14, Tran., p 15, line 1-13

other than the Defendant as the titleholder.³ Though the search was of an outdated website and inaccurate, it is at this time that Third Party Purchaser had notice of another's potential interest in the property. Prior to paying the balance of the purchase price, Third Party Purchasers had **notice of an adverse claim** by way of Mr. Key's own admission (on April 7, 2015), that he knew on May 15, 2014, that Mr. Murray intended to file a Motion to Vacate.⁴ Finally, Third Party Purchasers most certainly had **notice of an adverse claim**, after having been served on May 16, 2014, the Defendant's Motion to Vacate, when they thereafter accepted the deed to the property and caused the same to be recorded on May 23, 2014.

On April 24th, 2014 (prior to placing their bid), May 15th (prior to paying the full purchase price), and on May 23rd, 2014 (prior to recording the deed), the Third Party Purchaser had notice of an adverse claim(s) or other interest in the property thus disqualifying the Third Party Purchaser as a bona fide purchasers for value.

Third Party Purchaser is further disqualified as bona fide purchasers for value for failing to act in good faith and with integrity of dealing. The Third Party Purchaser was not acting in good faith and integrity when he ran to the Courthouse to pay the balance of the bid less than twenty-four hours after learning of Defendant's intent to file a Motion to Vacate and twenty days before the funds were due. Nor was the Third Party Purchaser, acting with "good faith and integrity of dealing" when he omitted facts from the pleadings he filed in this matter and during his own disingenuous testimony to this Court.

For these reasons, the Third Party Purchaser simply does not rise to the status of a Bona Fide Purchaser for Value and is not entitled to the protections of the same.



Amanda Reece, Esq. (81252)
Reece Law Firm, LLC
217 Lucas Street, Unit J
Mt. Pleasant, SC 29464
Tel: 843.209.9830
Email: amanda@reececlawfirmllc.com

³ Exhibit A to 7/3/14 Keys Memorandum in Opposition to Defendants Motion to Vacate Default and Judgment and to Set Aside the Sale

⁴ 4/7/15 Keys Memorandum in Support of the Third Party Purchasers' Motion to Reconsider the Master's Amended Order Filed February 10, 2015

EXHIBIT A

398

RECORD 394



4/24/2014

Charleston County PRC System

CHARLESTON COUNTY

Auditor

Péter Tecklenburg

- MAIN MENU
- EXIT

Parcel ID
5370700058

Sub-Division
THE VERANDA

Tax District
21, Town of Mt. Pleasant

Legal Description : LOT 378 PHASE A1-1

Acreage High: Marsh: Swamp: Water: Total: 0

Jurisdiction: CNTY-ASSESSR

Property Address : 378 JARDINERE WALK

Mailing Address : 1144, 3100 TRADITION CIR, MT PLEASANT - SC, 29466

Current Owner - 1	Current Owner - 2	Owner 1 as of Jan 1	Owner 2 as of Jan 1	Deed	Deed Date	Sale Date	Sale Price
		MURRAY JOHN E	MURRAY GLORIA C	H643-075	11/06/2007	10/29/2007	\$275,900.
MIDDLETON RICHARD WILLIAM		BRETBELL STEPHEN J	AND JEANNE E	T416-858	08/30/2002	08/29/2002	\$173,000.
		BRETBELL STEPHEN J	AND JEANNE E	O236-811	12/23/1993	12/22/1993	\$89,220
		RYLAND GROUP INC THE		M232-099	09/28/1993	09/24/1993	\$120,000
		BELLE HALL JOINT VENTURE		Z228-027	07/02/1993	06/24/1993	\$243,681

CARD
IMAGEPLAT
COMMENTOWNER
COMMENT

For Plat Comment and Owner Comment information on plats and deeds recorded prior to 01/05/2004, please click on Card Image button.

Basic deed transfer information is complete back to 1991.
For records and transactions preceding that date, please click on Card Image button.

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Charleston County
Master In Equity Case
Details
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Belle Hall Plantation Homeowners Association Inc VS John A Murray , defendant, et al

Case Number:	2013CP1004248	Court Agency:	Master In Equity	Filed Date:	12/27/2013
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:	Scarborough, Mikell R.		
Disposition:	Ended by Non Jury	Disposition Date:	04/07/2014	Disposition Judge:	Scarborough, Mikell R.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
 Belle Hall Plantation Homeowners Association Inc					Plaintiff		07/22/2014
David Conor Keys and Karen Keys	843 Robert E. Lee Blvd. Charleston SC 29412				Other Party to Case		04/01/2015
John E Murray and Gloria C Murray Family Trust					Defendant		01/13/2014
Keys, David Conor	843 Robert E. Lee Blvd. Charleston SC 29412				Third Party Bidder		07/22/2014
Keys, David Conor	843 Robert E. Lee Boulevard Charleston SC 29412				Attorney		04/03/2015
McCabe Trotter & Beverly, PC	Atty for Belle Hall Plantation HOA 140 Stoneridge Drive, Suite 650 Columbia SC 29210				Other Party to Case		07/22/2014
 Murray, John A					Defendant		01/13/2014
Murray, John A as Trustee					Defendant		01/13/2014
 Reece, Amanda Megan	217 Lucas Street Unit J Mount Pleasant SC 29464				Defendant Attorney		04/01/2015
 Trotter, Stephanie Carol	Mccabe Trotter & Beverly, PC PO Box 212069 Columbia SC 292213200				Plaintiff Attorney		01/13/2014

Tax Map Information

Agency name	Tax Map Number	Tax Map Description
Master In Equity	5370700058	378 Jardinere Walk

Associated Cases

Agency	Case #	External	Relationship	Description	Case Filed Date	Disposition Date	Case Status	Disposition
Common Pleas	2013CP1004248	N	MIETR	Master in Equity Case Transfer to agency 10003: Master In Equity	07/22/2013	07/22/2014	Dismissed	Dismissed per Rule 41(a)

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
	4th Amended Notice of Appeal by David & Karen Keys, srv	Filing		04/16/2015-10:13		
	Defendants Memo in Opposition	Filing		04/09/2015-09:21		
	Master Order denying mot to reconsider	Order		04/09/2015-09:03		
	Memo in Support by David & Karen Keys, crt/srv	Filing		04/07/2015-11:42		
Trotter, Stephanie Carol	Roster/Notice of Motions Roster Publication Sent	Action		04/01/2015-16:15		
Reece, Amanda Megan	Roster/Notice of Motions Roster Publication Sent	Action		04/01/2015-16:15		
Belle Hall Plantation Homeowners Association Inc	NOTE: Motion rescheduled to April 9, 2015 3:30	Action		04/01/2015-14:58		
	Notice of Change of Address f/ dfndnt Atty Amanda Reece, srv	Filing		03/30/2015-14:13		
Trotter, Stephanie Carol	Roster/Notice of Motions Roster Publication Sent	Action		03/24/2015-10:35		
Reece, Amanda Megan	Roster/Notice of Motions Roster Publication Sent	Action		03/24/2015-10:35		

400

RECORD 396

	3rd Amended Notice of Appeal by David & Karen Keys, prf/srv	Filing		03/10/2015-13:17		
Trotter, Stephanie Carol	Roster/Notice of Motions Roster Publication Sent	Action		02/26/2015-15:20		
McCabe Trotter & Beverly, PC	Motion/Motion Filing Fee	Filing		02/18/2015-13:39		
McCabe Trotter & Beverly, PC	Motion/Reconsider by David & Karen Keys, crt/srv	Motion		02/18/2015-11:14	04/22/2015-11:14	
Belle Hall Plantation Homeowners Association Inc	Master Amended Order	Order		02/10/2015-12:54		
	Amended Notice of Appeal by David & Karen Keys, proof/srv	Filing		10/08/2014-09:55		
	Amended Notice of Appeal by David & Karen Keys, proof/srv	Filing		09/26/2014-08:49		
	Master Order-mot for reconsideration is denied	Order		09/19/2014-11:49		
	Notice of Appeal by David & Karen Keys, proof/srv	Filing		09/19/2014-09:26		
McCabe Trotter & Beverly, PC	Motion/Motion Filing Fee	Filing		09/02/2014-16:50	09/02/2014-16:50	
McCabe Trotter & Beverly, PC	Mot/Reconsider Order of 8/20/14 by David & Karen Keys, srv	Motion		09/02/2014-14:37	09/22/2014-14:37	
Belle Hall Plantation Homeowners Association Inc	Service/Certificate Of Service	Filing		08/21/2014-09:51	08/21/2014-09:51	
Belle Hall Plantation Homeowners Association Inc	Consent order to relieve Karen DeJong as counsel	Order		08/21/2014-09:50	08/21/2014-09:50	
John E Murray and Gloria C Murray Family Trust	Order/Order Filing Fee	Filing		08/21/2014-09:26	08/21/2014-09:26	
	Master Order-Keys' mot to reconsider is denied etc	Order		08/20/2014-11:01	08/20/2014-11:01	
Belle Hall Plantation Homeowners Association Inc	Form 4	Action		08/18/2014-15:55	04/07/2014-15:55	
Murray, John A	Defnt's memo in support of motions	Filing		08/18/2014-14:50	08/18/2014-14:50	
Belle Hall Plantation Homeowners Association Inc	Signed Consent Order to Relieve Counsel w/ck to Clerk.	Action		08/18/2014-12:06	04/07/2014-12:06	
Keys, David Conor	Mr. Keys never rec'd ck. Stop Paymt. Funds remain on case **	Action		08/15/2014-11:11	04/07/2014-11:11	
	Affidavit/Affidavit of Anna Howell	Filing		08/14/2014-10:03	04/07/2014-10:03	
	Affidavit/Affidavit of Libby Castle	Filing		08/14/2014-10:02	04/07/2014-10:02	
Keys, David Conor	Affidavit: Opposing Affidavit	Filing		08/14/2014-10:01	04/07/2014-10:01	
Belle Hall Plantation Homeowners Association Inc	Motion Hearing	Action		08/12/2014-10:20	04/07/2014-10:20	
John E Murray and Gloria C Murray Family Trust	Motion/Motion Filing Fee	Filing		08/04/2014-16:56	04/07/2014-16:56	
Keys, David Conor	Motion/Amend Master Order Fr/ John Murray & crt/srv	Motion		08/04/2014-10:00	04/07/2014-10:00	
McCabe Trotter & Beverly, PC	Motion/Motion Filing Fee	Filing		08/01/2014-11:43	04/07/2014-11:43	
McCabe Trotter & Beverly, PC	Motion/Reconsider Order Vacating Judgment & crt/srv	Motion		08/01/2014-11:36	08/18/2014-11:36	
Keys, David Conor	All Other Disbursements Complete. Case Closed.	Action		07/22/2014-14:46	04/07/2014-14:46	
Keys, David Conor	Check Issued to McCabe Trotter, Atty (\$5,122.55) ck#29495	Action		07/22/2014-14:45	04/07/2014-14:45	
Keys, David Conor	Check Issued to David & Karen Keys (\$101,216.39) ck#29494	Action		07/22/2014-14:44	04/07/2014-14:44	
Keys, David Conor	Signed Order pertaining to 3rd party sale to Clerk's Office.	Action		07/22/2014-14:43	04/07/2014-14:43	
Belle Hall Plantation Homeowners Association Inc	Master/Master's Order-action dismissed w/out prej etc	Order		07/22/2014-14:35	04/07/2014-14:35	
	Motion/Motion Filing Fee	Filing		07/22/2014-12:56	04/07/2014-12:56	
McCabe Trotter & Beverly, PC	Motion/Stay Order by David & Karen Keys	Motion		07/22/2014-10:30	04/07/2014-10:30	
	Rebuttal Affidavit to plntffs	Filing		07/03/2014-	04/07/2014-	

	Affidavit in Reply to Motion			15:35	15:35	
	Affidavit of Auditor Peter J Teckenburg	Filing		07/03/2014-15:32	04/07/2014-15:32	
	Memo of Opposition by David & Karen Keys, crt/srv	Filing		07/03/2014-14:40	04/07/2014-14:40	
Belle Hall Plantation Homeowners Association Inc	Memo in Opposition to defendants Motion to Vacate	Filing		07/03/2014-10:53	04/07/2014-10:53	
Belle Hall Plantation Homeowners Association Inc	Affidavit/Affidavit of Stephanie C Trotter	Filing		07/03/2014-09:17	04/07/2014-09:17	
Murray, John A	Affidavit/Affidavit of John A Murray	Filing		06/30/2014-14:20	04/07/2014-14:20	
Murray, John A	Notice of Appearance of Atty K Dejong	Filing		06/30/2014-13:01	04/07/2014-13:01	
Belle Hall Plantation Homeowners Association Inc	File in rack above compliance drawer	Action		06/11/2014-10:16	04/07/2014-10:16	
Belle Hall Plantation Homeowners Association Inc	Motion Hearing	Action		06/11/2014-09:55	04/07/2014-09:55	
Belle Hall Plantation Homeowners Association Inc	Post-Sale documents mailed to TPB	Action		05/22/2014-16:08	04/07/2014-16:08	
Murray, John A	Motion/Motion Filing Fee	Filing		05/20/2014-09:10	04/07/2014-09:10	
Keys, David Conor	Motion/Vacate & Set Aside by plaintiff, crt/srv	Motion		05/19/2014-14:17	04/07/2014-14:17	
Belle Hall Plantation Homeowners Association Inc	Deed Issued to David Coner Keys & Karen Keys	Action		05/16/2014-13:16	04/07/2014-13:16	
Keys, David Conor	Master/Sale Amount Paid in Full	Action		05/16/2014-12:03	04/07/2014-12:03	
Keys, David Conor	Master/Advertising Costs Paid in Full	Action		05/07/2014-11:26	04/07/2014-11:26	
Keys, David Conor	Balance of Bid \$95,000.00 due on June 2, 2014	Action		05/07/2014-11:24	05/16/2014-11:24	
Keys, David Conor	Sold to David Conor Keys & Karen Keys for \$100,000.00	Action		05/07/2014-11:24	04/07/2014-11:24	
Keys, David Conor	Advertising Costs	Action		05/07/2014-11:24	05/07/2014-11:24	
Trotter, Stephanie Carol	Master/Sale before Master	Action		04/21/2014-15:56	04/07/2014-15:56	
Belle Hall Plantation Homeowners Association Inc	5370700058 378 Jardiniere Walk	Action		04/17/2014-08:59	04/07/2014-08:59	
Belle Hall Plantation Homeowners Association Inc	Sale: May 6, 2014	Action		04/17/2014-08:59	04/07/2014-08:59	
Belle Hall Plantation Homeowners Association Inc	Master/Master's Order Of Foreclosure & Sale	Order		04/08/2014-09:09	04/17/2014-09:09	
Belle Hall Plantation Homeowners Association Inc	Filing/Filing Of Validation of Debt	Filing		04/08/2014-09:09	04/07/2014-09:09	
Belle Hall Plantation Homeowners Association Inc	Filing: Statement of Indebtedness	Filing		04/08/2014-09:08	04/07/2014-09:08	
Belle Hall Plantation Homeowners Association Inc	Affidavit/Affidavit of Costs	Filing		04/08/2014-09:08	04/07/2014-09:08	
Belle Hall Plantation Homeowners Association Inc	Affidavit/Attorney Fees	Filing		04/08/2014-09:07	04/07/2014-09:07	
Belle Hall Plantation Homeowners Association Inc	JUDGMENT - \$4,053.85	Action		04/07/2014-11:59	04/08/2014-11:59	
Belle Hall Plantation Homeowners Association Inc	Order of Foreclosure & Sale to Clerk's Office.	Action		04/07/2014-11:59	04/08/2014-11:59	
Belle Hall Plantation Homeowners Association Inc	Case file with docs to MRS to execute decree	Action		03/31/2014-12:39	04/08/2014-12:39	
Belle Hall Plantation Homeowners Association Inc	Hearing Held - No Sale before May 20, 2014	Action		03/31/2014-12:39	04/08/2014-12:39	
Belle Hall Plantation Homeowners Association Inc	HEARING - March 18, 2014 @2:00 pm	Action		02/24/2014-14:26	04/08/2014-14:26	
Belle Hall Plantation Homeowners Association Inc	HEARING - February 4, 2014 @2:00 pm	Action		01/21/2014-09:48	04/08/2014-09:48	
Belle Hall Plantation Homeowners Association	Master/Reference Fees Paid	Action		01/14/2014-12:44	04/08/2014-12:44	

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

NOV 30 2015

APPEALS FROM CHARLESTON COUNTY SC Court of Appeals
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2013-CP-10-4248

Belle Hall Plantation Homeowner's Association.....Plaintiff,

v.

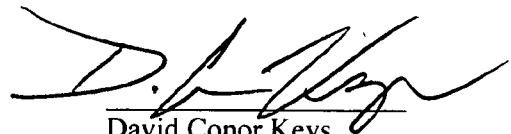
John A. Murray, Trustees of the John E. Murray and
Gloria C. Murray Family Trust,.....Respondent,

And

David Conor Keys & Karen Keys.....Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by the parties in their designations of matter to be included and not any other material.



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November 5, 2015

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2013-CP-10-4248

Belle Hall Plantation Homeowner's Association.....Respondent,

v.

John A. Murray, Trustee of the John E. Murray and
Gloria C. Murray Family Trust, Defendant

Of whom David Conor Keys & Karen Keys, Third Party Plaintiffs.....Appellants.

FINAL BRIEF OF APPELLANTS

November 22, 2015
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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE MASTER ERR IN DISREGARDING SOUTH CAROLINA PRECEDENT FOR VACATING A FORECLOSURE SALE.
- II. DID THE MASTER ERR IN GRANTING THE TRUST'S MOTION TO AMENDED THE ORDER VACATING THE SALE, WHEN THE MOTION REQUESTED RELIEF WHICH HAD NOT BEEN REQUESTED OF THE COURT BEFORE THE ORDER OF JULY 22, 2014.
- III. DID THE MASTER ERR IN DENYING THE APPELLANTS MOTION TO STAY WHERE THE EFFECT OF THE DENIAL IRREPARABLY HARMED APPELLANTS AND LEFT APPELLANTS SUCEPTIBLE TO FURTHER DAMAGE IN THE FORM OF WASTE UPON THE PROPERTY.
- IV. DID THE MASTER ERR IN DENYING THE APPELLANTS MOTION TO STRIKE THE AFFIDAVITS, WHEN THE TRUST SOUGHT TO INTRODUCE EVIDENCE THROUGH THE AFFIDAVITS WHICH THE TRUST EITHER HAD KNOWLEDGE OF OR SHOULD HAVE KNOWN PRIOR TO THE HEARING ON THE MOTION TO VACATE.

INTRODUCTION

This matter has a tortured procedural history, which resulted in a number of compounding motions and orders upon the same subject matter. At its core this Appeal is about the Respondent Trust's Motion to Vacate the Order of Foreclosure and Sale.¹ All issues and defenses concerning that Motion must have been raised before the Master by the end of the July 3, 2014 hearing. However, long after July 3, 2014, the Trust continued to request additional basis for relief and assert additional defenses. In response the Master continued to evolve and expand his initial ruling through additional orders. The substantive facts have never changed. The result is a collection of compounding orders dispensing relief which was either not requested and/or not timely request by the Trust. Many of the issues addressed herein were not raised nor preserved for appeal.

¹ This Appeal also involves the denial of the Motion and Stay and for Order of Supercedeas; a denial of a Motion to Strike Certain Affidavits; and the granting of a Motion to Amend the Order Vacating the Order of Foreclosure and Sale.

STATEMENT OF THE CASE

Procedural and Factual History

October 26, 2011, John A. Murray as attorney-in-fact for John E. Murray and Gloria C. Murray deeded the property, at 378 Jardinere Walk, Mt. Pleasant, SC (hereinafter “the Property”) to John A. Murray as Trustee for the John E. Murray and Gloria C. Murray Family Trust. (R. pp. 235-257). May 23, 2012, the Plaintiff, Belle Hall Plantation Homeowner’s Association, Inc. (hereinafter “Belle Hall”), filed a notice of lien against the Property in the amount of \$1,1103.28 R. pp. 210-212). July 22, 2013, Belle Hall filed the Lis Pendens, Summons and Complaint, in this action against the Defendant, John A. Murray, Trustee of John E. Murray and Gloria C. Murray Family Trust (hereinafter “the Trust”) (R. pp. 54-66).

July 27, 2013, a process server, attempted to serve John A. Murray as Trustee of John E. Murray and Gloria C. Murray Family Trust (hereinafter “Trustee”), at 3100 Tradition Circle Apt. 1144, Mt. Pleasant, SC 29466. The Affidavit of Non-Service states: “[the apartment complex manager stated John A. Murray does not live there. . .” (R. p. 215) August 2, 2013, a process server, attempted to serve the Trustee at the Property. The Affidavit of Non-Service states: “[resident stated John A. Murray does not live there, they rent this house from him. They did not know his address, they deposited the rent payment in an account, his phone number is 843-[***-****]- called this number a recording states – number not in service.” (R. p. 214). August 9, 2013, service was attempted a third time on the Trustee, at 937 Bowman Rd, Apt. 261, Mt. Pleasant, SC 29464. The Affidavit of Non-Service states: “[Manager at front desk stated John A. Murray does not live in apt 261. . .” (R. p. 213). September 30, 2013, Belle Hall filed an

Affidavit for Order of Publication (9/30/13 Aff.). October 4, 2013, the Clerk of Court issued an Order of Publication (R. pp. 216-220). Belle Hall published the summons and notice of this action in the Moultrie News on 10/16/13, 10/23/13, 10/30/13. An Affidavit of Publication was filed on November 4, 2013 (R. pp. 221-222).

December 18, 2013, Belle Hall filed an Affidavit of Default as to the Trust (R. p. 223). December 23, 2013, John A. Murray as trustee of John E. Murray and Gloria C. Murray Family Trust transferred the Property by quit claim deed to John A. Murray, individually which deed was recorded in the RMC Office for Charleston County in book 0380 at page 338 (R. pp. 224-227). December 27, 2013, the Order of Reference was filed (R. pp. 6-8). On or about February 27, 2014, Belle Hall mailed a Notice of Hearing to the Trustee at the Property as well as at 1090 Loyalist Lane Mt. Pleasant, SC 29464 (R. pp. 228-230). March 18, 2014, a final foreclosure hearing was held (R. pp. 9-19). March 26, 2014, the Trustee received the notice of hearing from his tenants for the Property (R. pp. 258-263). March 26, 2014, the Trustee sent Belle Hall's Counsel an email stating he had received the notice of foreclosure hearing and he would pay the debt² (R. pp. 258-263). The Trustee failed to pay the debt. April 8, 2014, the Master in Equity filed an Order of Foreclosure and Sale in this matter, which states: "Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein. The Defendant(s) are in default." (R. pp. 9-19). The Trust did not challenge the Order of Foreclosure. April 24, 2014, Appellants, David Conor Keys and Karen Keys (hereinafter "Appellants") noticed the subject property listed on the auction List, and conducted a due diligence title search

² Belle Hall's Counsel during the July 3, 2014 hearing, searched her email and attested she did not have a record of the email, nor did her office receive any written or facsimile correspondence from the Trustee. (R. p. 136, lines 10-19).

on the property. During the due diligence title search Appellants reviewed the pleadings for this action, reviewed the RMC office records for Charleston County and the tax records for the subject property. Appellants search evidenced that at the time the action was commenced the property was owned by the Trust and then on December 23, 2013, the Trust quit claimed the Property to the Trustee individually.

May 6, 2014 the Property was sold by the Master at public auction where upon the Appellants were the successful bidders on the Property for the sum of \$100,000.00. On the date of sale, the Appellants tendered the required deposit, with the remaining balance being paid on May 16, 2014 (R. pp. 396-399). May 16, 2014, the Master executed the Master's Deed to Appellants (R. pp. 231-234).

On or about May 13, 2014, the Trust's Counsel contacted the Employer of the Appellant, Mr. Keys and left a voice message. Or about May 15, 2014, the Employer returned the Trust's Counsel's phone call during which Trust's Counsel made reference to this matter. As a result of the phone conversation Appellants learned that the Trust had retained counsel. May 16, 2014, the Trust's Counsel email Appellants a copy of the Trust's yet unfiled Motion to Vacate.

May 19, 2014, the Trust made its initial appearance in this matter filing a Motion to Vacate the Entry of Default and Judgments and to set Aside the Sale pursuant to Rule 59 or alternatively Rule 60, SCRPC. (R. pp. 67-70). May 23, 2014, the Master's Deed was recorded in the RMC office for Charleston County in book 0406 at page 909 (R. pp. 231-234).

June 30, 2014, the Trustee, filed an affidavit which states: "I was never served with Summons and Complaint of Foreclosure *nor did I receive any notices* regarding the

foreclosure. *I only became aware of the foreclosure proceeding after the sale.*” (R. pp. 235-257). July 3, 2014, the Trustee filed an affidavit stating: “*My discovery of this action was on or about Mar 26, 2014.*” (R. pp. 258-263). July 3, 2014, Belle Hall filed an affidavit (R. pp. 266-316) and a Memorandum in Opposition. (R. pp. 317-320). July 3, 2014, Appellants’ filed a Memorandum in Opposition (R. pp. 321-334).

The Trust’s Motion to Vacate was heard on July 3, 2014. The Master stated:

“I’m going to take this one under advisement. . . I’m going to tell you that Ms. Trotter sites the Yarborough case, which I think is probably the controlling law here. And that’s not good for Mr. Murray. . . What gives me concern when I read the affidavit of Mr. Murray is that apparently around on or by the 28th of March, within ten days of the hearing date and probably prior to – I haven’t checked the date of the order yet but probably prior to the date the order was entered he had some notice or knowledge of this thing going on.” (R. p. 144, line 16 – R. p. 145, line 7).

July 22, 2014, the Master granted the Motion to Vacate based upon equity and good cause shown. (R. pp. 20-21).

July 22, 2014, Appellants filed a Motion to Stay or enjoining the Master from voiding, terminating or canceling the Master’s Deed, as well as requesting an Order of Supersedeas whereby the Court would hold the proceeds of sale in bond. (R. pp. 71-78). August 1, 2014, Appellants filed a Motion to Reconsider the Order of July 22, 2014. (R. pp. 79-91).

August 4, 2014, the Trust filed a Motion to Amended the Order of July 22, 2014. The Motion requested the Master make additional findings of facts, and conclusions of law. (R. pp. 92-98). August 14, 2014, the Trust’s Counsel caused to be filed in the RMC Office in Book 0423 at Page 008, a certified copy of the Order of July 22, 2014, which voided the title of Appellants. August 14, 2014, the Trust filed three affidavits: an affidavit of the Trust’s Counsel, pursuant to Rule 59(c), SCRCP; an Affidavit of Libby

Castle; and Affidavit of Anna Howell (R. pp. 335-343). August 18, 2014, the Trust filed a Memorandum in Support of Motions. (8/18/14 Memo).

August 18, 2014, the Master held a hearing upon: the Trust's Motion to Amend the Order of July 22, 2014; Appellants Motion to Reconsider the Order; Appellants' Motion Stay the Order and requesting an Order of Supersedeas; and Appellants' oral Motion to Strike the Trust's Affidavits filed August 14, 2014. The Master stated:

"I don't find that there was fraud, but I do find that there was negligence in the failure to notify Mr. Murray. . . I find that the man was denied due process, and it's on that basis that I overturned this sale."³ . . Accordingly I am going to deny the Motion to Reconsider of August 1, 2014. I'm going to grant - - to the extent it's necessary I'm going to grant the Defendant's Motion to Amend the Order to support that decision, and I'm asking Ms. Reece to prepare an order to that effect. . . so that's my number one ruling. The other has to do with the motion to stay the order vacating the sale. That will be denied, and for an Order of Supersedeas I'm going to deny that as well." (R. p. 182, line 10-R. p. 184, line 1).

Then Master denied Appellants Motion to Strike the Affidavits. (R. p. 184, lines 5-24).

August 20, 2014, the Master filed a Form 4 Order, which states: "Keys' Motion to Reconsider is denied. Key's Motion to Strike the Affidavits is denied. Keys' Motion to Stay Vacating Sale and Order of f/c and for Supersedeas is denied. Defendant Murray's Motion to Amend the order is granted. Formal order to follow." (R. p. 22). September 2, 2014, Appellants filed a Motion to Reconsider the Order of August 20, 2014. (R. p. 99-117). September 19, 2014, Appellants served their Notice of Appeal. September 19, 2014, the Master filed an Order denying Appellant's September, 2, 2014, Motion to

³ At the hearing and in its Memorandum the Trust never raised the issue of due process, nor allegations under Rule (b)(4), SCRCF. The Trust Motion to Amend does make a conclusory statement that the motion should be vacated under Rule 60(b)(4) without providing any support for the assertion.

Reconsider. (R. p. 23). September 24, 2014, Appellants served an Amended Notice of Appeal to include the Order of September 19, 2014.

February 4, 2015, Appellants' initial appellate brief was filed. February 10, 2015, the Master filed the Formal Order referenced in the Form 4 Order of August 20, 2014. (R. pp. 42-50). The February 10, 2015, Order makes new factual and legal findings including but not limited to that Order of Foreclosure and Sale were vacated based upon the Master's inherent equitable powers; that service of process was defective; that Bell Hall was grossly negligent in servicing the Trust; that the Fraud and Collusion standard set forth in Yates v. Gridley, 16 S.C. 500 (1882) and its progeny should not be applied because the facts of this case are distinguishable; that the Master lacked personal jurisdiction over the Trust; that the Order of Foreclosure and Sale is VOID pursuant to 60(b)(4); that the Master's Deed to Appellants is void ab initio; and that "[i]n light of its ruling, the Court does not find it necessary to rule on . . . Third-Party Purchaser's disputed status as a Bona Fide Purchaser for Value. The Court, however, as expressed at the hearing to the parties stands prepared to make a ruling as to the Bona Fide Purchaser for Value issue with further briefing of the matter." (R. pp. 42-50).

February 18, 2015, Appellants filed a Motion to Reconsider the Order of February 10, 2015. (R. pp. 118-126). February 26, 2015 Appellants served a Third Amended Notice of Appeal to include the Order of February 10, 2015. April 7, 2015, pursuant to the Master's request Appellants filed a memorandum further briefing the Master as to Appellants' status as BFPV (R. pp. 380-390). August 9, 2015 the Trust filed a Memorandum in Opposition. (R. pp. 391-395) The Master held a hearing on August 9, 2015, and filed an Order denying Appellants Motion to Reconsider, ruling that

Appellants are not BFPV. (R. pp. 51-53). On April 13, 2015, Appellants served a Fourth Amended Notice of Appeal to include the Order of April 9, 2015.

STANDARD OF REVIEW

There are four motions which resulted in multiple orders being reviewed in this Appeal. The Motions are: the Trust's Motion to Vacate the Sale and Order of Foreclosure (R. pp. 20-21); Appellants' Motion to Stay the Order Vacating the Sale and for Order of Supersedeas (R. pp. 22-23); the Trust's Motion to Amend the Order Vacating the Sale and Order of Foreclosure (R. pp. 22-23); and the Appellant's Motion to Strike the Affidavits filed by the Trust on August 14, 2014 (R. pp. 22-23).

Abuse of discretion is standard of review for all of the issues. "The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court." Bloody Point Property Owner's Association, Inc. v. Ashton, 410 SC 62, 762 S.E.2d 729 (Ct. App. 2014). "The grant or denial of an injunction by the trial court will not be reversed absent an abuse of discretion." Levine v. Spartanburg Regional Services District, Inc., 367 S.C. 458, 463, 626 S.E.2d 38 (Ct. App. 2005) "The decision of whether to allow a party to amend a pleading to conform to the evidence is left to the sound discretion of the trial judge." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 27, 602 S.E.2d 772 (2004). "A decision about the admissibility or exclusion of evidence is left to the sound discretion of the trial judge whose decision will not be reversed on appeal absent an abuse of discretion." Allegro Inc. v. Scully, 400 S.C. 33, 733 S.E.2d 114 (Ct. App. 2012).

An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions" Carson v.

CSX Transp., Inc., 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012). “An abuse of discretion occurs when the circuit court’s ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the circuit court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.” State v. McClinton, 369 S.C. 167, 170, 631 S.E.2d 895 (2006).

ARGUMENT

I. DID THE MASTER ERR IN DISREGARDING SOUTH CAROLINA PRECEDENT FOR VACATING A FORECLOSURE SALE.

A. THE MASTER ERRED IN GRANTING THE TRUSTS MOTION PURSUANT TO RULE 60(B) SCRCP.

“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; and (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. Rule 60, SCRCP. “[I]t is significant to note that when considering whether to grant relief from final judgments, “a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute. We recognized in *Chewning* both this Court’s

longstanding policy towards final judgments and that important benefits are achieved by preservation of final judgments.” Raby Construction, 358 S.C. 10, 594 S.E.2d 478; Bryan, 220 S.C. 164, 66, S.E.2d 609; Citing: Chewning, 354 S.C. 72, 579 S.E.2d 605.

1. The Master Erred in Granting the Trust’s Motion Pursuant to Rule 60(b)(4)

a. The Trust did not appropriately request relief under Rule 60(b)(4), SCRCF.

“It is well settled that ordinarily a party may not receive relief not contemplated in his pleadings. While it is true that pleadings in the [] court must be liberally construed, this rule cannot be stretched so as to permit the judge to award relief not contemplated by the pleadings. Due Process requires that a litigant be placed on notice of the issues which the court is to consider.” Heins v. Heins, 344 S.C. 146, 152, 543 S.E.2d 224 (Ct. App. 2001) A party cannot use Rule 59(e) to present an issue the party could have raised prior to judgment but did not. “Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier.” Hickman, 301 S.C. 455, 392 S.E.2d 481 (quoting: Natural Resources Defense Council, 705 F. Supp. 698, 701 (D.D.C. 1989), vacated on other grounds, 707 F. Supp. 3 (D.D.C. 1989)). A party cannot request the Master amend his Order to make findings of fact and conclusions of law on issues not previously raised before the Master issued the Order. Id. A party cannot raise a defense to an asserted issue by way of a Rule 59(e) motion which could been raised prior to the order See Patterson, 456 S.E. 2d 436; In re Beard, 359 S.C. 351, 597 S.E.2d 835; Gainey, 382 S.C. 414 675 S.E.2d 792.

Here the Trust did not assert that the Order of Foreclosure and Sale should be vacated pursuant to Rule 60(b)(4) SCRCF, until after the Master had filed the Order of

July 22, 2014. The Trust's August 4, 2014, Motion to Amend is the only time the Trust ever made a reference to Rule (b)(4), SCRCF. The Motion simply states: "Conclusions of Law: 1) The Order of Judgment and Foreclosure dated [sic] is Void under SCRCF 60(b)(4)."⁴ (8/4/14 Mtn Am) The Trust did cite any facts or case law to support the assertion. The Trust's August 18, 2014, Memorandum does not reference Rule 60(b)(4), nor did the Trust ever reference Rule 60(b)(4) during *any* hearing in this matter. Additionally, Trust never asserted an issue as to personal jurisdiction or due process in any motion, memorandum, or hearing before the Court in this matter. In conclusion the Trust did not timely and appropriately move pursuant to Rule 60(b)(4), SCRCF and the Master abused his discretion in granting the Trust's Motion pursuant to Rule 60(b)(4).

b. Even if the Trust appropriately requested relief under Rule 60(b)(4), the Master erred in granting the relief.

Case law and precedent precluded the Master from amending his order to find: that the Judgment of Foreclosure and Sale void pursuant Rule 60(b)(4); that the Court lacked personal jurisdiction over the Trust; and that the trust had been deprived of due process. "The definition of void under the rule [60(b)(4)] only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. . . The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review." Universal Benefits, Inc. v. McKinney, 561 S.E.2d 659 (Ct. App. 2002).

⁴ The Motion also cites and conclusions of law that the Order of foreclosure should be granted pursuant to Rule 60(b)(1),(3), and (5) as well.

The Courts findings in McKinney are analogous to this matter. In McKinney the Court found that the order should not have been vacated under Rule 60(b)(4), SCRPC, based upon due process or personal jurisdiction because it was undisputed the party was afforded notice of the order, an opportunity to be heard and to receive judicial review of the order. The Court found the party received notice in time to move for reconsideration pursuant to Rule 59(e), SCRPC, and the party could have filed an appeal, but did not timely avail itself of either procedural remedy. The same is true in this case. On or about March 26, 2014, the Trust had actual notice that a foreclosure hearing had been held. (Murray Aff.) The Master did not file the Order of Foreclosure until April, 8, 2014. The Trust had plenty of time to avail itself of the procedural remedy provided by Rule 59, SCRPC, and if the Master denied the motion for reconsideration, the Trust could have sought further judicial review through the Court of Appeals. However, the Trust did not timely avail itself of these remedies. Therefore abused his discretion to Master when he amended his Order to state that Order of Foreclosure was void pursuant to Rule 60(b)(4).

c. The Court obtained personal jurisdiction over the Trust through service by Publication.

The Master found the service of the Trust to be defective based upon a lack of due diligence of Belle Hall in attempted personal service of the Trust. However service by publication provided the Court with personal jurisdiction over the Trust. Belle Hall properly advertised the summons and Complaint in the Moultrie News a newspaper which serves the Mount Pleasant area. Trustee is and was at the time of publication a resident of Mount Pleasant, South Carolina. Therefore personal jurisdiction over the trust was achieved through service by publication.

The Trust asserts that Belle Hall failed to strictly comply the publication statute S.C. Code Ann. § 15-9-730(3) and § 15-9-740. However the trust did not assert a violation of the publication statute until its memorandum filed on August 18, 2014. A “party may not receive relief not contemplated in his pleadings.” Heins, 344 S.C. at 152. Here the Trust did not raise the issue in its Motion to Vacate; at the July 3, 2014 hearing, nor in its August 4, 2014, Motion to Amend. The Trust did not timely or appropriately assert a violation of the publication statute which would entitle it to said relief. Additionally the Master did not rule the Belle Hall failed to comply with the publication statute.

2. The Master Abused his Discretion in Overruling the Clerk of Court’s Order of Publication Therefore the Sale Should Not Have Been Vacated.

On May 19, 2014, the Trust filed the Motion to Vacate. The Motion moves:

“The grounds for this motion are that the plaintiff presented a false, misrepresentative or fraudulent, and fatally defective affidavit of due diligence to the court in obtaining the court’s order for service of the summons and complaint by publication. The affidavit lacked evidentiary support. The address of the defendant’s residence was readily available to the plaintiff and a matter of public record.” (R. pp. 67-70).

At the July 3, 2014, Motion hearing the Trust stated:

“Your Honor, we are here to ask the Court to set aside, to vacate the judgment of foreclosure and set aside the sale. We believe that we have grounds under Rule 60(b) in extraordinary circumstances where Mr. Murray was deprived of his ability to counter any arguments due to the service. The service was, there was an Affidavit of Service that was a misrepresentation to the Court. And that Misrepresentation to the Court we would argue was fatal.” (R. p. 129, lines 11-19).

The Order of July 22, 2014, stated: “[t]he Court finds that in the interest of equity and for good cause shown that the Defendant’s motion be granted.”(R. pp. 20-21). The Master’s Amended Order of February 10, 2015, found service was defective and that the fraud and

collusion standard required for overturning the Clerk of Courts findings as to due diligence did not be apply because the facts of this case are distinguishable. The Order states:

“The Court is mindful of the standard set forth in Yates v. Gridley, 16 S.C. 496, 500 (1882) and subsequent cases regarding the finality of the finding of due diligence of the Officer issuing the Order of Publication in the absence of fraud or collusion. [citations omitted] The Court is also mindful of the volume of Motions for Orders of Publication that the Clerk of Courts reviews and makes note of the similarity of the Defendant’s name and the name of his father, the party exhibited in the Westlaw address search which was incorporated into Plaintiff’s Affidavit to obtain that Order of Publication. The Court further finds that *such indifference and gross negligence on the part of the Plaintiff is not normally contemplated and therefore remained virtually indiscernible to our Honorable Clerk of Court* prior to the evidentiary hearing of the matter. *To the extent that the Clerk of Court might have and not discover the grossly negligent effort to effectuate service, the Court views this as a structural defect in the constitution of the trial (defying) analysis by harmless error standards.*” (R. pp. 42-51)

The Order concludes: “In light [sic] its ruling, the Court does not find it necessary to rule on Defendant’s other 60(b) motions. . .”⁵ (R. pp. 42-51)

a. There is No Finding of Fraud, Collusion, or a Facially Defective Affidavit.

“Generally absent fraud or collusion, once the issuing officer is satisfied with the supporting affidavit, the decision to order service by publication is final unless the order of publication is premised upon a facially defective affidavit.” Brown v. Malloy, 546 S.E.2d 195 (Ct App 2001) (Citing: Wachovia Bank of S.C. v. Player, 341 S.C. 424, 535 S.E.2d 128 (2000)); Montgomery v. Mullins, 480 S.E.2d 467 (Ct. App. 1997) (in absence of fraud or collusion, the decision of the officer ordering service by publication is final.) Yarbrough v. Collins, 293 S.C. 290, 293 360 S.E.2d 300 (1987) (in the absence of fraud

⁵ The Amended Order grants the Trust’s Motion to vacate pursuant to Rule 60(b)(4).

or collusion it is final.). In *Player*, the Petitioner was held in default in a foreclosure action. The Petitioner sought to overturn the order of foreclosure and sale pursuant to Rule 60, SCRCF. The “motion was predicated on [Petitioner’s] claim that substituted service by publication was improper, *and thus the court did not have personal jurisdiction over him. Petitioner claims the process server did not use “actual” due diligence because if she had, she would have easily found him.* He also points out that the petition for an order of publication contains an untrue statement . . . It is clear from reading the two documents together that the petition is inaccurate, but that the process server’s affidavit reflects due diligence by her.” *Player*, 341 S.C. 424, 535 S.E.2d 128. The master denied the petitioners motion holding the petitioner failed to present evidence of fraud or collusion in obtaining the order for service by publication. The Supreme Court affirmed the master’s order. *Id.*

In this case that facts and pleadings are nearly identical to those in *Player*. The Trust’s Motion to Vacate was based solely on Rule 60(b)(3), SCRCF, on the alleged ground Belle Hall made misrepresentations to the lower court in its affidavits of service and publication. Trust conceded there is a lack of fraud or collusion, stating: “This is the case where - *I know we don’t want to call it – I know the standard is suppose to be fraud collusion.* I’m not certain that we have any actual intent, and I’m pretty certain that we don’t have actual intent obviously on the part of anybody.” (R. p. 171, line 22 – R. p. 172, line 5). No assertion of collusion or a facially defective Affidavit is made by the Trust. *The Order of July 22, 2014, does not find fraud collusion, or a facially defective affidavit.* (R. pp. 21-22). During hearing on August 18, 2014, the Master clearly states “*I don’t find that there was fraud,* but I do find that there was negligence in the failure to

notify Mr. Murray. (R. p. 182, lines 10-13). Thereafter the Trust asked: "Your Honor, I just wanted to clarify, in the amended order *I just wanted to be sure that there would be no findings of misrepresentation, fraud, or collusion* and specifically that you found - -"⁶ To which the Master replied: "I find gross negligence. All right?" (R. pp. 184, line R. p. 185, line 7).

The Amended Order of February 10, 2015, again does not make a finding of fraud or collusion, or a facially defective affidavit. (R. pp. 42-50). Additionally, Order makes factual finds which support why the Master did not find that there was a facially defective affidavit when the Order states: "The Court is also mindful of the volume of Motions for Orders of Publication that the Clerk of Courts reviews and makes note of the similarity of the Defendant's name and the name of his father . . . The Court further finds that such indifference and gross negligence on the part of the Plaintiff is not normally contemplated and *therefore remained virtually indiscernible* to our Honorable Clerk of Court prior to the evidentiary hearing of the matter." By acknowledging that alleged defect in Plaintiff's Affidavit for Order of Publication⁷, was *virtually indiscernible*, the Master made clear that the Affidavit was not defective on its face. (R. pp. 42-50)

⁶ On October 1, 2015, the Trust sent an Errata Sheet to the court report who produced the transcript for the Hearing on August 18, 2014. On October 1, 2015, the Court Reporter sent an affidavit which stated that the above referenced quote is attributable to Belle Hall not the Trust. The trust informed Appellants that they were going to move to amend their designation of matter to include the court reporter's affidavit, but no such motion was ever filed and as such the affidavit is not part of the Record on Appeal.

⁷ The Affidavit for Publication states: "After due diligence, as demonstrated by the attached Exhibit A which is incorporated herein by reference Plaintiff's counsel has been unable to ascertain the location of Defendant, John A. Murray, Trustee of John E. Murray and Gloria C. Murray Family Trust." Exhibit A to the Affidavit contains a Westlaw search for John E Murray; and three affidavit of non-service of John A. Murray. (R. pp. 216-220)

The case law is clear, absent a finding of fraud, collusion or a facially defective affidavit, the Master lacked the authority to overrule the Clerk of Court's Order of Publication. The Trust did not allege fraud collusion or a facially defective affidavit. The Master did not find fraud, collusion or a facially defective affidavit. Therefore the Master abused his discretion in granting the trusts Motion to vacate the sale under Rule 60, SCRCP, based upon defective service of the Trust.

b. The Master Abused his Discretion in Overruling the Clerk of Court's Factual Findings on Bell Hall's Due Diligence of Attempted Service of the Trustee.

"An order for service by publication may be issued pursuant to Section 15-9-710 of the South Carolina Code when an affidavit, satisfactory to the issuing officer is made stating that the defendant, a resident of the state, cannot, after the exercise of due diligence, be found, and that a cause of action exists against him." S.C. Code Ann. §15-9-710(3). "We hold the trial court [is] without authority to overrule the find of the clerk of court that the [defendant] could not after due diligence be found in the County and State of their last known residence. Yarbrough makes it clear that in absence of fraud or collusion, the decision of the officer ordering service by publication is final. Therefore, to the extent the trial court concluded the publication was invalid, we reverse." Montgomery, 480 S.E.2d 467." Equity follows the law. Regions v. Wingard Properties, 394, S.C. 241, 715 S.E.2d 349 (Ct App. 2011). "When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent." Id. at 254.

The July 22, 2014, Order, does not reference to fraud, collusion, or lack of due diligence or the affidavit of publication (R. pp. 20-21). During August 18, 2014, hearing the Master did provide subsequent insight into the basis for his ruling stating: "I find that

there was not service of process upon Mr. Murray individually as the trustee. . .” (R. pp. 183, lines 17-21). In the Amended Order of February 20, 2014, the Master found that “Service was the defective.” The Order states: “The Defendant’s dwelling house address. . . was available at www.charlestoncounty.org as the tax mailing address of the Subject Property at all relevant times and in the actual possession of the Plaintiff by virtue of the West search⁸. . . Under the attendant circumstances and facts of this case, the Plaintiff’s efforts to notify the Defendant do not approximate any effort reasonably calculated to notify the Defendant of this action. . . reason would dictate attempting to serve the fourth address revealed on the Westlaw Search.” (R. pp. 42-50)

In this case the Master found personal service of the Trust was defective based on a factual finding of a lack of due diligence in Belle Hall’s attempted service of the Trustee. However, the Clerk of Court found Belle Halle performed due diligence in its attempted personal service of the Trust and executed the Order of Publication. The case law is clear, after the Clerk of Court executes the Order of Publication, the Master is without the authority to make a finding of lack of due diligence of service, unless the Master finds one of three essential elements are present, namely fraud, collusion, or a facially defective affidavit. The Master made no such finding. The Master may not ignore rules and precedent to make an equitable ruling. The Master’s disregard of the case law was an abuse of discretion and the Master’s Order Vacating the Sale was an error of law.

⁸ The fourth address listed on the Westlaw Search attached to the Affidavit for Publication is the Trustee’s actual address but there is no evidence Belle Hall knew it was Trustee’s address. Therefore Belle Hall did not have actual knowledge of the Trustee’s address. (R. pp. 216-220)

c. The Master's Refusal to Apply the Fraud and Collusion Standard was an Abuse of Discretion.

The Master refused to apply the fraud and collusion standard set for in Player, instead electing to distinguish the facts of this case from those requiring the application of the standard. The Order of February 10, 2015, states: "[t]he Court is mindful of the standard set forth in Yates v. Gridley, 16 S.C. 496, 500 (1882) and subsequent cases regarding the finality of finding of due diligence of the Officer issuing the Order of Publication in the absence of fraud or collusion." (R. pp. 42-50) However, the distinction the Master makes is not recognized by the Courts of Appeals of this state. Additionally no party requested that a distinction be made in this matter.

In support of the distinction, the Master cites State v. Mouzon, 326 S.C. 199, 204, 485 S.E. 2d 918 (1997), and LaSalle Bank v. Davidson, 386 S.C. 276, 280, 688 S.E. 2d 121 (2009): Mouzon is a criminal matter where our state Supreme Court determined the trial court erred by not allowing the Defendant to make a closing argument, and that the harmless error standard did not apply in that instance. 326 S.C. 199, 204, 485 S.E. 2d 918 (1997). In Davidson, a Supreme Court case, the Court concluded the harmless error standard did not apply to an instance where the Master failed to attend the final hearing of a foreclosure proceeding, but nonetheless executed Plaintiff's proposed order. Neither of these cases is analogous or applicable to the present matter. The Master's has refused to apply fraud and collusion standard originated in 1882 with Yates v. Gridley, 16 S.C. 496, and has chosen to ignore Yates' numerous progeny, up to and including Player. The refusal to apply the fraud and collusion standard was an abuse of discretion.

d. Gross Negligence is not an Appropriate Standard for Determining Whether there was Due Diligence in Attempted Personal Service.

Gross Negligence is “the failure to exercise slight care.” Steinke v. S.C. Dept. of Labor, Licensing, 336 S.C. 373, 395, 520 S.E.2d 142 (1999). It is “the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” Id.

In this case the law is clear that the appropriate standard to apply in determining whether the Master may overturn the Clerk of Court’s finding of due diligence of attempted personal service is the fraud or collusion standard, not gross negligence. None the less it is also clear that Belle Hall lacked the requisite intent to fail to serve the Trust which would be required for a finding of gross negligence. The Trust even conceded as much “I’m not certain that we have any actual intent, and I’m pretty certain that we don’t have actual intent obviously on the part of anybody.” (R. p. 171, ln 22 – R. p. 172, ln 5). The Trust never plead or asserted Belle Hall was grossly negligent. Additionally Belle Hall’s service by publication was properly conducted. It was an abuse of discretion and error of law for the Master to vacate the order of foreclosure and sale based upon a finding that Belle Hall was grossly negligent in their attempted personal service of the Trust.

3. Good Cause Shown is Not the Appropriate Standard for granting relief under Rule 60(b) SCRCP.

The Trust’s Motion of May 19, 2014, moved “for an order pursuant to SCRCP Rule 59 or alternatively Rule 60, requesting that the court vacate its entry of default, its order of foreclosure, and set aside the sale. . .” (R. p. 21-22). “The standard for granting relief from an entry of default is good cause under Rule 55(c), SCRCP, while the standard is more rigorous for granting relief from a default judgment under Rule 60(b),

SCRCP.” Richardson v. P.V., Inc., 383 S.C. 610, 616, 682 S.E.2d 263 (2009). Our

Supreme Court noted in Sundown that:

“Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from any entry of default under Rule 55(c) is mere “good cause.” Rule 55(c), SCRCP. . . Once a default judgment has been entered a party seeking to be relieved must do so under Rule 60(b), SCRCP. The standard for granting relief from a default judgment under Rule 60, (b) is more rigorous than the “good cause” standard established in Rule 55(c). Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party.” Rule 60(b), SCRCP. The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default.” Sundown Operating Co., Inc. v. Intedge Indus., Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885 (2009).

In this case, the Trust did not seek relief under Rule 55, SCRCP, until after the Order of July 22, 2014. (R. p. 92-98) The Trust's, Motion to Vacate makes no reference to Rule 55, SCRCP (Mtn Vacate), The Trust did not make reference to Rule 55, SCRCP, during the hearing on July 3, 2014 (R. pp. 127-147). The Order of July 22, 2014, states: “[t]he Court finds that in the interest of equity and for good cause shown that the Defendant's motion be granted.” (R. pp. 20-21). “Good cause” is the incorrect standard for granting relief from a judgment under Rule 60, SCRCP. Moreover, in this matter the Master judged “Defendant(s) are in default” in the Order of Foreclosure. (R. pp. 9-19) The time for moving under the Rule 55, good cause standard had passed. Vacating the judgment under Rule 60 would require a more particularized showing. Good cause shown was not a proper ground to grant Trust's Motion to Vacate pursuant to Rule 60, SCRCP. The Master's Order of July 22, 2014, granting the Trust's Motion to Vacate for “good cause shown” was an abuse of discretion.

B. THE TRUST REQUESTED EQUITABLE RELIEF FROM THE MASTER BUT CONTINUALLY SLEPT UPON ITS RIGHTS AND OBLIGATIONS.

The Court in Eldridge noted:

“The equitable defense of laches follows the equitable maxim: “Equity aids the vigilant, not those who slumber on their right.” Laches is defined as neglect for an unreasonable and unexplained length of time, under the circumstances affording opportunity for diligence, to do what in law should have been done. Under the doctrine of laches, if a party, knowing his rights, does not reasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. Thus, the predicate for laches is an unreasonable and unexplained delay.” Eldridge v. Eldridge, 398 S.C. 113, 121-22, 728, S.E.2d 24 (2012)

In this case the Trust’s failed to pay the homeowner’s association assessments for at least two years prior to the sale of the Property. The Trust failed to provide Belle Hall with a correct mailing address in which to provide notice of the assessments. On December 23, 2013, the Trust transferred the Property to the Trustee by a deed it recorded in the RMC Office for Charleston County (R. pp. 231-234). However, the Trust failed to search or examine the public records while was transferring the Property. Had the Trust done a simple title or records search in December of 2013 it would have discovered the this action with plenty of time to resolve the matter prior to the Order of Foreclosure and Sale of the Property⁹. *More to the point, on or about March 26, 2014, the Trustee had actual knowledge of these foreclosure proceedings*, when it received a notice of the foreclosure hearing scheduled for March 18, 2014 (R. pp. 258-263). Here

⁹ Trust has continually asserted that Belle Hall and the Appellants should have exerted more due diligence in searching the public records for the Trust and Trustee and that Belle Hall had constructive knowledge of the Trustee and his address as a result of the public records. However the Trust fails to acknowledge its own lack of due diligence in discovering this action through an examination of the public records as well as its own constructive knowledge of this action.

again the Trust could have made an appearance in this matter prior to the filing of the Order of Foreclosure and prior to the sale with plenty of time to resolve the matter but failed to do so. March 26, 2014, the Trustee sent Belle Hall's counsel an email stating that he received the notice of foreclosure hearing and he would pay the debt. (R. pp. 258-263). Order of February 10, 2015, states: "it is clear in light of the email the Defendant later sent to the Plaintiff's counsel that, had the Defendant had notice, he had the means and would have exercised his Right of Redemption and paid the small amount due the Plaintiff." (R. pp. 42-50) The Master's Order ignores that at the time of the email the Trustee did have actual notice of the foreclosure action with plenty of time to resolve the matter, but still failed to pay the assessments as he always had in the past. Trustee never did pay the debt as he said he would, nor did the Trustee ever attempt to contact Belle Hall again. Had the Trust paid the debt at the time of the email it would have resolved the matter prior to the Order of Foreclosure and Sale of the Property. The Trust did not attempt to contact the Court when it gained knowledge of the foreclosure. Instead the Trust with actual knowledge that a foreclosure hearing had occurred on March 18, 2014, waited until May 9, 2014, to retain counsel in this matter. (R. pp. 258-263). May 9, 2014, the Trust learned that the sale had occurred on May 6, 2014, but again the Trust slept upon its rights not filing its Motion to Vacate until May 19, 2014.

During the hearing on the Motion to Vacate both Belle Hall and Appellants noted to the Court that the Trust had slept upon its rights and acted inequitably¹⁰ (R. p. 136,

¹⁰ Appellants again raise the issue in its motions to reconsider and during the hearing on August 18, 2014. (R. pp. 79-91; R. pp. 99-117) (R. p. 167, lines 3 – 25).

lines 10 – 25; R. p. 139, lines 3-20). Additionally, the Master noted: “What gives me concern when I read the affidavit of Mr. Murray is that apparently around on or by the 28th of March, within ten days of the hearing date and probably prior to – I haven’t checked the date of the order yet but probably prior to the date the order was entered he had some notice or knowledge of this thing going on.” (R. p. 144, line 16 – R. p. 145, line 7). However, the Master’s Order of July 22, 2014 and the Amended Order of February 10, 2015, both state that Master is granting the Motion to Vacate based upon equity. The Amended Order of February 10, 2015, quotes Wingard Props. Inc., stating: Courts have the inherent powers to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.” 394. S.C. at 252. However, Appellants noted in their Motion to Reconsider said Order filed February 18, 2015, that Wingard Props. Inc., then goes on to state “[w]hen providing equitable remedy, the court may not ignore statutes, rules, and other precedent.” Id. at 254.

The Trust and Trustee in this matter have time after time slept upon the Trust’s rights and obligations. However, after an unreasonable delay the Trust nonetheless came before the Master requesting that he grant the Trust’s motion in on the basis of equity, and the Master granted the request. The Trust’s motion should have been barred by the doctrine of laches, as wells as statute, rules, case law and other precedent including but not limited to Player, 341 S.C. 424, 535. S.E.2d 128; Ashton, 410 S.C. 62, 762 S.E.2d 729; Rule 60, SCRCPP; and S.C. Code § 15-39-870. The Master’s Order granting the Trust’s Motion to Vacate in the basis equity was an abuse of discretion.

C. THE APPELLANTS ARE BONA FIDE PURCHASERS FOR VALUE.

“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 that 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 Ann. § 15-39-870 (2005). The rationale for the statute is the well established public policy of protecting good faith purchasers and upholding the finality of a judicial sale.” Robinson v. Estate of Harris, 378 S.C. 140 662 S.E.2d 420 (Ct. App. 2008)

“A purchaser may assert a plea in equity of a bona fide purchaser for value, without notice of defect in his title, by showing (1) he has actually paid in full the purchase money (giving security for the payment is not sufficient, nor is past indebtedness a sufficient consideration); (2) he purchased and acquired the legal title, or the best right to it; and (3) he purchased bona fide, *i.e.*, in good faith and with integrity of dealing, without notice of a lien or defect. The bona fide purchaser must show all three conditions — actual payment, acquiring of legal title, and bona fide purchase — occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property”. Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006).

Equity follows the law. Wingard Properties, 394, S.C. 241, 715 S.E.2d 349.

“When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent.” Id. at 254.

In this case Appellants filed a Memorandum on July 3, 2014 (R. pp. 321-334), asserting that they were BFPV. During the July 3, 2014, hearing Appellants asserted that they were BFPV. The Trust did not refute the assertion by Appellants. The Order of July 22, 2014, did not address whether Appellants are BFPV. August 1, 2014, Appellants filed a Motion for Reconsideration the Order of July 22, 2014 (R. p. 79-91). Appellants again asserted that they are BFPV. During the August 18, 2014, hearing Appellants again asserted they are BFPV. At the end of the hearing the Trust asked the Master “So no Bona Fide Purchaser for Value ruling?” The Master replied: “For me I find that - - you know, I don’t know the answer to that question as I sit here right now. If you –all want to

brief me on that I will take a look at it. I will be glad to look at the law. What I'm finding is that Mr. Murray didn't get notice. . . I find the process to be defective. If the notice is defective I don't know what that means to a BFE for value. I don't know. If you-all can get me up to speed on that I'll give you a ruling on it." (R. p. 187, ln 11 – R. p. 188, ln 1)

Appellants cited the relevant BFPV case law in their Memorandum in opposition to Trust's, Motion to Vacate; during the hearing on the Motion to Vacate; in Appellants' Motion to Reconsider; and during the hearing on Appellant's Motion to Reconsider. On August 20, 2014, the Master filed an Order denying Appellants Motion to Reconsider (R. p. 22). On September 2, 2014, Appellants filed a Motion to Reconsider the Order of August 20, 2014. Appellants attached to the Motion to Reconsider a copy of Ashton, which was filed by the Court of Appeals the same day the Master's Order of August 20, 2014. (R. pp. 99-117). Appellants would assert that Ashton directly answers the question the Master asked the parties to brief him on when he said "If the notice is defective I don't know what that means to a BFE for value. I don't know. If you-all can get me up to speed on that I'll give you a ruling on it." (R. p. 187, ln 11 – R. p. 188, ln 1). Ashton states the alleged issues with service in this matter do not affect the Appellants' rights as BFPV because Appellants are entitled to the presumption that the Court adjudicated those matters prior to the sale¹¹. Ashton, 410 S.C. 62, 762 S.E.2d. 729. On September 19, 2014, the Master denied Appellant's Motion to Reconsider without further a further hearing. Attached to the Order is a copy of Ashton (R. pp. 23-41).

¹¹ As will be explained more fully below.

Thereafter the Amended Order filed on February 10, 2015, states: “that Court does not find it necessary. . . to rule on Third-Party Purchaser’s disputed status as Bona Fide Purchaser for Value. The Court, however, as expressed at the hearing to the parties, stands prepared to make a ruling as to the Bona Fide Purchaser for Value issue with further briefing of the matter.” Appellants would assert that they had previously briefed the Master on the relevant case law as to BFPV. But Nonetheless, Appellants filed a Motion to Reconsider on February 18, 2015, citing Ashton. Id. Thereafter on April 7, 2015, Appellants filed a Memorandum in Support of their Motion to Reconsider, which stated: “Third-Party Purchasers would request that the Master rules as to all of Third-Party Purchaser’s objections as set forth in their Motion to Reconsider. Third Party Purchaser’s additionally submit this memorandum to the Court. . . pursuant to the Master’s request for further briefing on the issue of Bona Fide Purchaser for Value.

April 9, 2015, the Master held a hearing on Appellants’ Motion to Reconsider¹², and finally, on April 9, 2015, the Master filed an order ruling on Appellants’ status as BFPV. The Order states:

Today’s question before the court arises from the case of Bloody Point v. Ashton, [citation omitted]. The Court of Appeals opinion confirmed an HOA foreclosure sale in Beaufort County, challenged by the defaulting homeowner *on virtually the same basis as the case before me today*. . . Ashton discussed several issues relevant to this court’s decision including: 1) The public policy requiring the validity of judicial sales be upheld if, in reason and justice it can be done. 2) The Standard of Review to determine whether to set aside a foreclosure sale is within the discretion of the trial court. . . This Court finds that the Purchasers met the first two tests of a BFP: 1) they actually paid the purchase price; and 2) they acquired legal

¹² Appellants Motions to Reconsider raised objections to the Order of February 10, 2015, in addition to Appellants status as BFPV. During the hearing Appellants asked the Master if his denial of the Motion to Reconsider was a denial of all objections Appellants asserted in the written Motion to Reconsider, and not just as to BFPV, to which the Master said it was. (R. p., lines 19-23)

title to the property – by payment of the bid price to the Master-in-Equity of the amount owed and receipt of a Master's Deed to the Property. However, the Court finds, upon further inquiry that the Keys do not meet the third (3) prong of the test to qualify as a BFP because they did not “in good faith and with integrity of dealing, without notice of a lien or defect,” acquire the deed. The record establishes that the Purchasers, with notice of a potential claim from the defaulting owner, rushed to the court to pay the balance due and then, after service of the Motion to Vacate the Sale, had the deed recorded at the RMC Office. Therefore, the Court finds that Keys did not act in good faith and with integrity of dealing, without notice of a lien or defect. In fact, the Keys had notice of a defect in the proceedings prior to paying the purchase price and acquiring legal title to the property. . . *Keys argues that the sales date – not the deed issuance date – determines when the notice of a defect should be known; however, this court finds, based upon its experience that no fixed date can determine when the interests of justice dictate a sale should be overturned.*”

The Master erred in ruling that Appellants are not BFPV.

1. The Trust Did not Raise a Defense to Appellants Assertion of BFPV Before the Order of July 22, 2014.

The Trust failed to raise a Defense to Appellants assertion that they are BFPV, until after the Order of July 22, 2014. A “party may not receive relief not contemplated in his pleadings.” Heins, 344 S.C. at 152. A party cannot raise a defense to an asserted issue by way of a Rule 59(e) motion which could been raised prior to the order. See Patterson, 456 S.E. 2d 436; In re Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004) (quoting Patterson); Gainey, 382 S.C. 414 675 S.E.2d 792 (citing Patterson). The Trust’s August 4, 2014, Motion to Amend the Order of July 22, 2014 is the first time the Trust refuted Appellants assertion of BFPV. Thereafter the Trust sought to provide alleged supporting evidence of its defense by filing of Affidavits on August 14, 2014, and the filing of memorandums on August 18, 2014 and April 9, 2015. The Trust asserts Appellants had knowledge of a defect in title or adverse claim to title prior to making payment in full because Appellants had knowledge on May 15, 2014, that the Trust

intended to file a motion to vacate. On August 18, 2014, the Trust stated: To the extent that this should have been addressed at the last hearing I would argue that it was newly discovered evidence. While I attempted to find out when Mr. Keys had actually paid for the deed . . . I could not obtain that. I obviously could tell when it was executed. . .” (R. p. 168, lns 16-24).

In this case at the time the first motion hearing on July 3, 2014, the Trust had constructive and actual knowledge of the facts it asserts as evidence that Appellants are not BFPV, but did not raise the issue until after the Order of July 22, 2014. To the extent the statement “I obviously could tell when it was executed” refers to the executed Master’s Deed, then deductive reasoning would establish Appellant’s paid in full prior to the Master executing the Deed on May 16, 2014. Additionally, a notation in the public index for this matter states that the sale amount was paid in full May 16, 2014 at 12:03, and that the Deed was subsequently executed at 13:16. (R. pp. 396-399) The Trust is certainly deemed to have constructive notice of the public record of an action in which it had made an appearance. Spence, 368 S.C. 106, 628 S.E.2d 869. The alleged evidence is not new evidence. The Trust new or had reason to know of the information prior to the July 3, 2014 hearing, but failed to raise a defense to Appellants assertion until after the Order of July 22, 2014. The defense is not preserved.

2. The Unpreserved Defenses Raised by the Trust are Without Merit.

Nonetheless, for the sake of argument if the Trust preserved its defenses to Appellants’ assertion they are BFPV, the Trust’s defenses are still without merit. Appellants conducted a due diligence title search prior to the sale on May 6, 2014. Appellants did not discover notice of any liens on the Property during the title search, and

on May 6, 2014, Appellants had no notice of any adverse or allegedly adverse claim to the Property.

a. The Trustee's Claim to Title is Not Adverse to that of Appellants.

“Upon the filing of the petition in the office of the clerk of court of common pleas, the clerk shall immediately enter it in the index to lis pendens affecting real property and from the time of the filing the pendency of the action or special proceedings is constructive notice to an assignee, pledgee, purchaser, or encumbrancer of the mortgage, and every person whose purchase, encumbrance, assignment, pledge, or hypothecation is subsequently executed or subsequently recorded is considered a subsequent purchaser or encumbrancer and is bound by all proceedings taken after the filing of the petition to the same extent as if he were made a party to the action or special proceedings taken after the filing of the petition to the same extent as if he were made a party to the action or special proceeding.” S.C. Code Ann. § 29-3-400.

In this Case, On July 22, 2013, Belle Hall filed a Lis Pendens, Summons and Complaint, in this action against the Trust. (R. pp. 54-66). December 23, 2013, Trust transferred the Property to the Trustee by a quit claim deed recorded in the RMC office for Charleston County (R. pp. 224-227). As S.C. Code Ann. § 29-3-400, makes clear, because the Trust transferred the Property to the Trustee, after the Lis Pendens was filed the Trustee “is considered a subsequent purchaser or encumbrancer and is bound by all proceedings taken after the filing of the petition to the same extent as if he were made a party to the action.” Id. The Order of Foreclosure extinguished the Trust’s right to transfer title to the Trustee therefore the Trustee’s deed is void. (R. p. 166, ln 9 –R. p. 167, ln 13.) The Trustee’s individual claim to title is not adverse to that of Appellants.¹³

¹³ The Trust in its April 9, 2015, memorandum additionally asserts that on April 24, 2014, Appellant’s had notice of the adverse claim of the Trustee’s Parents as a result of discovering tax records which stated the Trustee’s parents owned the property. The Trustee’s parents are not a party to this action, were deceased prior to the

b. Appellants Tendered Purchase Money Prior to Notice of Any Alleged Defect in Title or Adverse Claim.

May 6, 2014 is the date of sale and the relevant date for determining whether the Appellants' met the payment prior to notice element of BFPV. S.C. Code § 15-39-720 in collaboration with § 15-39-760 provide where a Plaintiff waives the right to a deficiency judgment prior to sale the bidding will not remain open and the sale will be closed the day of the auction. Bankruptcy Courts in South Carolina as well as the District Court of South Carolina have held "the actual foreclosure sale as the cut-off date for curing mortgage defaults." In re Watts, 273 B.R. 471, 476 (Bankr. D.C. 2000). *In re Watts*, speaking of the debtors right to cure or redemption noted: "The Court acknowledges that the foreclosure process may require steps following the auction sale in order to conclude the sale and make it effective; however, . . . [p]recedent in this Court and this District has found that upon the falling of the gavel, the debtor is left with bare legal title; thus, the fact that the sale procedure has yet to be completed does not alter the fact that the only right that debtor is left with is the right to raise questions regarding the sale procedure."¹⁴ Id. The court went on to state: "[a]s the court in In re Bobo emphasized, [w]hatever process is used to bid up the property, the property is sold at the foreclosure sale once the rights and obligations vest in an entity to acquire the property as a result of making the highest bid. The additional steps of obtaining court approval . . . paying the purchase price, and recording the deed may be necessary to consummate the sale, but that does not alter the fact that the purchaser's right to acquire the property has intervened - - that the property has been sold at a foreclosure sale - - to the detriment of the debtor." Id.

initiation of this action, and have never asserted an adverse claim. As there is no such claim, there can be notice of claim, this argument is without merit.

¹⁴ No issues involving the sale procedure have been raised in this matter.

(quoting In re Bobo, 246 B.R. 453, 456 (Bankr. D.C. 2000). Our Bankruptcy Court has continually held “the sale is over when the hammer falls.” In re Riverfront Props., LLC, 405 B.R. 570, 573 (Bankr. D.C. 2009) (Citing : In re Watts; In re Holmes, C/A No. 99-08796-W (Bankr. D. S.C. 11/23/1999); In re Brown, C/A No. 87-02507-B, Adv. Pro. 87-0281-B (Bankr. D. S.C. 1/28/1988); In re Agripen Grain Co., C/A No. 83-03606; Adv. Pro. 86-0413-D (Bankr. D.S.C. 7/31/1987).

In this case Appellants purchased the property from the Master at a public judicial auction on May 6, 2014, at which time Appellants tendered the initial required purchase-money deposit to the Court. On May 6, 2014, Appellants had no knowledge of an adverse claim to title, that the Trust intended to file a motion to vacate, or knowledge of any other alleged defect in the Appellant’s title to the subject property¹⁵.

c. The Trust’s Motion to Vacate did Not Constitute Notice to Appellants of a Defect in Appellants’ Title.

The Trust asserts its Motion to Vacate served as a notice to Appellants of a defect in Appellants title because it alleged the Trust had never properly been served.¹⁶ Appellants assert there is a distinction between a defect in title to real property and an alleged defect in the procedure of a civil action.

“It must be presumed from the judgment rendered that the Court considered and adjudicated the regularity and sufficiency of each and every step in the proceedings leading up to it, including the sufficiency of the complaint, the issuance and service of process upon the defendants,

¹⁵ The Trust did not even retain counsel until May 9, 2014. (R. pp. 258-263)

¹⁶ Appellants gained knowledge of the Trust’s intent to file a motion to vacate on May 15, 2014. On May 16, 2014, at 12:03 p.m. Appellants tendered the balance of the purchase money to the Master. On May 16, 2014, at 1:16 p.m. the Master executed the Master’s Deed to Appellants. On May 16, 2014, at 4:35 p.m. the Trust’s Counsel served Appellants a copy of the Trust’s Motion to Vacate via email. Prior execution of the Master’s Deed Appellants only had notice the Trust intended to file a Motion to Vacate.

and the rights and interests of the parties to the action under the allegations and evidence; and although the conclusions with respect to those matters, or any them, might have been erroneous, so that they would have been reversed on appeal they do not make the judgment void collaterally.” Ashton, at 68 (quoting: Gladden v. Chapman, 106 S.C. 486, 91 S.E. 796, 797 (1917)).

“A sound public policy requires that the validity of judicial sales be upheld, if in reason and justice it can be done. In furtherance of this principle, our decisions have applied the general rule, applicable here, that a purchaser in good faith at a judicial sale is not affected by irregularities in the proceedings or even error in the judgment, under which the sale is made; but is required at his peril only to make inquiry as to the jurisdiction of the court which ordered the sale, and whether all proper parties were before the court when the order was made.” Id. at 67 (quoting Cumbe v. Newberry, 251 S.C. 33, 159 S.E.2d 915 (1938))¹⁷.

In this case the Trust asserts that Appellants had notice of an adverse claim or title defect due to its Motion to Vacate.¹⁸ It is natural that the Trust would dispute Appellants claim to title because the Trust was foreclosed upon. However, Appellants as Purchasers at a Judicial Sale are entitled to rely upon the Courts rulings in the foreclosure action as to any claim to title asserted by the Trust. The Clerk of Court issued an Order of Publication and the Court determined that the Trust had properly been served by publication when the Order of Foreclosure stated service had been properly achieved. (R.

¹⁷ Appellants prior to sale undertook a title search of the Property, wherein Appellants examined the pleadings of the action, the RMC office records for Charleston County, and the tax records Charleston County. (R. pp. 321-334; R. p. 161, lns 5-15, R. p. 166, lns 20-25; R. pp. 380-391). Documents Appellants discovered during the title search include but are not limited to the December 2013 deed transferring the property to the Trust and an Tax record which appellants attached to their July 3, 2014, Memorandum. The Trust has asserted that Appellants attached the tax record to the Memorandum to evidence that Appellants believed the Property was owned by the Trustee’s Parents at the time of sale (R. p. 200, line 15 – p. R. p. 201, line 7,). This is not correct. Appellants prior to the sale believed that the Trustee individually owned the property as a result of the December 2013 deed. (R. p. 201, ln 13 – R. p. 202, ln 1; R. p. 139, lines 3-20; R. p. 321-334) Appellants attached the tax record to their memorandum not as evidence of proper ownership of the property but as evidence that the Trustee’s Address was not readily apparent.

¹⁸ Again, Appellants had no notice of anything on May 6, 2014.

pp. 9-19) The Trust's Motion did not constitute a notice of and adverse claim or defect of title to Appellants.

The Order of April 9, 2015, ruled Appellants met the first two elements of BFPV, but Appellants did not acquire the deed without notice of lien or defect. The Master states: "The record establishes that the Purchasers, with notice of a potential claim from defaulting owner, rushed to the court to pay the balance due and then, after service of the Motion to Vacate the Sale, had the deed recorded at the RMC Office."¹⁹ (R. pp. 9-19). The Master notes that Ashton discussed several issues relevant to the Court's ruling, but did not find controlling Ashton when Appellants quoted it stating: "It must be presumed from the judgment rendered that the Court considered and adjudicated the regularity and sufficiency of each and every step in the proceedings leading up to it, including . . . service of process upon the defendants. . . and although the conclusions with respect to those matters, or any them, might have been erroneous. . . they do not make the judgment void collaterally." Ashton, at 68; (R. p. 198, ln 22 – R. p 199, ln 19). Additionally the Master disagreed with Appellant's assertion that the sale date was the relevant date for determining whether Appellants had notice of adverse claim or defect. "Keys argues that the sales date – not the deed issuance date – determines when the notice of a defect should be known; however, this court finds, based upon its experience that no fixed date

¹⁹ Appellants recorded the Deed the day the Master presented it to Appellants. Upon presentment of the deed the Master's Office asked Appellants if they knew about the Motion to Vacate. Therefore Master knew about the Motion to Vacate prior to presenting the deed to Appellants, but nonetheless the Master did present the deed to Appellants. Appellants took the presentment of the deed by the Master as evidence that the Deed was valid despite the filing of the Motion. Therefore, Appellants recorded the Deed in the RMC office as the law and public policy of this state strongly recommend be done.

can determine when the interests of justice dictate a sale should be overturned.” (R. pp. 9-19).

Master erred in finding Appellants were not BFPV. The as the Master conceded Appellants paid in full, and received title by a Master’s Deed. Additionally, Appellants had no notice of an adverse claim on the date of sale; the Trustee’s deed is not an adverse claim to Appellants title because the Trustee’s deed postdates the lis pendens; and the Trust’s Motion to Vacate was not notice of an adverse claim because Appellants are entitled to a presumption that the Court judged service to have been affected upon the Trust with the Order of Foreclosure.

In conclusion Appellant’s paid in full, received title by way of the Master’s Deed, and did so without notice of a defect in title or adverse claim. Appellants are BFPV and the subject foreclosure proceedings were res judicata as to Appellants. The Master’s ruling that Appellants are not BFPV was an abuse of discretion.

D. THE MASTER LACKED JURISDICTION TO RULE ON THE TRUST’S MOTION TO VACATE PURSUANT RULE 59, SCRCP.

“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” Rule 59, SCRCP. The established case law is that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed. In re Beard, 597 S.E.2d 835 (Citing Pitman v. Republic Leasing Co., 351 S.C. 429, 579 S.E.2d 187 (Ct. App. 2002); Ness v. Eckerd Corp., 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002) (“Although trial judges retain jurisdiction to alter judgments on their own initiative for ten days if a Rule 59(e) SCRCP, motion is filed, after ten days that jurisdiction is lost.”).

In this case the Order of Foreclosure was filed April, 8, 2014. The Trust filed its Motion to Vacate pursuant Rule 59, SCRPC, on May 19, 2014. As of May 19, 2014, the Court had not retained jurisdiction to alter its Order of Foreclosure pursuant to Rule 59. The Order of July 22, 2014, is silent as to whether the Order was granted pursuant to Rule 59, SCRPC. (R. pp. 20-21). However, to the extent the Order was granted under Rule 59, SCRPC, it was an abuse of discretion.

II. DID THE MASTER ERR IN GRANTING THE TRUST'S MOTION TO AMENDED THE ORDER VACATING THE SALE, WHEN THE MOTION REQUESTED RELIEF WHICH HAD NOT BEEN REQUESTED BEFORE THE COURT ISSUED ORDER OF JULY 22, 2014.

"It is well settled that ordinarily a party may not receive relief not contemplated in his pleadings. While it is true that pleadings in the [] court must be liberally construed, this rule cannot be stretched so as to permit the judge to award relief not contemplated by the pleadings. Due Process requires that a litigant be placed on notice of the issues which the court is to consider." Heins at 152. A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." "Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier." Hickman, 301 S.C. 455, 392 S.E.2d 481 (quoting: Natural Resources Defense Council, 705 F. Supp. at 701, vacated on other grounds, 707 F. Supp. 3 (D.D.C. 1989)). A party cannot request that the Master amend his order to make findings of fact and conclusions of law not previously raised before the Master issued his order. Id. A party cannot raise a defense to an asserted issue by way of a Rule 59(e) motion which could be raised prior to the order See Patterson, 456 S.E. 2d 436; In re Beard, 359 S.C. 351, 597 S.E.2d 835; Gainey, 382 S.C. 414 675 S.E.2d 792.

In this case the July, 22, 2014, Order grants the Trust's Motion to Vacate on the basis that "in the interest of equity and for good cause shown that the Defendant's motion be granted" (R. pp. 20-21) That is the only basis asserted for the granting of the Trust's Motion to Vacate, and the Order makes no findings of fact. Prior to that Order, the only arguments the Trust had made were that the attempted personal service of the Trust by Belle Hall was defective due to a lack of due diligence, and that Belle had made misrepresentations to the Court within its affidavit for publication. August 1, 2014, Appellants filed a Motion to Reconsider the Order of July 22, 2014 (R. pp. 79-91). August 4, 2014, the Trust filed a Motion to Amend the Master's Order of July 22, 2014²⁰ (R. pp. 92-98). During the August 18, 2014, hearing upon the said Motions the Trust stated: "What started out essentially was - - quite honestly, I did not expect a Motion for Reconsideration on this. Essentially what we wanted to do is tidy it up for its impending appeals so we had some findings of fact and conclusions of law." (R. p. 171 lines 15-21). The Trust then goes on to state: "There's 60(b) language in there. There's 60(b)(1) that is excusable. There's 60(b)(5). Also in my memorandum, which I'll hand up to the Court, *I added independent action. It seems to have a slightly lesser standard than 60(b)(5). . .*" (R. p 175, line 2 – R. p.176, line 3).

At the August 18, 2014, hearing the Appellant's raised objections to a Number factual finding and conclusions of law asserted in the Trust's Motion to Amend. Specifically Appellants objected to the factual or legal findings found Paragraphs 7, 8, 12, 15, and 21 of the Trust's Motion to Amend. Additionally, the Appellants' objected to the Conclusion of Law asserted by the Trust in its Motions to Amend (R. p. 178, line 8 –

²⁰ The Motion to Amend takes the form of and could be interpreted as, a proposed order.

R. p. 180, line2). Appellants objected on the grounds that prior to the Order of July 22, 2014, the Trust had not presented evidence and/or sufficient evidence to support factual findings raised in the Trusts Motion to Amend. Additionally Appellants objected to the “Conclusions of Law” section of the Trust’s Motion to Amend asserting that prior to the Order of July 22, 2014, the Trust had not raised arguments under Rule 60(b)(1),(4), and(5), therefore the issues where not preserved, because it was not appropriate to raise these issues for the first time through a motion to amend. (R. p. 178, line 8 – R. p. 180, line2). Finally, the defenses or legal arguments asserted for the first time in the Trust’s August 18, 2014, Memorandum in support of its, Motion to Amend, including but not limited to public policy preclusion, violation of the publication statute, and independent action were not raised prior to the Order of July 22, 2014, nor in its Motion to Amend. During the August 18, 2014 hearing the Master stated: “to the extent it’s necessary I’m going to grant the Defendant’s Motion to Amend the Order to support that decision. . .” By a Form Four Order filed August 20, 2014, the Master granted the Trust’s Motion to Amend.

Thereafter the Amended Order of February 10, 2015, makes additional new factual and legal findings including but not limited to that Bell Hall was grossly negligent in its attempted personal service of the Trust; that the Fraud and Collusion standard set forth in Yates v. Gridley, 16 S.C. 500 (1882) and it progeny should not be applied because the facts of this case are distinguishable; that the Master lacked personal jurisdiction over the Trust; that the Order of Foreclosure and Sale is VOID pursuant to 60(b)(4).

Additionally the Master stated in his Order of February 10, 2015, that he was declining to rule upon Appellant's assertion of BFPV, but then by the Order of April 9, 2015, the Master de facto amended his Order of July 22, 2014, a second time to state that Appellants' are not BFPV.

None of the issues were ever raised or preserved by the Trust prior to the Order of July 22, 2014. Even after the Order of July 22, 2014, the Trust never raised any issue as to the alleged gross negligence of Belle Hall; due process; personal jurisdiction, and distinguishing the case from one where the fraud and collusion standard applies. The Court cannot amend its order of July 22, 2014, to grant relief which was either not requested prior to the Order, or relief which was never requested at all. Therefore the Courts amendments of the Order of July 22, 2014, *twice* to grant unrequested and unpreserved relief was an abuse of discretion.

III. DID THE MASTER ERR IN DENYING THE APPELLANTS MOTION TO STAY WHERE THE EFFECT OF THE DENIAL IRREPARABLY HARMED APPELLANTS AND LEFT APPELLANTS SUCEPTIBLE TO FURTHER DAMAGE IN THE FORM OF WASTE UPON THE PROPERTY.

Generally injunctive relief is appropriate where the party can demonstrate he will suffer irreparable harm, has a likelihood of success on the merits, and an inadequate remedy at law. Scratch Golf v. Dunes West, 361 S.C.117, 603 S.E.2d 905 (2004); County of Richland v. Simpkins, 348 S.C. 664, 560 S.E.2d 902, 904 (Ct. App. 2002). In this case on July 22, 2014, the same date the Master filed his Order, Appellants filed a Motion to Stay the Order and for Order of Supersedeas. The Appellants moved pursuant to Rules 62 and 65, SCRCP, as well as Rule 241, SCACR, for a stay of the Order Vacating the Sale and further staying or enjoining the Master from voiding, terminating,

or canceling the Master's Deed which transferred the Property Appellants. Appellants further requested that the Master issue an Order of Supersedeas holding the proceeds from the Sale in bond. Appellants purpose for filing the motion was to request the provision of equal protection to the rights and interest in the Property for both the Appellants and Trust during the pendency of this Appeal. Had the Master granted Appellants Motion the Appellants would have remained in possession of the Property, protecting their rights and interest in the Property. Additionally, the Trust would have been protected by the Sale proceeds held in bond.

Under this scenario if the Court of Appeals were to Affirm the Master's Motion to Vacate, then the Property would have been returned to the Trust and the Trust would have been entitled to submit a claim for damages which could have been satisfied by the Sale proceeds held in bond. Damages could have easily been computed as the value of the Appellants use of the property during the pendency of the Appeal. The Sale proceeds are much greater than the value use of the Property during pendency of the Appeal²¹, therefore there would have been sufficient bonded funds to compensate the Trust for its loss of use of the Property during the pendency of the Appeal.

However, the Master denied the Motion without even offering Appellants an opportunity to be heard orally on the matter. Additionally, that Master has continued to hold the proceeds of sale rather than returning them to Appellants as stated in the Order of July 22, 2014. The Master's and/or his office stated that he must hold the sale proceeds during the pendency of the Appeal, but refused to hold them in bond as

²¹ Both the Trust and the Appellants rented the property prior to the Appeal. Therefore Appellants would assert that the reasonable value of the use during pendency of this appeal would be determined to be the rental value of the property for the same period of time.

Appellants requested.²² The result was that the Master stripped the Appellants of their possession of the property, but did not return the funds used to purchase the property to Appellants. Prior to losing possession Appellants had been renting the Property, and therefore losing the Property meant that Appellants also lost the monthly rental proceeds generated from the Property. The national real estate website www.zillow.com estimates that the rental value of the property is \$2,084.00. Appellants have not received the benefit of renting the property since August of 2014. Using \$2,084.00 as a barometer at present the Master's denial of the Appellants' Motion to Stay has irreparably harmed Appellants in the amount \$20,840.00. Appellants will continue to suffer this irreparable harm during the pendency of the Appeal. Appellants have no remedy at law to make Appellants whole for the harm suffered, as there is no legal cause of action Appellants may assert to recover these damages. The harm to Appellants was caused not by the Trust but by the Master. Additionally Appellants would argue that because the Master denied Appellants Motion, Appellants are unprotected from suffering additional harm or waste at the hands of the Trust while the Trust is in possession of the Property during the pendency of the Appeal. Such harm or waste could include but is not limited to the Trust's failure to physically maintain the property.

²² Order of July 22, 2014, stated that the sale proceeds should be returned to Appellants. For whatever reason the check was lost transit. Appellants inquired about the check, and the Master's office canceled the check prior to it having been cashed. The money therefore remained in the Master's office trust account. Appellants moved for the Master to hold the money in bond which was denied. Appellants moved before the Court of Appeals which also denied the request. Thereafter Appellants requested a check from the Master's Office and were informed that the Master must hold the funds during the pendency of the appeal. (R. p. 164, line 21 - p. 166, line 7; R. pp. 118)

However, given that the Master presently holds the sale proceeds which the Trust would be entitled to if this Court overturns the Master's Order Vacating the Sale, then this Court could still make Appellants whole by overturning the Master's Order denying the injunctive relief which Appellants requested of the Master with Appellants Motion to Stay and for Order of Supersedeas. This Court could remand this matter to the Master to with the instruction to grant Appellants requested injunctive relief and to determine the amount of Appellants damages to be paid by the Trust through the proceeds of sale which are still being held by the Master. This remedy would put the parties on the equally protected footing which the Master should have placed the parties on upon by granting Appellants Motion to Stay and for Order of Supersedeas.

Appellants would assert that for the reasons stated above Appellants are likely to succeed on the merits of this action, Appellants have been irreparably harmed, and Appellants have no remedy at law to remedy their harm. The Master's denial of Appellant's Motion to Stay and for Order of Supersedeas was an abuse of discretion.

IV. DID THE MASTER ERR IN DENYING THE APPELLANTS MOTION TO STRIKE THE AFFIDAVITS, WHEN THE AFFIDAVITS SOUGHT TO INTRODUCE EVIDENCE WHICH THE TRUST EITHER HAD KNOWLEDGE OF OR SHOULD HAVE KNOWN PRIOR TO THE HEARING ON THE MOTION TO VACATE.

"The admission of evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. A motion to strike is likewise within the trial court's discretion and will not be reversed absent an abuse of discretion." Manios v. Nelson, Mullins, Riley & Scarborough, LLP, 389 S.C. 126, 697 S.E.2d 644 (2010).

A. party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” “Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier.” Hickman, 301 S.C. 455, 392 S.E.2d 481 (quoting: Natural Resources Defense Council, 705 F. Supp. at 701, vacated on other grounds, 707 F. Supp. 3 (D.D.C. 1989)). A party cannot request that the Master amend his Order to make findings of fact and conclusions of law on issues of fact and law not previously raised before the Master issued his Order. Id. A party cannot raise a defense to an asserted issue by way of a Rule 59(e) motion which could be raised prior to the order See Patterson, 456 S.E. 2d 436; In re Beard, 359 S.C. 351, 597 S.E.2d 835; Gainey v. Gainey, 382 S.C. 414 675 S.E.2d 792. In order for an affidavit to be considered newly discovered evidence, the affidavit must contain evidence which has been discovered since the trial; could not have been discovered before the trial; is material to the issue; and is not merely cumulative or impeaching.” See Lanier v. Lanier, 364 S.C.211, 612 S.E.2d 456 (2005).

In this case the Trust filed its Motion to Vacate on May 19, 2014 (R. pp. 67-78). During the July 3, 2014, hearing the Trust failed to raise a defense to Appellants assertion of BFPV (R. pp. 127-147). On July 22, 2014, the Master issued an Order granting the Trust’s Motion to Vacate. The Order was silent as to Appellants assertion that they were BFPV. On August 1, 2014, Appellants filed a Motion to Reconsider the Order, again asserting Appellants were BFPV. On Thursday, August 14, 2014, the Trust filed three affidavits to provide evidentiary support to the Trust’s subsequent and untimely assertion that Appellants were not BFPV (R. pp. 335-343). On Monday August 18, 2014, during the hearing upon Appellants’ Motion to Reconsider the Order of July 22, 2014,

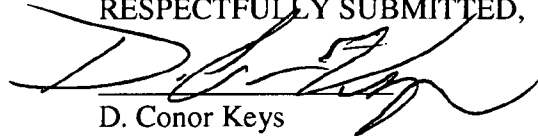
Appellants orally moved before the Master to Strike the August 14, 2014 Affidavits. The Master Denied the Appellants Motion to Strike (R. p. 22).

The three affidavits are an Affidavit of Trust's Counsel Amanda Reece, an Affidavit of Libby Castle, and an Affidavit of Anna Howell. All three Affidavits appear to be submitted to the Court for the purpose of providing evidence of when Appellants initially learned of the Trustee and when the Appellants originally received Notice of the Trust's intention to file a motion to vacate. Appellants would assert that all of the information or testimony presented in the Affidavits was either known by the Trust prior to the July 3, 2014 hearing, or should have been discovered prior to the hearing. After the hearing the Trust cannot raise for the first time, evidence which could have been presented to the Court at the hearing. The evidence submitted in the August 14, 2014, Affidavits was untimely and improper. The Master's Denial of Appellants Motion to Strike the Affidavits was an abuse of discretion.

CONCLUSION

For the reasons stated above, Appellants respectfully request that this Court reverse the rulings of the Master found in the Orders filed on July 22, 2014; August 20, 2014; February 10, 2015; and April 9, 2015.

RESPECTFULLY SUBMITTED,



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November 22, 2015
Charleston, SC

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

RECEIVED

NOV 30 2015

SC Court of Appeals

Case No. 2013-CP-10-4248

Belle Hall Plantation Homeowner's Association.....Respondent,

v.

John A. Murray, Trustee of the John E. Murray and
Gloria C. Murray Family Trust, Defendant

Of whom David Conor Keys & Karen Keys, Third Party Plaintiffs.....Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellant's Final Brief Complies with Rule 211(b), SCACR.

November 22, 2015
Charleston, SC



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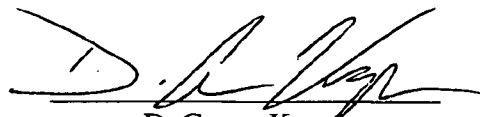
Of whom David Conor Keys & Karen Keys, Third Party Plaintiffs.....Appellants.

PROOF OF SERVICE

I certify that on this 25 day of November 2015, I have served the Final Brief and Final Reply Brief of Appellants upon all counsel of record by depositing a copy in the United States Mail, postage prepaid addressed as follows:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 01 2015

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Mikell R. Scarborough, Master in Equity

Case Number: 2013-CP-10-04248

Appellate Case Number: 2014-002018

Belle Hall Plantation Homeowner's Association, Inc. Plaintiff,

v.

John A. Murray, Trustee of the John E. Murray &
Gloria C. Murray Family Trust, ... Respondent,

David Conor Keys & Karen Keys, ... Appellants

BRIEF OF RESPONDENT

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QUESTIONS PRESENTED

- I. Did the Master-In-Equity err in finding that the Third Party Purchasers, one of whom is a licensed attorney, did not act in good faith and integrity of dealing and could not be afforded the protections of a Bona Fide Purchaser for Value?
- II. Did the Master-in-Equity err in declaring the Judgment and the Deed Void?
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 - b. Did the Master-in-Equity err in finding the clerk's erroneous issuance of the Order of Publication was a Structural Defect in the constitution of the trial?
 - c. Did the Master-in-Equity Err in finding that the Plaintiff Homeowner's Association violated S.C. Code § 15-9-740?
- III. Does the record of the proceedings reflect alternate sustaining grounds under Rule 60(b) of the South Carolina Rules of Civil Procedure in support of the Master's ruling in favor of the Respondent?

STATEMENT OF FACTS

This case involves the foreclosure of lien by a Homeowner's Association (HOA) in an amount of \$1,103.28. The home was otherwise unencumbered by mortgage liens or judgment liens. The HOA never served the homeowner. The HOA did not appeal that finding and is not a party to these proceedings. Instead, the Appellants include an attorney and his wife who were the successful bidders at the foreclosure sale and who ran to the courthouse to pay the remainder of the bid as soon as they learned that the homeowner would be moving for the sale to be set aside due to irregularities in the proceedings. The Lead Appellant is an attorney who practices in the area of foreclosure defense. The Master found that the Appellants were not Bona Fide Purchasers for Value. That finding was correct.

ARGUMENT

I. The Appellants are not Bona Fide Purchasers for Value.

On April 9th, 2015, in response to the Appellants' Motion for Reconsideration of February, 2015, the Master considered briefs, heard oral arguments, denied the Appellants' motion, and made a ruling that the Appellants were not Bona Fide Purchasers for Value. The Master had initially declined to rule on the issue of the Appellants' contested status as a Bona Fide Purchaser for Value. (R. pp. 187-188, lines 11-18). He reiterated this in his Amended Order of September February 5th, 2014, when he ruled that he did not find it necessary to reach this issue in light of his having ruled the judgment and sale void. (R. p. 50). He further explicitly agreed that he would reach the issue after further briefing (R. p. 50). The Master distinguished the facts of this case from those in *Bloody Point Property Home Owners Assn., Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (Ct. App. 2014). The *Ashton* opinion of this Court had been filed the same day as the Master's denial of Appellant's prior motion for relief on August 20th, 2014.

In his final order, the Master found that Appellants were not Bona Fide Purchasers for Value and could not be afforded protection under the S.C. Code Ann. § 15-39-870 as they “*did not in good faith and with integrity of dealing, acquire the deed.*” (R. p. 53).

The law on the issue is quite clear. It was properly applied by the Master, and the Master’s decision is based on facts that are not in dispute. Pursuant to section 15-39-870 of the South Carolina Code:

“[u]pon 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 be subsequently confirmed by the court.”

The Master relied on the same case law as the lower court in *Ashton* in support of his ruling that the Appellants are not Bona Fide Purchasers for Value.

“A purchaser may assert a plea of a bona fide purchaser for value, without notice of defect in his title, by showing (1) he has actually paid the full purchase price (giving security for the payment is not sufficient, nor is past indebtedness a sufficient consideration); (2) he purchased and acquired the legal title, or the best right to it; and (3) he purchased bona fide, *i.e.*, in good faith and with integrity of dealing. The purchaser must show all three conditions – actual payment, acquiring of legal title, and bona fide purchase—occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property.”

Robinson v. Estate of Harris, 378 S.C. 140, 146, 662 S.E.2d 420, 423 (2008) (citing *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-875 (2006); (R. p. 382); (R. p. 392). The Master determined that the Appellants met the first two prongs of *Robinson* in paying the purchase price and acquiring legal title (or the best right to it), but he also found that the third prong of the test was not met. (R. pp. 52-53).

The facts and history of the case support the Master’s findings. Sadly, they demonstrate a persistent pattern of false and misleading pleadings and testimony by the lead Appellant.

The Respondent served a motion to vacate the foreclosure and set aside the sale on May 15th, which was filed on May 19th, 2014. At no point during the argument (written or oral) (R. p. 127-147, R. p. 321-334) of Respondent's motion did the lead Appellant disclose to the Master that he had learned of Respondent's intent to file the Motion to Vacate the foreclosure sale on May 15th, 2014 which was the day before he ran to the courthouse to pay the balance of the bid, approximately three weeks before it was due.¹

In Appellants' August 1st, 2014 Motion to Reconsider the Master's Order to Vacate the Judgment and Set Aside the Sale, the lead Appellant is marginally more forthcoming. Relying exclusively on *Spence* in asserting his status as a Bona Fide Purchaser for Value (R. p. 102) (R. p.162, lines 17-18), Lead Appellant proceeds to narrate the following rendition of the facts:

"...In this case, Third-Party Purchasers are Bona Fide Purchasers for Value, who purchased the property in good faith from the Court at judicial sale on May 6, 2014 paying the required five percent that day, and timely paying the remainder on May 16, 2014. At the time of the sale the Court instructed the Third-Party Purchasers that as the successful bidder Third-Party Purchasers had entered into an agreement with the Court whereby if they failed to timely tender the remainder of the purchase they could be liable for damages and would lose the five percent payment tendered to the Court the day of the sale. The Master conveyed the property to Third-Party Purchasers by Deed on Friday, May 16, 2014. Thereafter on May 16, 2014, Defendant's Attorney emailed the Third-Party Purchasers a copy of Defendant's Motion to Vacate, which was subsequently filed on May 19, 2014. The following Friday on May 23, 2014, the Master's Office contacted Third-Party Purchasers to inform them to they could now pick up the Deed from the Master's Office. On May 23, 2014, the Third-Party Purchaser recorded the Deed in the RMC Office. Third-Party Purchasers in recording Deed were of the opinion and belief that the Master's Deed Conveying the Property to the Third-Party Purchasers was valid enforceable and without defect because it was based upon the Master's Order of Foreclosure and Sale, a good faith purchase of the property at judicial sale on May 6, 2014, and payment in full by the Third-Party Purchasers. Further the deed was not delivered to the Third-Party Purchasers by the Court until after the Master had actual knowledge of the of the Defendant's Motion to Vacate."

¹ The Appellant, in fact, argued his status as a BFP under the identical statute and case law. (R. pp. 324-325) (initial memo); (R. p. 138 pp. 5-9) (oral testimony).

(R. p. 84).

The Appellants' August 1st, 2014 Motion to Reconsider continues to fail to disclose his having had knowledge of the Respondent's claim on May 15th, 2014, and again asserts status as a Bona Fide Purchaser for Value. Lead Appellant does, however, then reveal that the Appellant retrieved, received, and accepted the deed a full week *after* he had received an emailed copy of the Respondent's motion to vacate the sale from the Respondent's counsel.

The Lead Appellant seems to be applying fantastical logic that "the Court made him do it" and the Court had "actual knowledge" superior to that of the Appellant as to the Respondent's claim. The Appellant, as an attorney practicing in Charleston, is accustomed to communicating with the court and the Master-in-Equity presiding over this case. Any actual perceived monetary or other damages he risked in non-performance of the bid could have been addressed directly with the court simply by emailing the Master or his clerk. The Respondent, by and through his counsel, asserts with a great degree of confidence that the Master would not have executed the deed three weeks early had he been aware of the circumstances let alone approved its release to the Appellant on May 23rd, 2015. Appellants, instead, chose to induce the Master to issue and release the deed under false pretenses.

After being served the Appellants' Motion to Reconsider of August 1st, 2014, Respondent's counsel confronted the lead Appellant in a telephone conversation on August 7th, 2014. It was at this point that Appellant acknowledged his having learned of the undersigned's

representation of Respondent on May 15th, 2014, the day before he tendered the balance of the bid on May 16th, 2014.² (R. pp. 335-336).

The Appellant learned of the Respondent's claim from his employer. This was a result of a telephone consult that Respondent's counsel initiated with the employer. Appellant's employer is an attorney experienced in the area of foreclosure defense amongst other areas of law. Respondent's counsel (the undersigned) called that attorney seeking advice as to the merits of the Respondent's claims. That attorney, upon recognizing the extraordinary fact pattern, informed the undersigned that a gentleman in her office had been the successful bidder. The undersigned confirmed the subject case Parties and the course of the conversation was changed. (R. pp. 335-336).

Appellant claims that Respondent was obligated to dispute his status as a Bona Fide Purchaser for Value at the initial hearing of the Motion to Vacate and, by failing to do so, that the claim was not preserved. This "catch me if you can" logic is absurd. Respondent's counsel would be loathed to anticipate, believe, or assert that a fellow member of the South Carolina Bar, schooled in the area of foreclosure defense, would conduct himself in such a manner. Respondent's counsel, in fact, struggled with suspicions as a result of the timing but was compelled to give the Appellants the benefit of any doubt. Respondent's counsel, relying on the presumably genuine assertions under the law contained in the Appellants' pleadings and oral

² Appellants object to the Master's refusal to strike Opposing Affidavits under Rule 59 (c) of Respondent's counsel and other affiants. What the lead Appellant fails to observe is that to the extent his Motion for Reconsideration reflected changed allegations of fact, that changed fact pattern constituted an affidavit served with his Motion. The Respondent timely served opposing affidavits under Rule 59 (c), SCRCP. Furthermore, "The Court may admit reply affidavits." *Id.* By representing himself, he is both counsel and lead Appellant.

arguments³, could only conclude that the timing was coincidental, that the Appellants did not have knowledge of the claim by way of the employer, and that the Appellants must have tendered the balance of the bid by mail at some point prior to the execution of the Master's deed of May 16th. Certainly any remaining doubt was dispelled when the Appellants, pursuant to the initial Order of July 22nd, 2014 retained rents that they had collected from the property and accepted a disbursement for additional "damages." (R. pp. 20-21).

Had the lead Appellant been forthcoming with the facts at the initial hearing in regards to the circumstances under which the Appellants had acquired title to Respondent's property, the Respondent would have then been afforded the opportunity to object to their status and the Master would have ruled on that objection. The sole reason this case required multiple hearings and Orders is that the Appellant failed his duty to be candid with the court and the facts were disclosed in piecemeal fashion.

The situation did not become clear to the Master until the final hearing, which occurred on April 9th, 2015. The Master made a direct inquiry of the Appellant as to "*what and when he had first gotten notice of the claim from the (Respondent) that he didn't think the procedure was valid.*" (R. p. 194, lines 12-14). The Appellant responded "*.....On May 15th, Ms. Reece contacted (lead Appellant's attorney employer), and I learned that they were going to file a motion...*"⁴ (R. p. 194, lines 12-14).

It is with this admission and acknowledgement that he knew of the claim, he knew the content of the claim, and he came about that knowledge through his attorney employer, finally

³ The lead Appellant argued he and his wife's status as a BFP under the identical standard of review verbatim that the Master did. (R. pp. 324-325) and (R. p. 138).

⁴ In oral testimony at the hearing of August 18th, 2014, the Appellant stated that "(He) had knowledge on May 15th," but the record is not specific as to his knowledge of the nature of the motion. (R. pp. 162. lines 12-14).

made by the lead Appellant, subsequent to nine months of motions, hearings, briefs and appeals, the Judge was finally able to discern the facts and to make an informed ruling. The Judge ruled that the Appellants are not Bona Fide Purchasers for Value as they had not met the third prong of the test in *Ashton, Robinson, and Spence* as they "*did not acquire the deed in good faith and with integrity of dealing without notice of a lien or defect.*" (R. p. 53). The Master continued...

"The record establishes that the Purchasers, with notice of a potential claim from the defaulting owner, rushed to the court to pay the balance due and then, after service of the Motion to Vacate the Sale, had the deed recorded at the RMC Office. Therefore, the Court finds the Keys did not act in good faith and with integrity of dealing, without notice of a lien or defect. In fact, the Keys had notice of a defect in the proceedings prior to paying the purchase price and acquiring legal title to the property.

(R. p. 53).

"This is not the type of action which, in reason and justice, this court finds the public policy requiring the validity of judicial sales be upheld." (R. p. 53) (citing to *Ashton*, citing to *Cumbe v. Newberry*, 251 S.C. 33, 37 159 S.E.2d 915, 917 (1968).

II. THE MASTER DID NOT ERR IN VOIDING THE JUDGMENT AND THE DEED.

The Master properly Voided the Judgment under Rule 60 (b)(4), SCRCPP, for want of Personal Jurisdiction.

a. Application of a standard of Gross Negligence for due process violations.

The Master's findings of facts are certainly not in dispute by the actual plaintiff to the foreclosure suit. The HOA has not appeared in this appeal and is not participating. The Master's ruling is contested solely by the Appellants, who were Third Party Plaintiffs. The Appellants do not appear to dispute the lower court's findings of fact.

A review of the record clearly reflects that the Master's ruling in favor of the Respondent is well grounded in facts which are not in dispute. The facts are contained in the Judge's Order and the relevant facts to the issue of can be summarized as follows;

The HOA obtained an Order of Publication from the Clerk of Court. (R. pp.2-3). This was based on an Affidavit of Due Diligence that was supported and exhibited by a Westlaw search for the address of a prior title holder who is not a party to this action. (R. p. 217).

The prior title holder was the Respondent's deceased father by the name of John E. Murray (as opposed to the principal Respondent, John A. Murray). (R. p. 44). The Exhibit "A" attached to the Affidavit of Due Diligence of a Westlaw search of John E. Murray reflected the year of birth as 1923. (R. p. 217).

The Westlaw Search revealed five possible addresses to be served. The HOA attempted and did not effectuate service at the first three of those addresses. Service was not attempted at the fourth or fifth available addresses. (R. p. 45). The Fourth address was, at all times relevant to this action, the residential address of the Defendant. (R. p.44).

The Master further made a finding of fact based upon the credibility of a sworn affidavit of the Charleston County Auditor that tax mailing address of the subject property was the Fourth address (Respondent's address) and available in the public record at www.charlestoncounty.org from "exactly" March 15th, 2013, which was before the filing of the Lis Pendens, and through the date of the Master's deed to Appellants in May of 2014. (R. pp. 264-265); (R. p.44).

The Master did not find credible the evidence of a title search that the HOA offered into evidence as proof of their title search. The HOA relied upon and produced the same snapshot of a website search that the Appellants had offered as their due diligence. (R. pp. 333-334). The

HOA's search was conducted through an area of the Charleston County Website that clearly disclosed it had not been updated since 2011. (R. p. 144).

The screen shot relied upon by the HOA of the outdated web site was offered as the HOA's proof of due diligence in searching title. It is the same evidence that the Appellants offered as their proof of due diligence. It did, indeed, reflect an address where service had been attempted, but did not reflect the Respondent as the record owner. It reflected his Mother and Father as the record owners. This had not been the case since before Mr. Murray had taken title from his parents on October 26th of 2011. (R. pp. 333-334).

The HOA did not search probate court records despite the fact that the person they were attempting to serve would have been Ninety years of age. (R. p. 45). This is despite the fact that two of the three addresses at which service was attempted were assisted living facilities. (R. pp. 218-219). The Probate Court Records reflected John A. Murray as his father's Personal Representative and disclosed his correct address, which (again) was the Fourth address on the HOA's list of possible addresses. (R. p. 47).

It was further established that upon discovering that a hearing had been held, Mr. Murray emailed the HOA's counsel to inquire as to the nature of the claim⁵ and to pay any amounts to be due under any claim. (R. pp. 258-260); (R. pp. 46-47). He received no response to that email. (R. 258-260). The Master confirmed with Plaintiff's counsel that the email address was correct. He further phoned the HOA's counsel on two occasions, however, the recording would not accept messages. (R. pp. 258-260). The Master confirmed with Plaintiff's counsel at the hearing that this was, in fact, her address. (R. p. 146, lines 2-14).

⁵ By way of clarification the "Rebuttal Affidavit" was mislabeled by counsel and should have been labeled as it was offered, a "Corrective Affidavit to the Defendant's 6/30/2014 Affidavit".

In making his finding of Gross Negligence in consideration of the above facts and ruling that service was defective the Master found....

".....the actions and inactions of the [HOA] so lacking as to rise to gross negligence in breaching its duty to provide adequate notice to [Mr. Murray] of the foreclosure action filed against him. This Court finds gross negligence in the [HOA's] failure to exercise the requisite degree of care. "A (party) is guilty of gross negligence if (they are) so indifferent as to the consequences of (their) actions as not to give slight care to what (they are) doing." *Hamilton v. Charleston County Sheriff's Department* 399 S.C. 252, 731 S.E.2d 727 (Ct. App. 2012) (citing to *Jackson v. The South Carolina Department of Corrections* 301 S.C. 125, 126, 390 S.E.2d 467, 468 (1989) (citing to *Anderson v. Ballenger* 166 S.C. 44, 164 S.E. 313 (1932)). [The HOA's] lack of attention demonstrated a "want of even slight care and diligence (and) a greater want of care than to be understood by the term 'ordinary care'." *Frankel v. Kuriz* 239 F. Supp. 713, 718 (W.D.S.C. 1965) (citing to *Thackston v. Port Royal & W.C.Ry. Co.*, 40 S.C. 80, 18 S.E. 177 (year omitted). [The HOA's] actions and inactions with regards to its duty to provide adequate notice to [Mr. Murray] are only generously described as indifferent to their consequences and lacking in even slight care and diligence."

(R. p. 48-49).

While the Master, at his discretion, relied on a totality of the facts in making his ruling that service was defective, what he found most persuasive was the fact that the Plaintiff did not attempt service at the fourth and fifth addresses, the party they were attempting to serve was revealed to have been born in 1923, and two of the first three addresses had been discovered to be assisted living facilities. (R. pp. 44-46). In applying his discretion to the factual findings, the Master concluded that attempting service at three of the five addresses was insufficient in the attendant circumstances of this case.

The Master's sound ruling that the Plaintiff was grossly negligent in breaching the duty owed the Respondent to provide adequate notice in the attendant circumstances certainly cannot be disputed.

- b. The Master did not err in finding the Clerk of Courts' issuance of the Order of Publication was in error and constituted a structural defect.

The court took of notice the more common standard of not overturning an Order of Publication absent fraud or collusion;

"The Court is mindful of the standard set forth in *Yates v. Gridley*, 16 S.C. 496, 500 (1882) and subsequent cases regarding the finality of the finding of due diligence of the Officer issuing the Order of Publication in the absence of fraud or collusion. *Yarborough v. Collins*, 293 S.C. 290, 293, 360 S.E.2d 300 (1987); *Montgomery v. Mullins*, 325 S.C. 500, 506, 480 S.E. 2d 467 (Ct. App 1997). The Court is also mindful of the volume of Motions for Orders of Publication that the Clerk of Court reviews and makes note of the similarity of the Defendant's name and the name of his father, the party exhibited in the Westlaw address search which was incorporated into Plaintiff's Affidavit to obtain that Order of Publication. The Court further finds that such indifference and gross negligence on the part of the Plaintiff is not normally contemplated and therefore remained virtually indiscernible to our Honorable Clerk of Court prior to the evidentiary hearing of the matter.

To the extent that the Clerk of Court might have and did not discover the grossly negligent efforts to effectuate service, the Court views this as a "structural defect in the constitution of the trial, (defying) analysis by harmless error standards." *State v. Mouzon* 326 S.C. 199, 204, 485 S.E. 2d 918 (1997) (citing to *Arizona v. Fulimante*, 499 U.S. 279, 309, 111 S. Ct. 1246, 1265, 113 L.E 2d 302, 331 (1991)). See also *LaSalle Bank v. Davidson*, 386 S.C. 276, 280, 688 S.E. 2d 121 (2009). This defect "effected the trial from beginning to end" (*Id* at 280) and resulted in a default judgment of foreclosure."

(R. p. 49).

There can be no doubt that the Respondent has been exponentially harmed in this case. He is at risk of losing an estimated amount of two hundred thousand dollars in equity which represents his retirement funds. He has incurred multiple thousands of dollars of attorney's fees. He stands to lose his birthright inheritance which is now his home, and he continues to be emotionally taxed.

La Salle is also an action in foreclosure in which it was the opinion of the South Carolina Supreme Court that issuance of a final judgment of foreclosure in which the Judge was not present at the hearing amounted to a structural defect that deprived the Defendant of the opportunity to be heard before an impartial tribunal, procedural due process, and the court

therefore lacked jurisdiction to enter the judgment. In this instance, the Clerk of Court's issuance of an Order of Publication that was supported by an attached exhibit of an address search of a prior title holder (R. p. 217) cannot be subject to a harmless error analysis. This breakdown effected the constitution of the trial mechanism and lead directly to a default judgment against the Respondent. This case is even more compelling in that the structural defect arguably caused Respondent's default, as opposed to the *La Salle* case in which the defendant had already defaulted before the defect occurred.

c. The Plaintiff failed to strictly comply with the Order of Publication and violated the South Carolina Code § 15-9-740.

In violation of the Order of Publication and the South Carolina Code, Plaintiff did not mail the Summons and Complaint to the last known address of the Respondent. Plaintiff, instead, mailed a copy of the Summons and Complaint to an address at which they had not even attempted service. Plaintiff did not strictly comply with South Carolina Code § 15-9-740 as required by law, *Caldwell v. Wiquist*, 402 S.C. 565, 741, S.E. 2d 583 (Ct. App. 2013).

III. The record of the proceedings reflects alternate sustaining grounds under Rule 60 (b) of the South Carolina Rules of Civil Procedure in support of the Master's ruling in favor of the Respondent.

Should this Court decide that the Appellants are not Bona Fide Purchasers for Value but disagree with the Master's findings that it lacked jurisdiction over the Respondent as service was defective, the Respondent should be relieved from Judgment under Rule 60 (b)(1), (b)(3) of the b(5) South Carolina Rules of Civil Procedure. The Master specifically reserved his jurisdiction to do so in his Order of February 5th, 2015. (R. p. 50).

The South Carolina Rules of Civil Procedure

a. Sustainable under Rule 60 (b) (1), SCRC.P.

The Respondent met the burden of proof for relief from judgment due to mistake, inadvertence, surprise, or excusable neglect under Rule 60(b)(1). In making this determination the following factors are relevant; "(t)he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of (a) meritorious defense, and the prejudice to the other party.", *Hill v. Dotts*, S.E. 2d 894, 345, S.C. 304, 308 (2001). The HOA was awarded a default judgment on March 18th, 2014 and Respondent's motion was served on May 15th, 2014. Respondent had no knowledge of the judgment against him until on or about March 26th. The passing of the Respondent's parents and the attendant probating of the estate was a hectic time of stress due to their slow decline. (R. p. 351);(R. p. 145, lines 12-19). The Respondent, upon discovery of the action, immediately attempted by phone and email to contact the HOA's counsel to discuss the nature of the action and to pay any amounts he owed. The Respondent had the ability to pay the debt. (R. p. 46).

The Respondent asserts perhaps the most salient of facts in the record remains that a search of the docket at the time of initial consultation with any and all such attorney's revealed that no sale was to take place prior to May 20th, 2014, after actual service on the Appellants. Any and all attorneys that the Respondent consulted with would have viewed that in the docket. The Court took judicial notice of its own customary procedure of not setting sale dates until the second month post judgment. Of record is the Judge's acknowledgment thereto at the hearing of July 3rd, 2014. (R. p. 144, lines 24-25, p. 145, line 1).

Upon receiving no response to his inquiry after a reasonable time, Respondent began to consult with attorneys and filed the motion within a reasonable time thereafter given the nature of the case.

Due to the facts of the case, the Respondent is not privy to all of the HOA's collection

efforts prior to the filing of the action. As such, it is not possible for the Respondent to be fully aware of available meritorious defenses, and he cannot know without further development of the record. The Respondent asserts that this prong is moot to the extent he would have paid any bona fide amount owed. The record reflects he had the means to do exercise his equitable right of redemption. (R. p. 46) (R. p. 263).

On information and belief, the Respondent had meritorious defenses amongst which were Plaintiff's failure to mitigate damages, violations of collection statutes, and payment. The "other party in the action" being the Plaintiff has not been prejudiced as they have been paid the full value of their claim and they do not appear in this appeal.

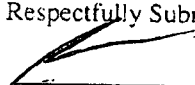
The Respondent is entitled to relief from judgment under Rule 60 (b)(1).

CONCLUSION

The Respondent respectfully requests that this Honorable Court affirm the rulings of the lower court in that the lower court made no error in its application of the law as it relied on equitable principals, controlling statutory authority, legal precedence, its own discretion, and undisputed factual findings.

November 30th, 2015

Respectfully Submitted,



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The below-signed counsel certifies that this brief complies with Rule 211 (b),
SCACR.

Respectfully submitted,

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November ³⁰~~28~~, 2015

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DEC 01 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Appellate Case Number: 2014-002018
Case Number: 2013-CP-10-04248

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DEC 01 2015

SC Court of Appeals

Belle Hall Plantation Homeowner's Association, Inc., Plaintiff,

v.

John A. Murray, Trustee of the John E. Murray & Gloria C. Murray Family Trust, Respondents,

David Conor Keys & Karen Keys, Appellants.

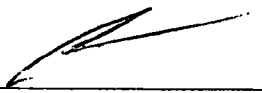
PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellant and the Respondent, with a copy of *Brief of Respondent* and overnight mail copies of the same by Federal Express to the following addresses:

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY SC Court of Appeals
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2013-CP-10-4248

Belle Hall Plantation Homeowner's Association.....Respondent,

v.

John A. Murray, Trustee of the John E. Murray and
Gloria C. Murray Family Trust, Defendant

Of whom David Conor Keys & Karen Keys, Third Party Plaintiffs.....Appellants.

FINAL REPLY BRIEF OF APPELLANTS

November 22, 2015
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INTRODUCTORY STATEMENT

In this Reply Brief, Appellants address and reply only to those allegations and issues raised directly in the substance of Respondent's Initial Brief. Appellants would assert that any issue or allegation raised in Appellants' Initial Brief, but not address by Respondent in the body of its initial brief, or addressed with only conclusory remarks is deemed conceded to and abandoned. First Savings Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994) ("issues not argued in the brief are deemed abandoned"); R& G Construction, Inc. v. Lowcountry Regional Transportation Authority, 343 S.C. 424, 437, 540 S.E.2d 113 (Ct. App. 2000) ("An issue is deemed abandoned if the argument in the brief is only conclusory."); Fields v. Fields, 342 S.C. 182, 536 S.E.2d, 684 (Ct. App 2000) (fn. 8: "she fails to argue the issue in the body of the brief and it is therefore deemed abandoned."); Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281 (2003) (fn. 3: "Since the County failed to argue this issue in the body of its brief, the issue deemed abandoned."); Muir v. CR Bard, Inc., 336, S.C. 266, 519 S.E.2d 583 (Ct. App.1999) (conclusory arguments are deemed abandoned); Fields v. Melrose Limited Partnership, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993) (an issue is deemed abandoned on appeal and therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority).

I. APPELLANTS ARE BONA FIDE PURCHASERS FOR VALUE.

A. It was an error for the Master to decline to rule on Appellants' BFPV status prior to the Order of April 9, 2015.

Respondent asserts in its brief: "[t]he Master had initially declined to rule on the issue of Appellant's contested status as a Bona Fide Purchaser for Value. He reiterated this in his Amended Order of February 5, 2015, when he ruled that he did not find it necessary to reach this issue in light of his having ruled the judgment and sale void." (Resp. In. Br., page 3) However,

statute and case law make clear: “[u]pon 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. . .” S.C. Code Ann. § 15-39-870.

In this case Appellant’s asserted they are Bona Fide Purchasers for Value (“hereinafter BFPV”) in their initial Memo in Opposition to the Motion to Vacate filed on July 3, 2014 (R. pp. 321-334); during the July 3, 2014, hearing on the Motion to Vacate (R. p. 138, lines 5-9); in a Motion to Reconsider the Order filed July 22, 2014 (R. pp. 79-91); during the hearing on August 18, 2014 (R. p. 157, line 18- R. p. 163, line. 4); in a Motion to Reconsider the Order filed August 20, 2014 (R. pp. 99-117); in a Motion to Reconsider the Order filed February 10, 2015 (R. pp. 118-126); in Appellants second memorandum on the subject filed April 7, 2015 (R. pp. 380-390); and during a hearing on April 9, 2015 (R. p. 194, line 4 – R. p. 199, line 19). However, it was not until the Order filed April 9, 2015, that the Master finally relinquished and ruled as to Appellants BFPV status. The statute makes clear that a ruling of BFPV is dispositive. Appellants asserted they are BFPV, and the Master should not have refused to rule on it for nearly a year, given that the ruling could have had a dispositive outcome in a matter.

B. Appellants acquired the deed in good faith.

The Masters April 9, 2015, Order found Appellants met two of three criteria for BFPV, but did not meet the third criteria namely purchase before notice of a title defect or lien. (R. pp. 51-53). Respondent asserts that Appellants did not purchase in good faith because over a week after the sale on May 15, 2015, Appellants learned Respondent intended to file a motion, and then Appellants tendered the *balance* of the purchase price on May 16, 2015. Respondent asserts Appellants had a duty to immediately inform the Court of this knowledge, or to present that fact

at the hearing on July 3, 2015. Appellants did not do so on the opinion and belief that the fact was a not issue which needed to be raised. Further Respondent never raised the fact either, though respondent knew or should have known the relevant facts with regard to the alleged issue. Without, Respondent raising the issue Appellants were unaware it was a subject which Respondent believed should be addressed. Respondent and/or their counsel new the date of the phone call in question and had the ability to look at the online public record or ledger for the case to see that Appellant's tendered the balance on May 16, 2015¹. (R. pp. 396-399). Respondent could have easily raised the alleged issue at the original hearing on July 3, 2015, when Appellant's asserted they were BFPV, nonetheless Respondent did not raise the alleged issue to Appellants or the Court.

Respondent asserts "[t]he law on this issue is quite clear" but then simply reiterates the statutory language without further support or citation to the assertion the law is clear. Appellants, however would contend that our state Courts of Appeal have not addressed the issue before this Court. The issue before the Court is two-fold. First, when is the date of notice determined from? Is it the date of sale, or the date of payment of the remainder of the balance due from the judicial sale, or as the Master contends the date of execution of the deed? Second,

¹ At the August 18, 2015 hearing, Respondent's Counsel stated with regard to this issue: "To the extent that this should have been addressed at the last hearing I would argue that it was newly discovered evidence. While I attempted to find out when Mr. Keys had actually paid for the deed some people in your office might be able to tell you that. I could not obtain that. I obviously could tell when it was executed, but the timing is highly suspect." (8/18/14 Trans. p. 21, Ins 16-25). Again Respondent had the means and the knowledge to raise this alleged issued on July 3, 2015, but did not do so. Additionally it is disconcerting Respondent beginning on the July 3, 2014, and thereafter has continued to call attention to the fact that the public record or ledger for this case contains a notation dated 3/31/14, which states as a caption or description: Hearing held – "No Sale before May 20, 2014" but failed to acknowledge that the same record or ledger that she called to the Courts attention on July 3, 2014, also contains a caption or description dated May 16, 2014, which states: "Keys, David Conor: Master/Sale Amount Paid in Full" (See public record/ledger screen shoot; 7/3/14 Trans.: p. 6, Ins 16 – 24).

what constitutes notice of a lien or defect in the title to real property, or put another way, does a motion to vacate an order of foreclosure and sale constitute notice of a lien or defect in title to real property? Appellants would assert that there are a number of South Carolina District Court Cases which can provide guidance upon the subject.

1. The date of sale should be the date for determining when notice was required for the BFPV statute.

May 6, 2014 is the date of sale and the relevant date for determining whether the Appellants' met the payment prior to notice of a title defect element of BFPV. Bankruptcy Courts in South Carolina as well as the District Court of South Carolina have held "the actual foreclosure sale as the cut-off date for curing mortgage defaults." In re Watts, 273 B.R. 471, 476 (Bankr. D.C. 2000). *In re Watts*, speaking of the debtors right to cure or redemption noted: "The Court acknowledges that the foreclosure process may require steps following the auction sale in order to conclude the sale and make it effective; however, . . . [p]recedent in this Court and this District has found that upon the falling of the gavel, the debtor is left with bare legal title; thus, the fact that the sale procedure has yet to be completed does not alter the fact that the only right that debtor is left with is the right to raise questions regarding the sale procedure."² Id. The court went on to state: "[a]s the court in In re Bobo emphasized, [w]hatever process is used to bid up the property, the property is sold at the foreclosure sale once the rights and obligations vest in an entity to acquire the property as a result of making the highest bid. The additional steps of obtaining court approval . . . paying the purchase price, and recording the deed may be necessary to consummate the sale, but that does not alter the fact that the purchaser's right to acquire the property has intervened - - that the property has been sold at a foreclosure sale - - to the detriment of the debtor." Id. (quoting In re Bobo, 246 B.R. 453, 456 (Bankr. D.C. 2000). Our

² No allegations of an improper sale procedure have been raised in this matter.

Bankruptcy Court has continually held “the sale is over when the hammer falls.” In re Riverfront Props., LLC, 405 B.R. 570, 573 (Bankr. D.C. 2009) (Citing : In re Watts; In re Holmes, C/A No. 99-08796-W (Bankr. D. S.C. 11/23/1999); In re Brown, C/A No. 87-02507-B, Adv. Pro. 87-0281-B (Bankr. D. S.C. 1/28/1988); In re Agripen Grain Co., C/A No. 83-03606; Adv. Pro. 86-0413-D (Bankr. D.S.C. 7/31/1987).

In this case Appellants purchased the property from the Master at a public judicial auction on May 6, 2014, at which time Appellants tendered the initial required purchase-money deposit to the Court. On May 6, 2014, Appellants had no knowledge of an adverse claim to title, that the Trust intended to file a motion to vacate, or knowledge of any other alleged defect in the Appellants’ title to the subject property³. The Master in response to the Appellants assertion that May 6, 2014, was the date notice should be determined from stated: “[Appellants] argues that the sales date – not the deed issuance date – determines when notice of a defect should be known; however, this court finds, based upon its experience that no fixed date can determine when the interests of justice dictate a sale should be overturned.” (R. pp. 51-53) As to the BFPV statute this Court has stated that “The rationale for the statute is the well established public policy of protecting good faith purchasers and upholding the finality of a judicial sale.” Robinson v. Estate of Harris, 378 S.C. 140 662 S.E.2d 420 (Ct. App. 2008). This rationale would be further promoted by a bright line rule that a potential purchaser only be responsible for knowing what is in the public record up to the point of sale. To do otherwise as the Respondent and the Master contend would create a bizarre result that a potential bidder must fend against matters that may arise after the point of public sale. That is a result that defeats the well-grounded public policy

³ The Trust did not even retain counsel until May 9, 2014. (7/3/14 Aff. Mur)

supporting the finality of a judicial sale. The Master erred by stripping the concept of finality of judicial sales and penalizing the successful bidder as a result of after sale events.

2. Notice of an intent to file the Motion to Vacate did not constitute notice of a defect or lien in the title to the real property.

The Master's Order states: "[t]he record establishes that the Purchasers, with notice of a potential claim from the defaulting owner, rushed to the court to pay the balance due. . . . Therefore, the Court finds the [Appellants] did not act in good faith and with integrity of dealing." (R. pp. 51-53). Appellants would assert that pursuant to this Court's findings in Ashton, notice of an intent to file a Motion to Vacate did not constitute notice of a lien or defect in the title to the real property. Bloody Point Property Owners Association, Inc. v. Ashton, 410 S.C. 62, 762 S.E.2d 729 (Ct. App. 2014). Respondent contends that the motion which was subsequently served upon Appellants provided Appellants with notice that the Defendant had not been properly served with notice of the matter, which therefore constituted notice of a defect in Appellant's title to the real property. Respondent asserts its Motion to Vacate served as a notice to Appellants of a defect in Appellants title because it alleged the Trust had never properly been served. Appellants assert there is a distinction between a defect in title to real property and an alleged defect in the procedure of a civil action, and in support of that assertion Appellants cited Ashton which states:

"It must be presumed from the judgment rendered that the Court considered and adjudicated the regularity and sufficiency of each and every step in the proceedings leading up to it, including the sufficiency of the complaint, the issuance and service of process upon the defendants, and the rights and interests of the parties to the action under the allegations and evidence; and although the conclusions with respect to those matters, or any them, might have been erroneous, so that they would have been reversed on appeal they do not make the judgment void collaterally." Ashton, at 68 (quoting: Gladden v. Chapman, 106 S.C. 486, 91 S.E. 796, 797 (1917)).

Appellants as purchasers at a judicial sale are entitled to rely upon the Courts rulings in the foreclosure action as to a potential claim of defective service asserted by the Trust. The Clerk of Court issued an Order of Publication and the Court determined in the Order of Foreclosure that the Trust had properly been served by publication when the Court stated service had been properly achieved. (R. pp. 9-19) The Trust's Motion did not constitute a notice of and adverse claim or defect of title to Appellants.

C. Appellants testimony and pleadings were not false and misleading.

Respondent in its brief asserts "The facts and history of the case support the Master's findings. Sadly they demonstrate a persistent pattern of false and misleading pleadings and testimony by the lead Appellant. . . Had the lead Appellant been forthcoming with the facts at the initial hearing in regards to the circumstances under which the Appellants had acquired title to Respondent's property, the Respondent would have then been afforded the opportunity to object to their status and the Master would have ruled on that objection. The sole reason this case required multiple hearings and orders is that the Appellants failed his duty to be candid with the court and the facts were disclosed in piecemeal fashion. The situation did not become clear to the Master until the final hearing, which occurred on April 9th, 2015." (Resp. Brf, p. 5, 8).

Appellants' affirmatively dispute the veracity and accuracy of Respondent's statements. As stated above Appellants asserted at the hearing on July 3, 2015, that they were BFPV, and Respondent had the means and knowledge to raise objection to that assertion but elected not to do so. Thereafter, as Respondent noted in its brief, on August 7, 2015, Respondent's counsel, contact Appellants and asked for the first time when Appellants' learned Respondent intended to file a motion, to which Appellant's responded May 15, 2015, and stated how they learned the information. That was the first time Respondent elected to question or raise the alleged issue to

Appellants. Then on August 14, 2014, Respondent filed an affidavit of Respondent's counsel proffering testimony on the May 15, 2014, and August 7, 2014, phone conversations. Not till the hearing August 18, 2014, was the alleged issue presented before the Court wherein Appellants stated:

"The big fact that we disagree as to the meaning of is that on May 15th [Respondent's counsel], contacted [Appellant's Employer], for whom I work. They discussed a number of different things. In the course of it [Respondent's Counsel] mentioned to [Appellant's Employer] this matter. [Appellant's Employer] recognized what was she was talking about and said, the gentlemen who works for me is the purchaser. They stopped talking about it. That's May 15th. I had knowledge on May 15th. May 16th, I received the motion. On May 16th I also tendered the remainder of the money. *I would assert that again that it goes back to the date of sale.* If you look at Spence v. Spence which is one of the commonly cited cases as to bona fide purchaser. . . page 119 – it's an old case, 1916, Walker v. Taylor, and they're referencing that it's not a bona fide purchaser because they had actual knowledge prior to the sale. They didn't have any actual knowledge prior to the sale, your Honor. Again, I would assert that it is not a defect in title if they filed a motion." (R. p. 162, line. 1 – R. p. 163, line 5.)

Respondent's assertion the Appellants have made false statements and misrepresentations to the Court is completely inaccurate as exemplified by record before this Court. Upon the first instance of this alleged issue being raised by Respondent, to Appellants and the Court, Appellants openly and honestly presented all the facts within their knowledge regarding the alleged issue.

Additionally, Respondent was incorrect in stating that due to Appellants' alleged misleading statements to the Court, the Master was unable to make a determination as to Appellant's BFPV status until April 9, 2011. Respondent incorrectly asserts "[t]he sole reason this case required multiple hearings and orders is that the Appellants failed his duty to be candid with the court and the facts were disclosed in piecemeal fashion. The situation did not become clear to the Master until the final hearing, which occurred on April 9th, 2015" (Resp. Brf, p. 5, 8). August 18, 2014, was the first time Respondent raised this alleged BFPV issue before the Court.

On August 18, 2014, Appellants provided all their knowledge on the subject to the Court as quoted above. On August 18, 2014, both sides had presented the Court the facts and arguments regarding the alleged BFPV issue. However, the Court did address the issue on August 18, 2014; nor by its Order denying reconsider filed August 20, 2014; nor by its Order filed September 19, 2014, denying a subsequent motion to reconsider; nor by its Order filed February 10, 2015, amending the Order of July 22, 2014. Between August 18, 2014, and prior to April 9, 2015, the Court could have addressed, the alleged BFPV issue asserted by Respondent. The Court's failure to address whether Appellants were BFPV, was not the result of false or misleading statements by Appellants.

II. THE MASTER ERRED IN RULING THE DEED, SALE AND ORDER OF FORECLOSURE WERE VOID.

A. The Master Erred in granting Respondent's Motion to Amend the Order pursuant Rule 60(b)(4), SCRPC.

1. Respondent failed to timely move pursuant to Rule 60(b)(4).

"It is well settled that ordinarily a party may not receive relief not contemplated in his pleadings. While it is true that pleadings in the [] court must be liberally construed, this rule cannot be stretched so as to permit the judge to award relief not contemplated by the pleadings. Due Process requires that a litigant be placed on notice of the issues which the court is to consider." Heins v. Heins, 344 S.C. 146, 152, 543 S.E.2d 224 (Ct. App. 2001). A party cannot use Rule 59(e) to present an issue the party could have raised prior to judgment but did not. "Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier." Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (quoting: Natural Resources Defense Council, 705 F. Supp. 698, 701 (D.D.C. 1989), vacated on other grounds, 707 F. Supp. 3 (D.D.C. 1989)). A party cannot request the Master amend his Order to

make findings of fact and conclusions of law on issues not previously raised before the Master issued the Order. Id. A party cannot raise a defense to an asserted issue by way of a Rule 59(e) motion which could been raised prior to the order See Patterson v. Reid, 318 S.C. 183, 456 S.E. 2d 436 (Ct. App. 1995); In re Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004); Gainey v. Gainey, 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009)

Here the Trust did not assert that the Order of Foreclosure and Sale should be vacated pursuant to Rule 60(b)(4) SCRCP, until after the Master had filed the Order of July 22, 2014. The Trust's August 4, 2014, Motion to Amend is the only time the Trust ever made a reference to Rule 60 (b)(4), SCRCP. The Motion simply makes an unsupported conclusory remark stating: "Conclusions of Law: 1) The Order of Judgment and Foreclosure dated [sic] is Void under SCRCP 60 (b)(4)."⁴ (R. pp. 92-98) The Trust did not cite any facts or case law to support the assertion. The Trust's August 18, 2014, Memorandum does not reference Rule 60(b)(4), nor did the Trust ever reference Rule 60(b)(4) during *any* hearing in this matter. Additionally, Trust never asserted an issue as to personal jurisdiction or due process in any motion, memorandum, or hearing before the Court in this matter. In conclusion the Trust did not timely and appropriately move pursuant to Rule 60(b)(4), SCRCP and the Master abused his discretion in granting the Trust's Motion pursuant to Rule 60(b)(4).

2. Negligence is not an appropriate basis for granting a Motion Pursuant to Rule 60 (b)(4), SCRCP.

"The definition of void under the rule [60(b)(4)] only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. . . The requirements of due process not only

⁴ The Motion also states as conclusions of law that the Order of foreclosure should be granted pursuant to Rule 60(b)(1),(3), and (5) as well.

include notice, but also include an opportunity to be heard in a meaningful way, and judicial review.” Universal Benefits, Inc. v. McKinney, 561 S.E.2d 659 (Ct. App. 2002).

In this case the Court amended its Order of July 22, 2014, to include the additional finding of gross negligence. Gross negligence is not a finding that the court lacked subject matter or personal jurisdiction in this action. Therefore it was an error for the Master to grant, the Respondent’s motion to Amend the Order of July, 22 2014 to find that the Order of Foreclosure and sale should be vacated under Rule 60(b)(4), based upon the Courts finding of gross negligence on the part of the Plaintiff.

3. Respondent slept upon its rights therefore the Master erred in granting relief pursuant to Rule 60(b)(4), SCRCP.

The Courts findings in McKinney are analogous to this matter. In McKinney the Court found that the order should not have been vacated under Rule 60(b)(4), SCRCP, based upon due process or personal jurisdiction because it was undisputed the party was afforded notice of the order, an opportunity to be heard and to receive judicial review of the order. The Court found the party received notice in time to move for reconsideration pursuant to Rule 59(e), SCRCP, and the party could have filed an appeal, but did not timely avail itself of either procedural remedy. The same is true in this case. On or about March 26, 2014, the Trust had actual notice that a foreclosure hearing had been held. (R. pp. 258-263) The Master did not file the Order of Foreclosure until April, 8, 2014 (R. pp. 9-19). The Trust had plenty of time to avail itself of the procedural remedy provided by Rule 59, SCRCP, and if the Master denied the motion for reconsideration, the Trust could have sought further judicial review through the Court of Appeals. However, the Trust did not timely avail itself of these remedies. Therefore the Master abused his discretion to Master when he amended his Order to state that Order of Foreclosure was void pursuant to Rule 60(b)(4).

B. The Master erred in finding the Clerk of Courts Order of Publication was a structural defect in the case.

1. The Master cannot ignore binding precedent

In this case, as Appellants described in great detail in their initial brief, the Master lacked the authority to overturn the Clerk of Court's factual findings with regard to the Order of Publication. Appellants' cited the controlling case law and precedent to the Master at every opportunity. Thereafter the Master in his Amended Order of February 10, 2015, stated "The Court is mindful of the standard set forth in *Yates v. Gridley*, 16 S.C. 496, 500 (1882) and subsequent cases regarding the finality of the finding of due diligence of the Officer issuing the Order of Publication in the absence of fraud or collusion. . . To the extent that the Clerk of Court might have and did not discover the grossly negligent efforts to effectuate service, the Court views this as a "structural defect in the constitution of the trial, (defying) analysis by harmless error standards This defect "effectuated the trial from beginning to end" and resulted in a default judgment of foreclosure. [(citations omitted)]. (R. pp. 42-50). The Master's finding that Clerk of Court's findings in the Order of Publication constituted a structural defect in the case is a theory not recognized by the Courts of Appeals of this state, nor supported by the case law of those Courts.

Additionally, though the Master stated that the Plaintiff's attempted service of the Respondent constituted gross negligence and did not involve fraud, nonetheless given the Master's finding of that the actions and/or inactions of Plaintiff resulted in a structural defect of the case, it is worth discussing the distinction between intrinsic and extrinsic fraud in a matter, if only for purposes of analogy.

As Appellants noted in their July 3, 2014, memorandum and during the July 3, 2014, hearing on the motion to vacate there is a distinction between intrinsic and extrinsic fraud.

“Historically this Court has held that in order to obtain equitable relief from a judgment based on fraud, the fraud must be extrinsic.” Raby Construction, L.L.P. v. Orr, 358 S.C. 10, 594 S.E.2d 478 (2004); Bryan v. Bryan, 220 S.C. 164, 66, S.E.2d 609 (1951); Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003). “Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Intrinsic Fraud, on the other hand, is fraud which, misleads a court in determining issues and induces the court to find for the party perpetrating the fraud. The classic case of intrinsic fraud is perjured testimony or presenting forged documents at trial. Allegations that a party failed to disclose documents also generally amount to intrinsic, rather than extrinsic fraud. Relief is granted for extrinsic but not intrinsic fraud on the theory that the latter deceptions should be discovered during the litigation itself, and to permit such relief undermines the stability of all judgments.” Orr, 358 S.C. at 20 (Citations Omitted).

In this case Respondent asserted “Plaintiff presented a false, misrepresentative or fraudulent, and fatally defective affidavit of due diligence to the court.” (R. pp. 67-70). The key words in the assertion are *presented to the court*, the Affidavit of Publication about which Defendant complains was filed with the Court, and was one of the documents within the Court’s purview when the court gave its Order of Publication, and wells as the Order of Foreclosure and Sale. It was within the Courts means and ability to discovery any misrepresentation, deception, or defective nature within the affidavit. If fraud is present as to the Affidavit (which the Appellants would contend it is not), then it is intrinsic fraud and not extrinsic. A motion under Rule 60(b) cannot be granted for instances of intrinsic fraud. Therefore, by way of analogy a the Master erred in determining that *Yate v. Gridley* and its progeny could be disregard because

Plaintiff's actions or inactions with regard to attempted service could not have been discovered by the Clerk of Court and therefore constitute a structural defect in the case.

2. The Master erred in ruling that Plaintiff failed to comply with South Carolina Code Ann. § 15-9-740.

"It is well settled that ordinarily a party may not receive relief not contemplated in his pleadings. While it is true that pleadings in the [] court must be liberally construed, this rule cannot be stretched so as to permit the judge to award relief not contemplated by the pleadings. Due Process requires that a litigant be placed on notice of the issues which the court is to consider." Heins at 152. A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." "Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier." Hickman, 301 S.C. 455, 392 S.E.2d 481 (quoting: Natural Resources Defense Council, 705 F. Supp. at 701, vacated on other grounds, 707 F. Supp. 3 (D.D.C. 1989)). A party cannot request that the Master amend his order to make findings of fact and conclusions of law not previously raised before the Master issued his order. Id. A party cannot raise a defense to an asserted issue by way of a Rule 59(e) motion which could be raised prior to the order See Patterson, 456 S.E. 2d 436; In re Beard, 359 S.C. 351, 597 S.E.2d 835; Gainey, 382 S.C. 414 675 S.E.2d 792.

In this case it was not until after the Order of July 22, 2014, after Respondent's Motion to Amend filed August 4, 2014, and not until Plaintiff's Memorandum filed on August 18, 2014, that Respondent first asserted that Plaintiff violated the publication statute. The Respondent cannot raise this issue for the first time after the Order and for that matter after it filed its motion to Amend. Additionally Respondent does not contend, that the Plaintiff did not publish the Summons and Complaint or that it did not mail a copy to the Respondent at a last known address, rather Respondent contends only that Plaintiff after the Order of Publication had been

granted failed to mail the summons and complaint to the correct last known address for Respondent. Therefore the Master erred in granting the untimely and incorrect request for relief.

III. RULE 60(B)(1), SCRPC, IS NOT AN APPROPRIATE ALTERNATIVE SUSTAINING GROUND IN THIS ACTION.

Respondent asserts that if this Court were to overturn the Master's rulings, then the Order Vacating the Order of Foreclosure and Sale should be affirmed under the additional sustaining ground of Rule 60(b)(1). "[R]espondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it." I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526, S.E.2d 716 (2000). Here, Respondent appears to argue that it should be excused from not promptly making an appearance in the action upon discovering on March 26, 2014, it had missed a foreclosure hearing on the merits a week prior. Further Respondent appears to assert that after attempting to contact Plaintiff unsuccessfully on or about March 26, 2014, it was reasonable for Respondent to wait until May 12, 2014 to retain an attorney though Respondent was aware a foreclosure hearing on the Merits had been held on March 18, 2014.

"Under Rule 60(b)(1), SCRPC, a party may be relieved from a final order for "mistake, inadvertence, surprise, or excusable neglect. In determining whether to grant a motion under Rule 60(b), the trial judge should consider (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." Micronics, Inc., v. South Carolina Department of Revenue, 345 S.C. 506, 510-11, 548, S.E.2d 223 (Ct. App. 2001). "A party must make a showing that failure to avoid the mistake was justified." Coleman v. Dunlap, 306 S.C. 491, 495, 413 S.E.2d 15 (1992). "[A] party may not generally use Rule 60(b)(1) as a vehicle for relief from a mistake of law. Hillman v. Pinion, 347 S.C. 253, 256, 554 S.E.2d 427 (2001).

In this case Respondent did not Raise Rule 60(b)(1), SCRCF, as a grounds for vacating the Order, in either its Motion to Vacate or at the July 3, 2014, hearing upon the motion to vacate. It is not until Respondent's Motion to Amend that Order of July 22, 2014, that Respondent first makes a conclusory statement that the Court should grant Respondent relief under Rule 60(b)(1), for failing to answer and for failing to file a motion to reconsider the order after acquiring actual knowledge before the order of foreclosure had been filed. Additionally Respondent did not meet the elements for determining whether it is appropriate to grant relief pursuant to Rule 60(b)(1), SCRCF.

As to the first, element respondent asserts that upon learning of the foreclosure action Respondent was prompted file a motion to vacate. However, Respondent's actions evidence a continued inaction and/or dilatory action for a period of years. As Respondent stated in its brief it took title to the property on October 26, 2011 (Resp. Brief p. 11). Respondent does not contest that it failed to pay the assessments due to Plaintiff for a period of years, though as Respondent states it had the ability to pay. (R. pp. 258-263). On March 26, 2014, Respondent learned that a foreclosure hearing on the merits had been held March 18, 2014, and attempted to contact Plaintiff, unsuccessfully. (R. pp. 258-263). Respondent made no further attempt to pay the debt it admitted was owed until after the sale. An Order of foreclosure was filed on April 8, 2014, giving Respondent plenty of time to file a Motion to Reconsider after learning of the foreclosure. Respondent did not file a Motion to reconsider and in fact waited for more than a month after the Order of Foreclosure until retaining counsel to file the Motion to Vacate. (R. pp. 258-263). As Respondent stated: "When the tenants put it on my doorstep and I looked at it, the next day I contact the [Plaintiff's Counsel]. . . I just waited for some kind of response. And when it didn't come that's when I went out and got lawyers. I was not aware --the date on the letter that I

received had already passed, so I assumed that everything had already happened and just waited for her to come back to me. And when she did not it was a couple weeks and I contacted lawyers.” (R. p 145, line 17 – R. p. 146, line 1). The sale was held on May 6, 2014. On May 9, 2014, Respondent retained counsel, and on May 19, 2014, Respondent’s Motion to Vacate was filed with the court. After Respondent learned a foreclosure hearing on the merits had occurred Respondent was dilatory in taking available actions to protect Respondent’s interest in the Property.

As to the second element, the reasons for the failure to act promptly, Respondent asserts that its dilatory actions were the result of attending to the probate estates of the Trustee’s parents. However unfortunate events of the Trustee’s parents passing, they are too far removed and remote from the relevant events with regard to this action to be a proper basis for the Respondents dilatory inaction. The July 3, 2014, Affidavit of John A. Murray states that Respondent *took title to the property on* October 26, 2011, thereafter after the Trustee’s parents passed in November of 2011 and June of 2012. Though Respondent failed to make assessment payments to Plaintiff in 2012 and 2013, this action was not initiated until July of 2013, and Respondent upon gaining knowledge of the action did not fail to act in protection of Respondent’s rights in the action until after March 26, 2014.

As to the third element, the existence of a meritorious defense, Respondent states: “On information and belief, the Respondent had meritorious defenses amongst which were Plaintiff’s failure to mitigate damages, violations of collections statutes, payment.” With regard to all of the asserted meritorious defenses, Respondent failed to raise the defense prior to this appeal and fails state anything more than a conclusory remark with regard to each. Wilder Corp v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). (A party cannot raise an argument for the first time on appeal);

Construction, Inc. v. Lowcountry Regional Transportation Authority, 343 S.C. 424, 437, 540 S.E.2d 113 (Ct. App. 2000) (“An issue is deemed abandoned if the argument in the brief is only conclusory.”);

With regard to the mitigation of damages Plaintiff’s “only duty was to take reasonable steps to avoid those damages which were avoidable once the contract was breached.” Bannon v. Knauss, 282 S.C. 589, 594, 320 SE2d 470 (Ct. Appeals 1984). In this case Respondent admittedly failed to pay assessments to Plaintiff for a period of years. Plaintiff sought to limit further damage by initiating foreclosure to recover payment of the amounts owed. Therefore Plaintiff did mitigate its damages.

With regard to the to the assertion that Plaintiff violated collection statutes, the statement is ambiguous at best. However, to the extent Respondent is referring to the Fair Debt Collection Practices Act and/or the South Carolina Consumer protection code, neither are applicable causes of action to assert against Plaintiff. See 15 U.S.C 1692(a)(6) (A person or entity attempting to collect a debt owed to itself is not a debt collector for purposes of the FDCPA.), S.C. Code Ann. § 37-1-201(1)(a) (This title only applies where a consumer of this state was issued credit.).

Finally with regard to the assertion that the Master’s Order could be affirmed on alternative sustaining grounds pursuant Rule 60(b)(1), SCRCF, Respondent states: “[t]he “other part in the action” being the Plaintiff has not been prejudiced. . .” Respondent fails to recognize that Appellants by purchasing the property at sale and being deeded the property by the Master, are a party to this action with standing to dispute Respondent’s claims and appeal the Master’s ruling. Appellants would assert that they have been greatly prejudiced by the Master vacating the sale and Appellants deed, stripping Appellants of their possession and control of the property,

and affirmation of the Master's Order on any additional sustaining grounds would prejudice Appellants further.

Additionally, Respondent asserts that when he initially consulted with his counsel, counsel reviewed the record for this case and saw an alleged notation that the sale should not take place prior to May 20, 2014 (Resp. Brief, p. 15; R. p. 132, lines 16-24). However, there is no evidence that Respondent actually mistakenly relied upon this alleged notation in failing to act prior to the sale, and further the evidence appears to show that Respondent and/or his counsel were unaware of the May 20th notation until May 9, 2014, when Respondent's counsel examined the public record or ledger or for the case, which also noted that a sale occurred on May 7, 2014. (See Resp. Brief, p. 15; R. p. 132, lines 16-24; R. pp. 258-263; R. pp. 396-399).

Therefore for all of the reasons stated above the Master's Order should not be affirmed by this Court under the alternative sustaining ground of Rule 60(b)(1), SCRPC.

IV. THE MASTER IMPROPERLY DENIED APPELLANTS MOTION TO STRIKE CERTAIN AFFIDAVITS.

"An issue is deemed abandoned if the argument in the brief is only conclusory." Construction, Inc. v. Lowcountry Regional Transportation Authority, 343 S.C. 424, 437, 540 S.E.2d 113 (Ct. App. 2000). Additionally an argument raised only in a footnote rather than the body of a brief is deemed abandoned. Fields v. Fields, 342 S.C. 182, 536 S.E.2d, 684 (Ct. App). A party cannot use Rule 59(e) to present an issue the party could have raised prior to judgment but did not. "Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier." Hickman, 301 S.C. 455, 392 S.E.2d 481 (quoting: Natural Resources Defense Council, 705 F. Supp. 698, 701 (D.D.C. 1989), vacated on other grounds, 707 F. Supp. 3 (D.D.C. 1989)). A party cannot request the Master amend his Order to make findings of fact and conclusions of law on issues not previously raised before the Master

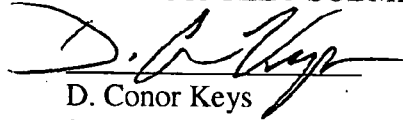
issued the Order. Id. A party cannot raise a defense to an asserted issue by way of a Rule 59(e) motion which could been raised prior to the order See Patterson, 456 S.E. 2d 436; In re Beard, 359 S.C. 351, 597 S.E.2d 835; Gainey, 382 S.C. 414 675 S.E.2d 792.

In this case, Respondent did not file the affidavits in question until after the Order of July 22, 2014, Vacating the Order of Foreclosure and Sale. Additionally in its brief Respondent's sole dispute of Appellants Appeal of the Master's Order Denying Appellant's Motion to Strike certain affidavits comes in footnote two on page seven of Respondent's brief. The footnote is conclusory and failed to cite any authority to support Respondents assertions. Finally, though it is unclear, to the extent Respondent is asserting that Appellant's Motion to Reconsider filed on August 1, 2014, was a motion under 59(c), SCRCP, for a new trial based upon affidavits, that assertion is not correct. As Appellants stated to the Court during the August 18, 2014, hearing on the Motion, Appellants Motion was a standard Rule 59(e), SCRCP, Motion to Reconsider. No new arguments, evidence or allegations of fact were presented in the Motion and Appellants did not file affidavits with the Motion. (R. p. 164, lines. 8-20).

CONCLUSION

Based on the foregoing, the arguments contained in Appellant's Amended Brief and the lack of arguments in Respondent's initial brief this Court should reverse Master's Orders Vacating the Order of Foreclosure and Sale, Granting Respondent's Motion to Amend the Order of July 22, 2014, Denying Appellant's Motion for Stay and a Supercedeas Bond, and Denying Appellant's Motion to Strike Certain Affidavits.

RESPECTFULLY SUBMITTED,



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*Individually and as
Attorney for Appellant.*

November 24, 2015
Charleston, SC

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

NOV 30 2015

APPEAL FROM CHARLESTON COUNTY SC Court of Appeals
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2013-CP-10-4248

Belle Hall Plantation Homeowner's Association.....Respondent,

v.

John A. Murray, Trustee of the John E. Murray and
Gloria C. Murray Family Trust, Defendant

Of whom David Conor Keys & Karen Keys, Third Party Plaintiffs.....Appellants.

PROOF OF SERVICE

I certify that on this 25 day of November 2015, I have served the Final Brief and Final Reply Brief of Appellants upon all counsel of record by depositing a copy in the United States Mail, postage prepaid addressed as follows:

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*Attorney for Belle Hall Plantation
Homeowner's Association, Inc.*


D. Conor Keys

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

OCT 09 2014

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2013-CP-10-4248

73798

Belle Hall Plantation Homeowner's Association, Inc.;
John A. Murray, Trustee of the John E. Murray and
Gloria C. Murray Family Trust Respondent,

v.

John A. Murray, Trustee of the John E. Murray and
Gloria C. Murray Family Trust.....Defendant,

Of whom David Conor Keys & Karen Keys are the Appellants.

MOTION TO STAY AND FOR
AN ORDER OF SUPERSEDEAS PURSUANT TO RULE 241

The Appellants, David Conor Keys and Karen Keys, hereby move the South Carolina Court of Appeals, pursuant to Rules 241 and 266, SCACR, for an Order to Stay the Order Vacating the Sale and Order Foreclosure of the Honorable Mikell R. Scarborough filed on July 22, 2014. Further Appellants move for an Order granting the Motion to Stay and for Order of Supersedes which was denied by the Order of Honorable Mikell R. Scarborough filed on August 20, 2014. The motion is based upon the grounds as set forth below, as well as the pleadings of record for this action filed with the Court of Common Pleas in Charleston County.

1. This action for foreclosure of homeowner assessments was commenced by Belle Hall Plantation Homeowner's Association, Inc. on July 22, 2013.

2. On or about March 26, 2014, the Respondent, John A. Murray, Trustee of John E. Murray Gloria C. Murray Family Trust (hereinafter "Murray") received a notice of foreclosure hearing in this matter. (Affidavit of Murray filed July 3, 2014).

3. On or about April 8, 2014, the Court granted foreclosure and filed an Order of Foreclosure and Sale in the matter.

4. On May 6, 2014, after proper advertisement, the Court sold the subject property by judicial sale to the Appellants as the successful bidders for the amount of \$100,000.00.

5. On May 16, 2014 the Master executed a deed to the subject property in favor of the Appellants, making Appellants Bona Fide Purchasers for Value.

6. On May 19, 2014, Murray filed a Motion to Vacate the Entry of Default and Judgment and to Set Aside the Sale pursuant to Rules 59 and 60, SCRCP.

7. On July 3, 2014, a hearing was held on Murray's Motion to Vacate, at the conclusion of which the Court stated it would take the matter under advisement. Thereafter by telephone conference on July 11, 2014 the Court informed the parties it was granting Murray's motion to vacate and that an order would follow.

8. On July 22, 2014, at 10:30 a.m., Appellants filed a Motion to Stay the Order Vacating the Sale and Order of Foreclosure and for an Order of Supersedeas.

9. On July 22, 2014, at 2:35 p.m., the Court filed an Order stating: "This matter came to hearing on July 3, 2014, by Defendant's Motion to Vacate the Judgment of Foreclosure and Set Aside the Sale in this action filed July 22, 2013. . . The Court finds that in the interest of equity and for good cause shown the Defendant's motion be granted. . . IT IS THEREFORE ORDERED THAT: . . The Master's Deed dated May 16, 2014 conveying the title to David Conor Keys and Karen Keys recorded in Book 0406, Page 909, of the RMC Office for

Charleston County on May 23, 2014 is VOID and title is restored to and vested in John A. Murray, *individually* as previously acquired by a certain deed recorded in Book 0380 Page 338, of the RMC Office for Charleston County on December 23rd, 2013.”

10. The Order of July 22, 2014, took away the real property titled which was titled to Appellants after Appellants had purchased the property at a public judicial sale.

11. On August 18, 2014, the Court held a hearing on Appellants’ Motion to Reconsider the Order Vacating the Sale and Order of Foreclosure; the Appellants’ Motion to Stay and for and Order of Supersedeas; Murray’s Motion to Amend Master Order Vacating the Sale and Order of Foreclosure; and Appellant’s oral Motion to Strike those Affidavit’s filed by Murray on August 14, 2014. The Court heard oral arguments from the parties as to Appellants’ Motion to Reconsider and Appellant’s Motion to Strike, as well as Murray’s Motion to Amend. Thereafter the Court denied the Appellants’ Motion to Reconsider and Motion to Strike, however granted Murray’s Motion to Amend. Additionally, the Court denied Appellants’ Motion to Stay and for Order of Supersedeas prior to providing the Appellants an opportunity to speak to the motion and without hearing oral arguments from any parties on the matter.

12. On August 20, 2014, the Court filed a Form 4 Order Denying Appellants’ Motion to Reconsider, Appellants’ Motion to Stay, Appellants’ Motion to Strike and granting Murray’s Motion to Amend.

13. On September 2, 2014 Appellants filed a Motion to Reconsider the Court’s Order dated August 20, 2014.

14. On September 19, 2014, Appellants served and filed a Notice of Appeal in this Matter.

15. On September 19, 2014, the Circuit Court denied Appellants September 2, 2014, Motion to Reconsider the Courts Order filed August 20, 2014.

16. On September 24, 2014, Appellants' served an Amended Notice Appeal, amending the Notice of Appeal to include the Order of Court filed on September 19, 2014.

17. At present the Charleston County Clerk of Court is in possession of the proceeds of the sale paid to the Court by the Appellants.

18. The July 22, 2014, Order Vacating the Sale and Order of Foreclosure voided Appellants' deed originally executed by the Master on May 16, 2014. The voiding of said deed by the Court has permanently and substantially prejudiced Appellants and is currently causing Appellants to suffer irreparable harm by the loss of significant rental income.

19. Generally injunctive relief is appropriate where the party can demonstrate he will suffer irreparable harm, has a likelihood of success on the merits, and an inadequate remedy at law. Scratch Golf v. Dunes West, 361 S.C. 117, 603 S.E.2d 905 (2004); County of Richland v. Simpkins, 348 S.C. 664, 560 S.E.2d 902, 904 (Ct. App. 2002).

20. In this case all three of the criteria are satisfied.

21. At present Murray has never lived in the subject property and for a couple of years prior to the sale of the property had rented the subject property to a family (hereinafter "Tenants"). After the judicial sale of the property the Appellants rented the property to the same Tenants (Upon information and belief Murray recently terminated the month to month lease the Tenants were operating under).

22. If Appellants are successful in the appeal of this matter, they are and will still continue to be irreparably harmed by the loss of tens of thousands of dollars of rental income during the pendency of the appeal. Indeed Appellants will be without means or adequate remedy

at law to redress that loss caused by the Master in equity voiding Appellants' Deed.

Additionally Appellants could be substantially harmed due to deterioration of the real property due to lack of up keep.

23. By contrast if the Circuit Court had granted the Order of Supersedeas holding the proceeds from sale in bond for the benefit of Murray, Murray's interest in the property would be protected in the event that this appeal results in the affirmance of the Order Vacating the Sale and Order of Foreclosure. The amount of the proceeds from sale currently in the possession of the Court are more than adequate to protect Murray's interest in the property.

24. It should be noted that while the matter is on appeal neither Murray nor Appellants would likely be able to sell the property as appeal would cloud the title to the property and therefore the parties stand on equal footing in regard to the alienability of the property at present.

25. Appellants would also assert that they are likely to succeed on the merits of the appeal, because this Court has rendered decisions which Appellants would respectfully assert are controlling as to the issues this appeal. Such case law includes but is not limited to the following:

1.) Appellants are Bona Fide Purchasers for Value and therefore the sale is final. Bloody Point Property Owners Association, Inc. v. Ashton, Opinion No. 5262 (Ct. App. August 20, 2014); Robinson v. Estate of Harris, 378 S.C. 140 662 S.E.2d 420 (Ct. App. 2008);

2.) A trial court does not have the authority to overrule a finding of the clerk of court as to a finding of due diligence of attempted service for purposes of an order of publication. Montgomery v. Mullins, 480 S.E.2d 467 (Ct. App. 1997); and

3.) The Master made no finding that fraud or collusion were present.

Therefore the Clerk of Court's Order of Publication should not have been overturned by the Master. Wachovia Bank of S.C. v. Player, 341 S.C. 424, 535 S.E.2d 128 (2000). Further a finding of fraud must be established by clear and convincing evidence. Turner v. Milliman, 392 S.C. 116, 125, 708 S.E.2d 766, 770 (2011).

26. For the reasons stated above Murray will not suffer prejudiced or permanent loss if this Court orders the proceeds from the sale to be held as a supersedeas bond and stays the voiding or cancelation of the Appellants' Deed until the resolution of this Appeal.

27. An equitable stay may be invoked if justified by circumstances which outweigh potential harm to the party against whom it is operative. These circumstances are present in the instant action.

28. The intent and purpose of posting a bond is that the appellant will not commit or suffer to be committed any waste thereon. Had the Circuit Court granted the Motion and Stay and for Order of Supersedeas, then the Order of Superdeas ordering the proceeds from sale to be held in bond would have protected Murray from any potential damage Murray may suffer during the appeal. By contrast if Court of Appeals denies this motion then Appellant will suffer irreparable damage and harm.

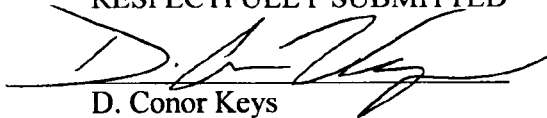
29. Therefore Appellants respectfully request that this Court Stay that certain order of the Honorable Mikell R. Scarborough filed on July 22, 2014, Vacating the Sale and Order of Foreclosure, and voiding Appellants deed. Appellants further request that if such action is necessary this Court instruct the Honorable Mikell R. Scarborough to undertake those steps necessary to reinstate the deed to the subject property back to Appellants to place Appellants back in possession of the subject property. Further Appellants respectfully request that this

Court instruct the Circuit Court to hold in bond the proceeds from the subject judicial sale, which are currently in the possession of the Circuit Court, for the protection of Murray until after a decision on this Appeal is entered.

The undersigned hereby certifies and affirms in accordance with Rule 11(a) of the South Carolina Rules of Civil Procedure that prior consultation with opposing counsel for the purpose of resolving the matter, will serve no useful purpose.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

RESPECTFULLY SUBMITTED



D. Conor Keys
843 Robert E. Lee Blvd.
Charleston, SC 29412
Phone: 843-906-3998
dconorkeys@gmail.com
*Individually and as
Attorney for Appellant*

October 7, 2014
Charleston, SC

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SC Court of Appeals

EXHIBIT A

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OCT 09 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Belle Hall Plantation Homeowner's
Association, Inc.

Plaintiff,

vs.

John A Murray, Trustee of John E. Murray
Gloria C. Murray Family Trust,

Defendant(s)

David Conor Keys & Karen Keys

Third Party – Purchasers

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-4248

**MOTION TO STAY THE ORDER
VACATING THE SALE AND ORDER
OF FORECLOSURE AND FOR AN
ORDER OF SUPERSEDEAS**

FILED
2014 JUL 22 PM 12:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

TO: THE HONORABLE MIKELL R. SCARBOROUGH, AMANDA REECE ATTORNEY
FOR THE DEFENDANT, AND STEPHANIE TROTTER ATTORNEY FOR THE
PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that ten days from the filing of this Motion, or as soon thereafter as it may be heard, the Third-Party Purchasers, David Conor Keys and Karen Keys (hereinafter "Third-Party Purchasers"), will move before this Court pursuant to Rules 62 and 65, SCRCP, Rule 241, SCARC, as well as pursuant to all other applicable rules, statutes or other applicable law, for an Order of Supersedeas staying the Order Vacating the Sale and Order of Foreclosure and further staying or enjoining the Master in Equity from voiding, terminating, or canceling the Master's Deed dated May 16, 2014, which conveys title to the Third-Party Purchasers, and was recorded in the RMC office of Charleston County on May 23, 2014, in Book 0406 at Page 909. The Third-Party Purchasers request the stay until after the resolution of the Third-Party Purchasers Motion for Reconsideration of the Order Vacating the Sale and Order

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OCT 09 2014

SC Court of Appeals

of Foreclosure and if said Motion for Reconsideration is denied and until after the resolution of the appeal by the Third-Party Purchasers, said appeal to be filed in the event the Third-Parties Purchasers Motion for Reconsideration is denied by the Court.

The Third-Party Purchasers further move for an Order of Supersedeas whereby Third-Party Purchasers respectfully request that the Court hold in bond the proceeds from sale which Third-Party Purchasers tendered as the purchase price for the foreclosure sale. The Third-Party Purchasers request that Court Grant this Order in order to preserve the Third-Party Purchasers title to the property. This Motion will be supported by the pleadings in this matter, the public records for this action and the office of the Charleston County RMC, and any applicable statutes, case law, affidavits, memoranda, or other evidence which the Third-Party Purchasers may submit to the Court at the time of the hearing in this matter.

Third-Party Purchasers move on the following grounds:

1. On or about March 26, 2014, the Defendant, John A Murray (hereinafter "Defendant") received a notice of foreclosure hearing in this matter. (Affidavit of Defendant filed July 3, 2014).
2. On April 8, 2014, the Court filed an Order of Foreclosure and Sale in this matter
3. On May 6, 2014, the Court sold the subject property at auction where upon the Third-Party Purchasers were the successful bidders bidding \$100,000.00.
4. On May 16, 2014 the Master executed a deed to the subject property in favor of the Third-Party Purchasers (hereinafter "TP Deed"), making the Third-Party Purchasers Bona Fide Purchasers for Value.
5. On May 19, 2014, the Defendant filed a Motion to Vacate the entry of Default and Judgment and to Set Aside the Sale pursuant to Rules 59 and 60, SCRPC.

6. On July 3, 2014. The Court held a hearing upon Defendant's Motion to Vacate, all parties and/or their counsel were present at the hearing.
7. On July 11, 2014 by tele-conference with all of the parties counsel, the Court informed the parties that the Court would granted Defendant's Motion to Vacate and an Order stating the same would be prepared and filed in the matter.
8. At present that Court is possession of the proceeds of the sale paid to the Court by the Third-Party Purchasers.
9. If the Order to Vacate is granted and the TP Deed is voided, canceled, or terminated by the Master, the Third-Party Purchasers will be permanently and substantially prejudiced and will suffer irreparable harm.
10. Generally injunctive relief is appropriate where the party can demonstrate he will suffer irreparable harm, has a likelihood of success on the merits, and an inadequate remedy at law. Scratch Golf v. Dunes West, 361 S.C. 117, 603 S.E.2d 905 (2004); County of Richland v. Simpkins, 348 S.C. 664, 560 S.E.2d 902, 904 (Ct. App. 2002).
11. In this case all three of the criteria are satisfied.
12. For a couple of years prior to the sale of the property the Defendant rented the subject property to one family (hereinafter "Tenants"). After the sale of the property the Third-Party Purchasers have rented the property to the same Tenants and intend to continue to rent the property until the resolution of these legal proceedings.
13. If the Court were to void or cancel the TP Deed and deny the Third-Party Purchasers Motion for Reconsideration, then the Third-Party Purchasers will file an appeal of the Order granting the Motion to Vacate. If the Third-Party Purchasers were to be successful upon appeal of the matter, then they would still be irreparably harmed by the loss of tens of thousands

of dollars of rental income not earned during the pendency of the appeal, and would subsequently be without means or adequate remedy at law to redress that loss.

14. By contrast if the Court were to grant the Order of Supersedeas holding the proceeds from sale in bond, the Defendant's interest in the property is protected in the event that the subsequent appeal led to the upholding the Order granting the Motion to Vacate. The amount of the proceeds from sale currently in the possession of the Court is many times larger than the income which the Defendant would receive renting the property to the Tenants as he had for the years prior to the sale.

15. It should be noted while the matter is on appealed neither the Defendant nor the Third-Party Purchasers would likely be able to sell the property as appeal would cloud the title to the property and therefore the Defendant and Third-Party purchasers standing on equal footing in regard to the alienability of the property at present.

16. Third-Party Purchasers also stand to be irreparably harmed and prejudiced if the TP Deed were to be voided or canceled by the Master, and thereafter the Third-Party Purchasers were successful in appealing this matter, because there is reason to believe that during the pendency of an appeal the Defendant would allow waste to occur in regards to the Property.

17. The Tenants have informed the Third-Party Purchasers that prior to the sale of the property they had informed the Defendant on a number of occasions that the roof of the property requires repair and is causing water damage to the property. The Third-Party Purchasers have seen the damage first hand and even addressed the damage in discussions with Defendant's counsel. However, Defendant failed for a protracted period of time to remedy the roof defect and water damage, and given its past inactions there is reason to believe that if Defendant were to regain title to the property during the pendency of the appeal, further inaction

on the part of Defendant would lead to greater waste in regard to the property, which would irreparably harm Third-Party Purchasers if The TP Deed was voided by the Master and then subsequently TP Purchasers were to regain title after appeal.

18. The Third-Party Purchasers would also assert that they are likely to succeed on the merits of the appeal, because our State Courts of Appeal have issued controlling and dispositive case law on the issues which would be before the Court of Appeals.

19. Third-Party Purchasers are Bona Fide Purchasers for Value and therefore the sale is final. Robinson v. Estate of Harris, 378 S.C. 140 662 S.E.2d 420 (Ct. App. 2008).

20. A trial court does not have the authority to overrule a finding of the clerk of court as to a finding of due diligence of attempted service. Montgomery v. Mullins, 480 S.E.2d 467 (Ct. App. 1997).

21. There being no evidence of fraud and further the Court did not make a finding of fraud, therefore the Order of Publication is final. Wachovia Bank of S.C. v. Player, 341 S.C. 424, 535 S.E.2d 128 (2000). Further a finding of fraud must be established by clear and convincing evidence. Turner v. Milliman, 392 S.C. 116, 125, 708 S.E.2d 766, 770 (2011).

22. For the reasons stated above Defendant will not suffer prejudiced or permanent loss if the Master in Equity orders the proceeds from the sale to be held as a supersedeas bond and stays the voiding or cancellation of the TP Deed until the resolution of the Motion for Reconsideration and if denied the subsequent Appeal of the Order Vacating the Sale.

23. An equitable stay may be invoked if justified by circumstances which outweigh potential harm to the party against whom it is operative. These circumstances are present in the instant action.

24. The intent and purpose of posting a bon is that the appellant will not commit or suffer to be committed any waste thereon. In this case the subject property in this action is not at risk of waste and further would be secured by the granting of an Order of Supersedes as requested. By contrast if the court were to void or cancel the TP Deed then there a risk that Defendant will commit or suffer to be committed waste upon the property as described above and at a minimum Third-Party Plaintiff's will be irreparably harmed.

The undersigned hereby certifies and affirms in accordance with Rule 11(a) of the South Carolina Rules of Civil Procedure that prior consultation with opposing counsel for the purpose of resolving the matter, will serve no useful purpose.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

RESPECTFULLY SUBMITTED



D. Conor Keys
843 Robert E. Lee Blvd.
Charleston, SC 29412
Phone: 843-906-3998

~~GOOD COPY~~

Attorney for Third Party Purchasers

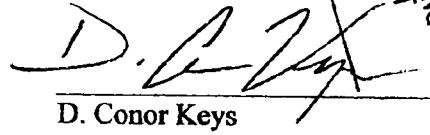
July 2~~2~~ 2014
Charleston, SC

CERTIFICATE OF SERVICE

I certify that on this ²¹ day of July 2014, a copy of the within Third-Party Purchasers Motion to Stay was delivered by hand, addressed to opposing counsels as follows:

Amanda Reece
Reece Law Firm, LLC
871 Low Country Blvd. #200
Mt. Pleasant, SC 29464

Stephanie C. Trotter
140 Stoneridge Drive Suite 650
Columbia, SC 29210
P.O. Box 212069
Columbia SC 29221

BY 
D. Conor Keys

FILED
2014 JUL 22 PM 12:54
JULIE J. ARMSTRONG
CLERK OF COURT

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OCT 09 2014
SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Belle Hall Plantation Homeowner's
Association, Inc.

Plaintiff,

vs.

John A. Murray, Trustee of John E. Murray
Gloria C. Murray Family Trust

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-4248

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Third Party
Plaintiff's Attorney:

D. Conor Keys, Bar No. 100148

Address:

843 Robert E Lee Blvd

Phone: 843-906-3998 Fax _____

E-mail: dconorkeys@gmail.com Other: _____

Defendant's Attorney:

Amanda Reece, Bar No. _____

Address:

871 Low Country Blvd. #200

Mt. Pleasant, SC 29464

Phone: _____ Fax _____

E-mail: _____ Other: _____

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Mtn to stay

Estimated Time Needed: 15 min.

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

D. C. Keys
Signature of Attorney for ☐ Plaintiff / ☒ Defendant *Third Party* Date submitted *7/22/14*

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

EXHIBIT B

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SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013CP-10-4248

Belle Hall

Murray

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

Keys' motion to reconsider is denied. Keys' motion to strike the affidavits is denied. Keys' motion to stay vacating sale and order of file and for supersedeas is denied. Defendant Plaintiff's motion to amend the order is granted. Formal order to follow.

INFORMATION FOR THE PUBLIC INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

524

3062

Judge Code

Date

8/18/2014

EXHIBIT C

525

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OCT 09 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-4248

Belle Hall

Murray

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a) SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

Motion for reconsideration is hereby respectfully denied to petitioners who bought through HOA foreclosure sale.

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

Date

9/17/14

526

D. Conor Keys, Esq.
843 Robert E. Lee, Blvd.
Charleston, SC 29412
Phone: 843-906-3998
D.CONORKEYS@GMAIL.COM

September 2, 2014

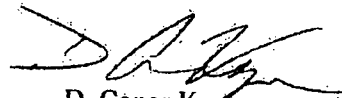
The Honorable Mikell R. Scarborough
100 Broad St, Ste. 266
Charleston, SC 29401

**RE: Belle Hall Plantation Homeowner's Association, Inc. v. John A.
Murray, Trustee of John E. Murray Gloria C. Murray Family Trust
Case: 2013-CP-10-4248**

Your Honor:

Please find, enclosed a copy of the Third-Party Purchasers' Motion to Reconsider the Order of the Court filed on August 20, 2014. Third-Party Purchasers' are filing said motion for the purpose of preserving issues for appeal. If your Honor wishes to rule on the Motion without holding a hearing on the matter, the Third-Party Purchasers would not object to your Honor ruling in such a form.

With kind regards,



D. Conor Keys

Enclosures:
(as stated)
CC:
Amanda Reece
Stephanie Trotter

RECEIVED

OCT 09 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Belle Hall Plantation Homeowner's
Association, Inc.)

Plaintiff,)

vs.)

John A. Murray, Trustee of John E. Murray
Gloria C. Murray Family Trust,)

Defendant(s))

David Conor Keys & Karen Keys)

Third Party – Purchasers)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-4248

**MOTION TO RECONSIDER THE
ORDER DATED AUGUST 20, 2014**

FILED
JULIE J. ARMSTRONG
CLERK OF COURT
SEP - 2 PM 4:48

TO: THE HONORABLE MIKELL R. SCARBOROUGH, AMANDA REECE ATTORNEY
FOR THE DEFENDANT, AND STEPHANIE TROTTER ATTORNEY FOR THE
PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Third-Party Purchasers, David Conor Keys and Karen Keys (hereinafter "Third-Party Purchasers"), will move before the Master-In-Equity for Charleston, County, at chambers, Charleston County Courthouse, Charleston, South Carolina, at such place and time as the court may appoint, in order for the Court to reconsider that certain Order filed on August 20, 2014, Denying the Third-Party Purchasers' Motion to Reconsider; Denying Third-Party Purchasers' Motion to Strike the Opposing Affidavit of Defendant's Attorney Amanda Reece, Affidavit of Anna Howell, and Affidavit of Libby Castle all filed by Defendant on August 14, 2014; Denying the Third-Party Purchasers' Motion to Stay the Order Vacating the Sale and Order of Foreclosure and for an Order of Supersedeas; and Granting Defendants Motion to Amend, (hereinafter "Order") and received by Third-Party

Purchasers on August 23, 2014. Third-Party Purchasers make this motion pursuant to all applicable Rules of Civil Procedure including but not limited to Rule 52, 55, 59, 60, 65, 70, 71, SCRCP, and Rule 241, SCARC. This Motion will be supported by the pleadings in this matter, the public records for this action and the office of the Charleston County RMC, and any applicable statutes, case law, affidavits, memoranda, or other evidence which the Third-Party Purchasers may submit to the Court at the time of the hearing in this matter, as well as the recent Court of Appeals decision in Bloody Point Property Owners Association, Inc., David L. Fingerhut, and Patricia M. Santry, Respondents, v. William A. Ashton, Jr. and Michele C. Ashton Appellants, Opinion No. 5262., filed on August 20, 2014 the same date as the subject Order (a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.)

Third-Party Purchasers move on the following grounds:

1. On July 22, 2014, at 10:30 a.m., Third-Party Purchasers filed a Motion to Stay the Order Vacating the Sale and Order of Foreclosure and for an Order of Supersedeas.
2. On July 22, 2014, at 2:35 p.m., the Court issued an Order stating: "[t]he Court finds that in the interest of equity and for good cause shown the Defendant's motion be granted."
3. On August 1, 2014, Third-Party Purchasers filed a Motion to Reconsider the Order Vacating Sale and Order of Foreclosure.
4. On August 4, 2014, the Defendant filed a Motion to Amend the Master's Order filed on July 22, 2014
5. On August 18, 2014, during the hearing on Third-Party Purchasers Motion to Reconsider, Third-Party Purchaser Motion and Stay and for Order of Supersedeas, and Defendant's Motion to Amend the Order, Third-Party Purchasers' moved orally before the Court to strike the Opposing Affidavit of Defendant's Attorney Amanda Reece, Affidavit of Anna

Howell, and Affidavit of Libby Castle all filed by Defendant on August 14, 2014, after which the Court Denied said Motion to Strike.

6. On August 20, the Court filed the Order which Third-Party Purchasers now respectfully request the Court to Reconsider

7. "South Carolina Code section 15-39-870 provides as follows: 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 that 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 Ann. § 15-39-870 (2005). The rationale for the statute is the well-established public policy of protecting good faith purchasers and upholding the finality of a judicial sale." Robinson v. Estate of Harris, 378 S.C. 140 662 S.E.2d 420 (Ct. App. 2008) A purchaser may assert a plea in equity of a bona fide purchaser for value, without notice of defect in his title, by showing (1) he has actually paid in full the purchase money (giving security for the payment is not sufficient, nor is past indebtedness a sufficient consideration); (2) he purchased and acquired the legal title, or the best right to it; and (3) he purchased bona fide, i.e. in good faith and with integrity of dealing, without notice of a lien or defect. The bona fide purchaser must show all three conditions — actual payment, acquiring of legal title, and bona fide purchase — occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property. Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869 (2006).

8. In this case, Third-Party Purchasers are Bona Fide Purchasers for Value, who purchased the property in good faith from the Court at judicial sale on May 6, 2014 paying the required five percent that day, and timely paying the remainder on May 16, 2014. At the time of

sale the Court instructed the Third-Party purchasers that as the successful bidder Third-Party Purchasers had entered into an agreement with the Court whereby if they failed to timely tender the remainder of the purchase they could be held liable for damages and would lose the five percent payment tendered to the Court the day of the sale. The Master conveyed the property to Third-Party Purchasers by Deed on Friday, May 16, 2014. Thereafter on May 16, 2014, Defendant's Attorney emailed the Third-Party Purchasers a copy of Defendant's Motion to Vacate which was subsequently filed on May 19, 2014. The following Friday on May 23, 2014, the Master's Office contacted Third-Party Purchasers to inform them they could now pick up the Deed from the Master's Office. On May 23, 2014, the Third-Party Purchaser recorded the Deed in the RMC Office. The Third-Party Purchasers in recording Deed were of the opinion and belief that the Master's Deed Conveying the Property to the Third-Party Purchasers was valid, enforceable and without defect because it was based upon the Master's Order of Foreclosure and Sale, a good faith purchase of the property at judicial sale on May 6, 2014, and payment in full by the Third-Party Purchasers. Further the deed was not delivered to the Third-Party Purchasers by the Court until after the Master had actual knowledge of the of the Defendant's Motion to Vacate.

9. Third-Party Purchaser's contend that they are Bona Fide Purchasers for Value and therefore the sale cannot be set aside. The Master's Order does not address the Third-Party Purchaser's assertion that they are Bona Fide Purchaser's for value. Moreover, prior to the Order Defendant did not offer evidence or contest the assertion that Third-Party Purchasers are Bona Fide Purchasers for Value. A party cannot raise a defense to an asserted issue by way of a Rule 59(e) motion which could be raised prior to the order. See Patterson v. Reid, 456 S.E. 2d

436 (Ct. App. 1995); In re Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004) (quoting Patterson); Gainey v. Gainey, 382 S.C. 414 675 S.E.2d 792 (Ct. App. 2009) (citing Patterson).

10. Third-Party Purchasers moved to Strike the Affidavits filed by Defendant based on the grounds that a party cannot asserted issue for the by way of a Rule 59(e) motion, when the issue could been raised prior to the order. See Patterson v. Reid, 456 S.E. 2d 436 (Ct. App. 1995); In re Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004) (quoting Patterson); Gainey v. Gainey, 382 S.C. 414 675 S.E.2d 792 (Ct. App. 2009) (citing Patterson).

11. Additionally Defendant by its Motion to Amend the Judgment of the Court cannot request that the Court Amended its order to make findings of fact and ruling as to law on issues of fact and law not priorly raised before the court. See Patterson v. Reid, 456 S.E. 2d 436 (Ct. App. 1995); In re Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004) (quoting Patterson); Gainey v. Gainey, 382 S.C. 414 675 S.E.2d 792 (Ct. App. 2009) (citing Patterson).

In this Case the Defendant's Motion to Amend state's that "Third-Party Purchaser had notice of an adverse claim of title" a fact not argued or raised before the court prior to the filing of the Motion to Amend by Defendant. Defendant's Motion further states that Order should be amended to find conclusion of law under 60(b)(1),(4), and (5), when such relief was not request by Defendant prior to the Order.

12. The Court has no authority to overrule the clerk of Courts Order of Publication. An order for service by publication may be issued pursuant to Section 15-9-710 of the South Carolina Code when an affidavit, satisfactory to the issuing officer is made stating that the defendant, a resident of the state, cannot, after the exercise of due diligence, be found, and that a cause of action exists against him. S.C. Code Ann. 15-9-710(3). "We hold the trial court [is] without authority to overrule the finding of the clerk of court that the [defendant] could not after

due diligence be found in the County and State of their last known residence.” Montgomery v. Mullins, 480 S.E.2d 467 (Ct. App. 1997); see also: Charleston County Department of Social Services v. Father, 454 S.E.2d 307 (1995) (stating: “There is a long-standing rule in this State that one judge of the same court cannot overrule another.”)

13. Moreover, even if the Court had the authority to overturn the Order of Publication (which Third-Party Purchasers contend it does not) “*Yarbrough* makes it clear that in absence of fraud or collusion, the decision of the officer ordering service by publication is final. Therefore, to the extent the trial court concluded the publication was invalid, we reverse.” Montgomery v. Mullins, 480 S.E.2d 467 (Ct. App. 1997). “Generally absent fraud or collusion, once the issuing officer is satisfied with the supporting affidavit, the decision to order service by publication is final unless the order of publication is premised upon a facially defective affidavit. Brown v. Malloy, 546 S.E.2d 195 (Ct App 2001) (Citing: Wachovia Bank of S.C. v. Player, 341 S.C. 424, 535 S.E.2d 128 (2000). In *Player* the “Petitioner claims the process server did not use “actual” due diligence because if she had, she would have easily found him.” The master denied the petitioners motion under Rule 60, SCRCF holding that the petitioner failed to present evidence of fraud or collusion in obtaining the order for service by publication. The Supreme Court affirmed the master’s order. Id.

In this case, like in *Player* Defendant has asserted that the affidavits of non-service and affidavit for order of publication do not evidence due diligence in the attempted service of Defendant, and had due diligence been undertaken Defendant would have been easily found. The Court’s Order does not find a lack of due diligence existed, but in the event that is the reasoning for the Court’s Order, the Court is without the authority to overrule the Clerk of Court finding of due diligence. Moreover, even if the Court was authorized to overrule Order of

publication (which Third-Party Plaintiff's assert it is not) here as in Player the Master did not find fraud, collusion or facially defective affidavits were present.

14. Generally injunctive relief is appropriate where the party can demonstrate he will suffer irreparable harm, has a likelihood of success on the merits, and an inadequate remedy at law. Scratch Golf v. Dunes West, 361 S.C. 117, 603 S.E.2d 905 (2004); County of Richland v. Simpkins, 348 S.C. 664, 560 S.E.2d 902, 904 (Ct. App. 2002).

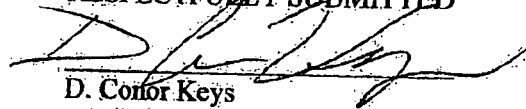
15. In this case all three of the criteria are satisfied. For a couple of years prior to the sale of the property the Defendant rented the subject property to one family (hereinafter "Tenants"). After the sale of the property the Third-Party Purchasers rented the property to the same Tenants and intend to continue to rent the property until the resolution of these legal proceedings. By the Court voiding Third-Part Deed (hereinafter TP Deed) Third-Party Purchaser have been irreparably harmed by the loss of tens of thousands of dollars of rental income not earned during the pendency of the appeal, and would subsequently be without means or adequate remedy at law to redress that loss. By contrast if the Court had granted the Order of Supersedeas holding the proceeds from sale in bond, the Defendant's interest in the property would have been protected in the event that the subsequent appeal led to the upholding the Order granting the Motion to Vacate. The amount of the proceeds from sale currently in the possession of the Court is many times larger than the income which the Defendant would receive renting the property to the Tenants as he had for the years prior to the sale. It should be noted while the matter is on appeal neither the Defendant nor the Third-Party Purchasers would likely be able to sell the property as appeal would cloud the title to the property and therefore the Defendant and Third-Party purchasers standing on equal footing in regard to the alienability of the property at present.

16. The Third-Party Purchasers would also assert that they are likely to succeed on the merits of the appeal, because our State Courts of Appeal have issued controlling and dispositive case law on the issues which would be before the Court of Appeals.

The undersigned hereby certifies and affirms in accordance with Rule 11(a) of the South Carolina Rules of Civil Procedure that prior consultation with opposing counsel for the purpose of resolving the matter, will serve no useful purpose.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

RESPECTFULLY SUBMITTED



D. Connor Keys
843 Robert E. Lee Blvd.
Charleston, SC 29412
Phone: 843-906-3998
dcconckey@gmail.com
Attorney for Third Party Purchasers

September 2, 2014
Charleston, SC

CERTIFICATE OF SERVICE

I certify that on the 2nd day of September 2014, a copy of the within Third-Party Purchasers Motion to Reconsider was delivered by mailed, addressed to opposing counsels as follows:

Amanda Reece,
Reece Law Firm, LLC
871 Low Country Blvd. #200

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SC Court of Appeals

Mt. Pleasant, SC 29464

Stephanie C. Trotter
140 Stoneridge Drive Suite 650
Columbia, SC 29210
P.O. Box 212069
Columbia SC 29221



D. Conor Keys

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Bloody Point Property Owners Association, Inc., David
L. Fingerhut, and Patricia M. Santry, Respondents,

v.

William A. Ashton, Jr. and Michele C. Ashton,
Appellants.

Appellate Case No. 2013-000222

Appeal From Beaufort County
Marvin H. Dukes, III, Master-in-Equity

Opinion No. 5262
Heard May 7, 2014 – Filed August 20, 2014

AFFIRMED

James Frederick Berl, of Law Offices of James F. Berl,
PC, of Hilton Head Island, and Dustin Lee, of Lee Law
Firm, LLC, of Hilton Head Island, for Appellants.

Terry A. Finger, of Finger & Fraser, PA, of Hilton Head
Island, for Respondent Bloody Point Property Owners
Association, Inc.; and Matthew Tillman, of Womble
Carlyle Sandridge & Rice, LLP, of Charleston, for
Respondents David L. Fingerhut and Patricia M. Santry.

LOCKEMY, J.: William A. Ashton, Jr. and Michele C. Ashton appeal the
master-in-equity's denial of their motion to vacate/set aside a foreclosure sale,
arguing the master erred in finding (1) they were properly served; (2) their due

process rights were not violated; (3) the foreclosure sales price did not shock the conscience of the court; and (4) David L. Fingerhut and Patricia M. Santry were bona fide purchasers for value pursuant to section 15-39-870 of the South Carolina Code. We affirm.

FACTS/PROCEDURAL BACKGROUND

This action arises from the foreclosure sale of Lot 55, Daufuskie Island Club, Phase I, Bloody Point, in Beaufort County (the Property). The Bloody Point Property Owners Association, Inc. (the Association) commenced the foreclosure action on May 17, 2011. The Association asserted claims for foreclosure of a lien against the Property's owners, William A. Ashton, Jr. and Michelle C. Ashton (Appellants),¹ for payment of Association dues and fees.

Appellants are residents of Chester County, Pennsylvania. The foreclosure summons and complaint were delivered to the Chester County Sheriff's Office (the Sheriff's Office) for service on Appellants at their last known address. According to the affidavits of service returned by the Sheriff's Office, a deputy unsuccessfully attempted to serve Appellants on four separate occasions. Thereafter, Julie Scarfino, counsel for the Association, filed an affidavit for service by publication. On July 20, 2011, the Beaufort County Clerk of Court filed an order of publication authorizing service of Appellants by publishing a copy of the summons and complaint in Beaufort County's *The Island Packet* newspaper once a week for three consecutive weeks and mailing a copy of the summons and complaint to Appellants at their last known address.

On September 27, 2011, the master-in-equity found Appellants in default. Subsequently, on December 2, 2011, the master entered a report and judgment of foreclosure and sale wherein he held Appellants owed the Association \$2,971.70 in unpaid assessments and \$5,738.97 in attorney's fees and costs. A foreclosure sale was held on January 3, 2012. David L. Fingerhut and Patricia Santry (the Fingerhuts) purchased the Property for \$8,800 at the sale.

On February 2, 2012, Appellants filed a motion to vacate/set aside the foreclosure. In their motion, Appellants argued the foreclosure sale should be set aside because the sales price was so low as to "shock the conscience" of the court. Appellants further asserted the Association improperly served the summons and complaint by

¹ Appellants purchased the Property in 2001 for \$201,500.

publication. Appellants did not dispute the validity of the debt or their failure to pay dues and fees to the Association.

On May 9, 2012, the Fingerhuts filed a memorandum in opposition to the motion to vacate, wherein they argued they were good faith purchasers for value under section 15-39-870 of the South Carolina Code. The Fingerhuts further asserted (1) \$2,793.20 in taxes and fees unpaid by Appellants should be added to the sale price; (2) the foreclosure sales price did not shock the conscience of the court; and (3) the Association properly served Appellants pursuant to section 15-9-710 of the South Carolina Code.

On July 24, 2012, the master issued an order denying the motion to vacate, holding (1) the Fingerhuts were good faith purchasers for value; (2) the Fingerhuts paid \$11,593.20 for the Property; (3) the foreclosure sales price did not shock the conscience of the court; (4) the Association complied with the order for publication; and (5) Appellants were properly served with the summons and complaint. On July 25, 2012, Appellants filed a motion to reconsider the master's order denying the motion to vacate. The master denied the motion in a form order. This appeal followed.

STANDARD OF REVIEW

The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court. *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008). "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012).

LAW/ANALYSIS

I. Bona Fide Purchasers

Appellants argue the master erred in finding the Fingerhuts were bona fide purchasers for value pursuant to section 15-39-870 of the South Carolina Code. We disagree.

Pursuant to section 15-39-870,

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[u]pon 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 Ann. § 15-39-870 (2005). "The rationale for the statute is the well-established public policy of protecting good faith purchasers and upholding the finality of a judicial sale." *Robinson v. Estate of Harris*, 378 S.C. 140, 144-45, 662 S.E.2d 420, 422 (Ct. App. 2008) *aff'd*, 390 S.C. 272, 701 S.E.2d 740 (2010), (citing *Cumbe v. Newberry*, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968) (stating "a sound public policy requires the validity of judicial sales be upheld, if in reason and justice it can be done"); *Wooten v. Seanch*, 187 S.C. 219, 222, 196 S.E. 877, 878 (1938) (upholding a foreclosure sale in which the mortgagee purchased the property sold and further stating that, to set aside a sale, "there must be such irregularity in the proceedings as to show that the sale was not fairly made, or that appellant was defrauded or misled to his injury and loss"))).

Here, the master relied on *Robinson* in finding the Fingerhuts were bona fide purchasers for value. In *Robinson*, the defaulting owner of the subject property sought to vacate the foreclosure sale due to ineffective service. 378 S.C. at 143, 662 S.E.2d at 421. This court noted the bona fide purchaser submitted documents from the court file demonstrating (1) service was made upon defendants; (2) both defendants were in default; (3) the attorneys of record were notified of the hearing; and (4) neither defendants were in the United States military service. *Id.* at 145, 662 S.E.2d at 423. The court further noted the purchaser had satisfied all of the elements to be considered a bona fide purchaser for value: (1) actual payment of the purchase price of the property, (2) acquisition of legal title to the property, or the best right to it, and (3) a bona fide purchase, "i.e., in good faith and with integrity of dealing, without notice of a lien or defect." *Id.* at 146, 662 S.E.2d at 423.

Relying on *Cumbe*, Appellants argue the foreclosure sale should be set aside because the Fingerhuts were not bona fide purchasers for value. In *Cumbe*, our supreme court held:

A sound public policy requires that the validity of judicial sales be upheld, if in reason and justice it can be

done. In the furtherance of this principle, our decisions have applied the general rule, applicable here, that a purchaser in good faith at a judicial sale is not affected by irregularities in the proceedings or even error in the judgment, under which the sale is made; but is required at his peril only to make inquiry as to the jurisdiction of the court which ordered the sale, and whether all proper parties were before the court when the order was made.

251 S.C. at 37, 159 S.E.2d at 917. Appellants contend the Fingerhuts failed to (1) properly inquire as to the jurisdiction of the court that ordered the foreclosure sale and (2) properly and sufficiently inquire as to whether all parties were properly before the court when the order was made. Additionally, Appellants argue the order of publication did not comply with the publication requirements of section 15-9-740 of the South Carolina Code. Pursuant to section 15-9-740,

[t]he order of publication shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, most likely to give notice to the person to be served and for such length of time as may be deemed reasonable not less than once a week for three weeks. The court, judge, clerk, master or judge of probate shall also direct that a copy of the summons be forthwith deposited in the post office directed to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him.

S.C. Code Ann. § 15-9-740 (Supp. 2013). Appellants assert it is unreasonable to expect a newspaper in Beaufort County to be the newspaper most likely to give notice to the Appellants, who reside in Pennsylvania. Appellants further assert the Association's failure to properly serve the summons and complaint violated Appellants' due process rights.

The Fingerhuts contend the purchaser (1) is deemed to be on notice of documents contained in the court's file and (2) takes title to the property without notice of lien or defect. Citing *Gladden v. Chapman*, 106 S.C. 486, 91 S.E. 796, 797 (1917), they argue the foreclosure purchaser is entitled to a presumption that the court

considered and properly adjudicated issues of service. In *Gladden*, our supreme court held:

It must be presumed from the judgment rendered that the Court considered and adjudicated the regularity and sufficiency of each and every step in the proceedings leading up to it, including the sufficiency of the complaint, the issuance and service of process upon the defendants, and the rights and interests of the parties to the action under the allegations and evidence; and although the conclusions with respect to those matters, or any of them, might have been erroneous, so that they would have been reversed on appeal, they do not make the judgment void collaterally.

Id.

We find the master did not abuse his discretion in determining the Fingerhuts were bona fide purchasers. At the time of the foreclosure sale, the court file reflected Appellants had been served, were in default, had received notice, and were not in the military. Furthermore, the Fingerhuts made actual payment of the purchase price at the foreclosure sale and acquired title through the master-in-equity deed. Finally, the Fingerhuts had no notice of any title defect or other adverse claim, lien, or interest in the Property.

While Appellants assert the master lacked jurisdiction to sell the Property because of defects in service, the *Robinson* court held the foreclosure purchaser was a bona fide purchaser for value without notice such that claims of defective service in the foreclosure action did not affect purchaser's title. 378 S.C. at 147, 662 S.E.2d at 423. Although the *Robinson* court found the disputed affidavits of service were not in the record and Appellants' arguments regarding improper publication were not preserved, the court held:

Moreover, there is no evidence . . . [the foreclosure purchaser] . . . had notice, constructive or otherwise, of Appellants' claims that [the property owners] . . . were . . . not properly served in the foreclosure action. Pursuant to section 15-39-870, then, we hold [the foreclosure purchaser]'s title is not affected by Appellants' claims of defective service of process in the foreclosure action.

Id. at 146-47, 662 S.E.2d at 423. Thus, the *Robinson* court found foreclosure proceedings were res judicata as to bona fide purchasers without notice of defective service claims.

Here, as in *Robinson*, there is no evidence the Fingerhuts had any notice of Appellants' claims they were not properly served. Thus, the Fingerhuts were bona fide purchasers and their title to the Property was not affected by Appellants' claims of defective service of process in the foreclosure action. In light of our finding the Fingerhuts were bona fide purchasers without notice, we need not address Appellants' argument regarding improper service. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding appellate court need not address remaining issues when disposition of prior issue is dispositive).

II. Foreclosure Sales Price

Appellants argue the master erred in failing to set aside the foreclosure sale because the foreclosure sales price shocks the conscience. We disagree.

"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, 150, 662 S.E.2d 424, 425 (Ct. App. 2008) (alteration by court) (quoting *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 157, 177 S.E. 24, 27 (1934)). "South Carolina has not established a bright line rule for what percentage the sale value must be with respect to the actual value in order to shock the conscience of the court." *E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 359, 644 S.E.2d 802, 807 (Ct. App. 2007). "However, a search of South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a property's actual value, have our courts consistently held the discrepancy to shock conscience of the court." *Id.*

Appellants purchased the Property in 2001 for \$201,500. The Fingerhuts subsequently purchased the Property for \$11,593.20 at the foreclosure sale in 2012. Appellants submitted an appraisal (Appellants' Appraisal) to the master which set the Property's value at \$140,000. This appraisal stated its intended use was to rebut the foreclosure sales price. The master found the Appellants' Appraisal used non-comparable sales data from oceanfront lots and only cited Multiple Listing Service listing data for interior lots as support for the valuation conclusion.

In contrast, the Fingerhuts produced evidence showing the Property was sold for \$10,000 in the 2010 Beaufort County Delinquent Tax Auction.² Additionally, the Fingerhuts submitted an appraisal (Fingerhuts' Appraisal) stating the Property was valued at \$17,000 as of January 19, 2012. The master found the Fingerhuts' Appraisal used comparable sales data, not listing data, from interior lots. The master noted the Fingerhuts' Appraisal was supported by an affidavit submitted by David Fingerhut affirming that the appraisal was ordered for the purpose of obtaining title insurance and not to support the value for purposes of this action.

In denying Appellants' motion to vacate the judicial sale, the master found the Property would have to be worth more than \$115,930 for the foreclosure sales price to be less than 10% of the actual value. The master concluded the Fingerhuts' Appraisal and the 2010 tax sale data were more reliable than the valuation information provided by the Appellants. The master held the actual value of the Property was far less than the \$115,932 required to shock the conscience of the court.

We find the master did not abuse his discretion in determining the foreclosure sales price of the Property did not shock the conscience of the court. First, the master applied the correct legal standard in making his determination. The master noted that our courts have consistently held that when foreclosure sales prices amount to less than ten percent of the actual value of the property, the discrepancy shocks the conscience of the court. Furthermore, the master's decision is supported by the evidence in the record. The master considered all of the evidence presented, including both appraisals, and found the evidence provided by the Fingerhuts was more reliable.

CONCLUSION

We find the master did not err in denying Appellants' motion to vacate/set aside a foreclosure sale.

AFFIRMED.

WILLIAMS and KONDUROS, JJ., concur.

² The Property was subsequently redeemed by Appellants.

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D. Conor Keys, Esq.
843 Robert E. Lee, Blvd.
Charleston, SC 29412
Phone: 843-906-3998
dconorkeys@gmail.com

October 7, 2014

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

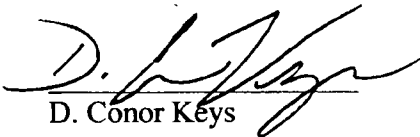
**RE: Belle Hall Plantation Homeowner's Association, Inc. v. John A.
Murray, Trustee of John E. Murray Gloria C. Murray Family Trust
Case: 2013-CP-10-4248**

Ms. Kitchings:

Please find enclosed, with regard to the above referenced matter the following:

- 1) Appellants, David Conor Keys and Karen Keys' Motion to Stay and Order of Supersedeas;
- 2) Proof of Service of the Motion
- 3) A corresponding check for the Motion; and
- 4) A copy of Appellants Notice to the Office of Court Administration that transcripts have been requested.

With kind regards,


D. Conor Keys

Enclosures:
(as stated)
CC:
Amanda Reece
Stephanie Trotter

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2013-CP-10-4248

Belle Hall Plantation Homeowner's Association, Inc.;
John A. Murray, Trustee of the John E. Murray and
Gloria C. Murray Family Trust Respondents,

v.

David Conor Keys & Karen Keys.....Appellants.

PROOF OF SERVICE

I certify that on this 7th day of October 2014, I have served the Appellant's Motion to Stay and for an Order of Supersedeas and all counsel of record by depositing a copy in the United States Mail, postage prepaid addressed as follows:

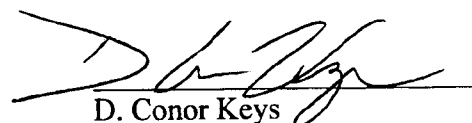
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Homeowner's Association, Inc.*

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SC Court of Appeals


D. Conor Keys



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SC Court of Appeals

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



The South Carolina Court of Appeals

Belle Hall Plantation Homeowner's Association, Inc.,
Respondent,

v.

John A. Murray, Trustee of John E. Murray & Gloria C.
Murray Family Trust, Defendants,

Of whom David Conor Keys & Karen Keys are the
Appellants.

Appellate Case No. 2014-002018

ORDER

After careful consideration, Appellants' petition for supersedeas is denied. *See* Rule 241(c)(2), SCACR ("In determining whether an order should issue pursuant to this Rule, . . . the judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.").


FOR THE COURT

Columbia, South Carolina

cc:

David Conor Keys, Esquire
Amanda Megan Reece, Esquire
Stephanie Carol Trotter, Esquire

FILED
10/15/14

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Belle Hall Plantation Homeowner's Association, Inc.,
Plaintiff,

v.

John A. Murray, Trustee of John E. Murray & Gloria C.
Murray Family Trust, Respondent,

and

David Conor Keys & Karen Keys, Appellants.

Appellate Case No. 2014-002018

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Opinion No. 5467
Heard December 7, 2016 – Filed February 8, 2017

AFFIRMED

David Conor Keys, of Charleston, for Appellants.

Amanda Megan Reece, of Reece Law Firm, LLC, of
Mount Pleasant, for Respondent.

LOCKEMY, C.J.: In this foreclosure action, D. Conor Keys and Karen Keys (the Keys) allege the Master-in-Equity erred by vacating a foreclosure sale, denying

their motion to stay the order vacating the sale, and denying their motion to strike affidavits presented to the master. We affirm.

FACTS

On July 22, 2013, Belle Hall Plantation Homeowners Association (Belle Hall) filed a complaint for foreclosure of its lien on property located at 378 Jardinere Walk in Mount Pleasant, South Carolina. The property, originally bought by John E. Murray and Gloria C. Murray, was transferred to John A. Murray as Trustee for the John E. Murray and Gloria C. Murray Family Trust.¹ The complaint alleged John A. Murray (Murray) failed to pay assessments to Belle Hall and owed \$1590.31 in principal, late fees, and interest.

Belle Hall attempted to serve Murray with notice of the suit at three different addresses, two of which were nursing homes, but was unsuccessful. Belle Hall filed an Affidavit for Order of Publication on September 30, 2013. Accompanying the affidavit were four documents. The first was a Westlaw search for John E. Murray. That document showed five separate addresses for John E. Murray. The remaining pages showed Belle Hall attempted service at the first three addresses but was unable to effect service. On October 4, 2013, the Charleston County Clerk of Court issued an Order for Service Via Publication. In its order, the clerk of court stated, "the Defendant, Murray, Trustee of John E. Murray and Gloria C. Murray Family Trust, on whom service of the Summons and Complaint is to be made cannot, after due diligence, be found in this State" The order provided that service could be effected by publication in the *Moultrie News*.² Belle Hall published the notice as required.

Murray failed to file a responsive pleading and Belle Hall filed an affidavit of default. The case was then referred to the Master-in-Equity for Charleston County for a hearing. The master held a final hearing on March 18 and filed an order foreclosing Belle Hall's lien and ordering the property sold to pay the lien on April 8, 2014. On March 26, 2014, the tenants staying at the 378 Jardinere Walk property left Murray a letter at his home giving him notice of the final hearing. That same day, Murray attempted to contact counsel for Belle Hall by telephone and email, offering to pay any money owed. He never received a response and

¹ John A. Murray is the son of John E. Murray.

² The *Moultrie News* is a newspaper of general circulation in Charleston County.

retained an attorney on May 9, 2014. Murray's counsel checked the court's docket, which reflected the house was not to be sold before May 20, 2014.

The master sold the property to the Keys for \$100,000 on May 6, 2014.³ Pursuant to the master's order, the Keys paid the required deposit and had twenty days to pay the remainder of their bid.

On May 15, 2014, Murray served a motion to vacate the entry of default and set aside the sale. Also on May 15, Murray's counsel called an area attorney to discuss "a host of legal developments and caselaw." During that conversation, Murray's counsel described his case to the other attorney. The attorney then asked Murray's counsel if the case involved Belle Hall. The attorney notified Murray's counsel that the winning bidder at the master's sale worked as an attorney in her office. The two did not discuss the case any further.

On May 16, 2014, the Keys paid the remaining balance of their bid amount. That same day, the master issued a deed to the Keys conveying the property. The Keys presented the deed to the Register of Mesne Conveyances on May 23, 2014, and the Register recorded the deed.

The master held a hearing on Murray's motion to vacate on July 3, 2014. Murray argued the judgment should be vacated pursuant to Rule 60(b), SCRCP,⁴ and "there was an [a]ffidavit of [s]ervice that was a misrepresentation to the [c]ourt. And that misrepresentation to the court we would argue is fatal." Murray presented the master an affidavit he prepared detailing the issues with service and an affidavit from Peter Tecklenburg, the Charleston County Auditor, which detailed that the property tax records indicated the property tax bill for the property was sent to Murray at his home address.

Belle Hall argued it searched the Charleston County property records website and the mailing address it showed was 3100 Tradition Lane, a location at which Belle Hall attempted service. Belle Hall also argued that in order to vacate the foreclosure sale, Murray must prove something more than misrepresentation—he

³ Neither party could provide a reason the master sold the property before the date provided in the court's docket.

⁴ Rule 60(b), SCRCP (providing five grounds for relieving a party from a judgment, order, or proceeding).

must prove fraud. Belle Hall asserted it attempted to find an address to serve Murray but could not find him.

The Keys presented the master with a memorandum in opposition to the motion⁵ and argued Murray's motion was untimely under Rule 59(e), SCRCP,⁶ and there was insufficient evidence to support Murray's 60(b) motion. The Keys also argued they were bona fide purchasers. Finally, the Keys asserted the price they paid for the property was not so grossly inadequate as to shock the conscience, such that the sale should be voided.

The master took the matter under advisement and issued its formal ruling on July 22, 2014. The master's order stated, "The [c]ourt finds that in the interest of equity and for good cause shown that [Murray's] motion be granted." The order then provides an accounting of funds held by the master, disperses those funds accordingly, and voids the master's deed issued to the Keys.

Prior to the master's written order, he notified the parties he would be ruling in favor of Murray. On July 22, 2014, before the master filed its written order, the Keys filed a motion to stay the order vacating the sale and for an order of supersedeas.

On August 1, 2014, the Keys filed a motion pursuant to Rule 59(e) to alter or amend the order vacating the judgment. The Keys again argued they were bona fide purchasers, that Murray did not contest that the Keys were bona fide purchasers, Murray failed to show evidence of extrinsic fraud as required under Rule 60(b)(3), SCRCP, the master used an incorrect standard to vacate the sale, the master had no authority to overrule the Clerk of Court's order of publication, and Murray came to the court with unclean hands because he slept on his rights.

On August 4, 2014, Murray also filed a motion pursuant to Rule 59(e) to alter or amend the master's order. Murray asserted the master should amend its order to make specific findings of fact and conclusions of law.

⁵ It appears from the record the Keys did not provide the memorandum to the master or opposing counsel prior to the hearing.

⁶ Rule 59(e), SCRCP (providing the time for filing a motion pursuant to the rule).

On August 18, 2014, the master held a hearing on the motions filed by the Keys and Murray. The Keys first argued the Clerk of Court made a finding that Belle Hall acted with due diligence in attempting to serve Murray and the master was without authority to overrule the Clerk of Court absent fraud or collusion. The Keys again argued they were bona fide purchasers. The Keys argued any affidavits produced by Murray at this stage to rebut his bona fide purchaser argument were inappropriate in a 59(e) hearing. During the hearing, the Keys acknowledged they had actual notice of Murray's intent to file a motion to vacate the sale prior to paying the remaining bid amount.

Murray asserted he did not discover when the Keys paid the balance of their bid until August 7, so any questions about bona fide purchasers should be treated as newly discovered evidence. Murray also argued his 59(e) filing should be considered responsive to the factual allegations in the Keys' 59(e) motion. Murray asserted actual knowledge of his impending motion disqualified the Keys from bona fide purchaser status.

The Keys again argued Murray failed to present any evidence or argument regarding their bona fide purchaser status during the first hearing and should therefore be prohibited from arguing those points during a 59(e) motion. The Keys also asserted the only ground for Murray's motion to vacate was under Rule 60(b)(3) and any other finding was not presented to the court previously.

The master stated, "This [c]ourt has inherent equitable powers and in the interest of justice as to make decisions that impact other people's lives. . . . I don't find there was fraud, but I do find there was negligence in the failure to notify Mr. Murray." The master orally granted Murray's motion and requested he prepare a proposed order. The master also denied the Keys' motions to stay the order vacating the sale and to strike the affidavits presented prior to the 59(e) hearing. The master declined to rule on the bona fide purchaser issue.

The master filed its amended order on February 10, 2015. The master included the findings of fact Murray requested in his motion to amend and found Belle Hall's actions in attempting to serve Murray to be grossly negligent. Recognizing the fraud or collusion standard generally required in cases regarding orders of publication, the master found the service process in this case "a 'structural defect in the constitution of the trial, (defying) analysis by harmless error standards.'" Because of the defective service, the master found it lacked personal jurisdiction over Murray; therefore, the judgment of foreclosure was void. The master found it

unnecessary to rule on the Keys' assertion they were bona fide purchasers because the original order of foreclosure was void.

The Keys filed a motion to reconsider the master's February 10, 2015 order on February 18, 2015. The Keys asserted: (1) the master erred by including findings of gross negligence, lack of procedural due process, and lack of personal jurisdiction; (2) that the judgement was void pursuant to Rule 60(b)(4); and (3) that Belle Hall violated the publication statute because those issues were not raised during the hearing on the motion to vacate. The Keys also asserted that some facts were contested. The Keys averred Murray failed to show there was fraud, collusion, or a facially defective affidavit in order to overrule the Clerk of Court's order of publication. The Keys again argued they were bona fide purchasers and cited to this court's decision in *Bloody Point Property Owner's Ass'n, v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (Ct. App. 2014) for the proposition that the master should make a ruling on their status as bona fide purchasers regardless of the master's decision on vacating the foreclosure order.

The master heard argument on the Keys' motion to reconsider on April 9, 2015. The Keys again acknowledged they had notice of Murray's intent to file a motion to vacate prior to paying the balance of their bid, but they argued "there is a distinction between . . . a defect in the procedure of a civil action versus a defect in title." Murray asserted the Keys did not have legal title prior to getting notice about the adverse claim and were therefore not bona fide purchasers. The Keys responded that the relevant date was May 6, 2014, when the gavel for the judicial sale fell, and at that time, they had no notice of adverse claims.

The master denied the Key's motion, finding the Keys actually paid the purchase price and acquired legal title to the property through the master's Deed. However, the master found the Keys did not acquire the deed in good faith and with integrity of dealing without notice of a lien or defect. The master filed its written order to that effect on April 9, 2015. This appeal followed.

STANDARD OF REVIEW

"The appellate court's standard of review in equitable matters is our own view of the preponderance of the evidence." *Horry Cty. v. Ray*, 382 S.C. 76, 80, 674 S.E.2d 519, 522 (Ct. App. 2009).

LAW/ANALYSIS

a) Vacating Foreclosure Sale

"The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court." *Bloody Point*, 410 S.C. at 66, 762 S.E.2d at 731. "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Id.* (quoting *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012)). "[T]he inartful use of an abuse of discretion deferential standard of review merely represents the appellate courts' effort to incorporate the two sound principles underlying the proper review of an equity case." *Crossland v. Crossland*, 408 S.C. 443, 452, 759 S.E.2d 419, 423-24 (2014) (quoting *Lewis v. Lewis*, 392 S.C. 381, 391, 709 S.E.2d 650, 655 (2011)). "[T]hose two principles are the superior position of the [master] to determine credibility and the imposition of a burden on an appellant to satisfy the appellate court that the preponderance of the evidence is against the finding of the [master]." *Id.* at 452, 759 S.E.2d at 424 (quoting *Lewis*, 392 S.C. at 391, 709 S.E.2d at 655).

1. Order of Publication

The Keys argue Murray failed to present evidence of fraud or collusion; therefore, the master had no authority to overrule the Clerk of Court's order of publication. We disagree.

The clerk of court may order a person to be served by publication when

the person on whom the service of the summons is to be made cannot, after due diligence, be found within the [s]tate and (a) that fact appears by affidavit to the satisfaction of the . . . clerk of the court of common pleas . . . of the county in which the cause is pending and (b) it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made . . . [the] clerk . . . may grant an order that the service be made by the publication of the summons

S.C. Code Ann. § 15-9-710 (2005).

Generally, "[w]hen the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion." *Wachovia Bank of S.C., N.A. v. Player*, 341 S.C. 424, 429, 535 S.E.2d 128, 130 (2000). However, this court in *Caldwell v. Wiquist* found affidavits requesting service by publication that are facially defective and do not comply with the publication statute will not be sustained even in the absence of fraud or collusion. 402 S.C. 565, 571-72, 741 S.E.2d 583, 586-87 (Ct. App. 2013). In *Caldwell*, this court distinguished the affidavits in *Player* and previous cases by noting the affidavit at issue in *Caldwell* only established the plaintiff attempted service on the defendant in Beaufort County, not in the State of South Carolina. *Id.* at 571, 741 S.E.2d at 586-87. Because the affidavit failed to comply with the publication statute, the court of appeals reversed the circuit court's order denying appellant's motion to set aside the default judgment. *Id.* at 577, 741 S.E.2d at 590.

This case is similar to *Caldwell* because the affidavit presented to the Clerk of Court was facially defective. The affidavit filed by Belle Hall states, "After due diligence, as demonstrated by the attached Exhibit A which is incorporated herein by reference, Plaintiff's counsel has been unable to ascertain the location of Defendant, John A. Murray" However, the search attached to the affidavit as Exhibit A reflects Belle Hall attempted to locate John E. Murray. As evidenced by its own affidavit, Belle Hall failed to comply with the publication statute because the attached search demonstrates it attempted service on the wrong defendant. *See* § 15-9-710 (noting one requirement for service by publication is that it "appears that a cause of action exists against the *defendant in respect to whom the service is to be made*" (emphasis added)); *Caldwell*, 402 S.C. at 572, 741 S.E.2d at 587 ("South Carolina courts have repeatedly required strict compliance with publication statutes.").

Accordingly, we find the master had the authority to overrule the Clerk of Court's order of publication because Belle Hall failed to comply with the publication statute. *See* § 15-9-710 (providing for service by publication if "the person on whom the service of the summons is to be made cannot, after due diligence, be found within the [s]tate").

2. Rule 60(b)(4)

The Keys also assert this court's decision in *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002), precludes the master from vacating the sale under Rule 60(b)(4) in this case.⁷ We disagree.

"Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the [master]." *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 17, 594 S.E.2d 478, 482 (2004).

Rule 60(b) provides,

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

⁷ The Keys also argue the master erred in vacating the foreclosure sale pursuant to Rule 60(b)(4), SCRCP, because Murray never requested the court do so. During the hearing on the motion to vacate, Murray requested the master set aside the order of foreclosure pursuant to Rule 60(b), SCRCP. We find this request was sufficient for the master to grant relief pursuant to Rule 60(b)(4) under the circumstances of this case. See *Busillo v. City of N. Charleston*, 404 S.C. 604, 608, 745 S.E.2d 142, 145 (Ct. App. 2013) ("It is possible . . . that the context of the proceeding may make the specific ground for the objection sufficiently apparent to the trial court . . .").

is no longer equitable that the judgment should have prospective application.

"A void judgment is one that, from its inception, is a complete nullity and is without legal effect." *Universal Benefits*, 349 S.C. at 183, 561 S.E.2d at 661 (quoting *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995)). "The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *Id.* (quoting *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996)). "Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property." *Id.*

In *Universal Benefits*, this court affirmed the circuit court's denial of Universal Benefits' motion to set aside an order of dismissal pursuant to Rule 60(b)(4). *Id.* at 181, 561 S.E.2d at 660. Universal sued its former employee to enforce a covenant not to compete. *Id.* Universal failed to attend a roster meeting, and the circuit court dismissed the complaint with prejudice for failure to prosecute. *Id.* at 182, 561 S.E.2d at 661. Universal subsequently filed a Rule 60(b)(4) motion, alleging it had not received notice of the roster meeting and requesting the court set aside the dismissal. *Id.* The circuit court denied Universal's motion. *Id.*

This court found Universal received written notice of the circuit court's order dismissing its case and had the opportunity to timely move for reconsideration. *Id.* at 183, 561 S.E.2d at 661. Because Universal had the ability to file a motion for reconsideration or file a direct appeal but did not, it had sufficient opportunity to be heard and its due process rights were protected. *Id.* at 184, 561 S.E.2d at 662. Accordingly, the court of appeals found the judgment was not void and affirmed the circuit court. *Id.*

We acknowledge Murray had an opportunity to request reconsideration of the order of foreclosure; however, we find the master properly granted Murray's 60(b)(4) motion because the master never had personal jurisdiction over Murray. *See id.* at 183, 561 S.E.2d at 661 ("Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property."); *id.* ("The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or

personal jurisdiction." (quoting *McDaniel*, 324 S.C. at 644, 478 S.E.2d at 871)). Accordingly, we affirm the master's decision to vacate the order of foreclosure.

3. Laches

The Keys assert Murray failed to pay the homeowners association fees for two years, failed to perform an adequate title check prior to a transfer of the property in 2013, and failed to adequately respond to stop the foreclosure sale once he received notice of the action. According to the Keys, Murray's request for equitable relief should be precluded by the doctrine of laches. We disagree.

"Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004) (quoting *Mid-State Trust, II v. Wright*, 323 S.C. 303, 474 S.E.2d 421 (1996)). "Under the doctrine of laches, if a party, knowing his rights does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Id.* "The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice." *Id.* "[T]he determination of whether laches has been established is largely within the discretion of the trial court." *Id.* at 216, 603 S.E.2d at 602.

We find Murray's actions were not sufficient to establish a defense of laches. We are troubled by Murray's delay in formally responding to the foreclosure action after receiving notice in late March 2014. However, by May 2014, Murray hired an attorney who filed a motion to vacate the foreclosure judgment. We do not believe this delay was unreasonable; therefore, we find the master did not abuse its discretion in granting Murray equitable relief in the face of the Keys' laches argument.

b) Bona Fide Purchasers

The Keys argue they are bona fide purchasers because at the time the gavel fell on the judicial sale, they satisfied the three elements to be bona fide purchasers.⁸ We disagree.

⁸ The Keys assert Murray's arguments opposing their status as bona fide purchasers are not preserved because Murray failed to assert them during the hearing on the

Section 15-39-870 of the South Carolina Code (2005) provides,

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.

The statute exists because "sound public policy requires that the validity of judicial sales be upheld, if in reason and justice it can be done." *Cumbie v. Newberry*, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968).

To qualify as a bona fide purchaser, a party must show "(1) actual payment of the purchase price of the property, (2) acquisition of legal title to the property, or the best right to it, and (3) a bona fide purchase, 'i.e., in good faith and with integrity of dealing, without notice of a lien or defect.'" *Robinson v. Estate of Harris*, 378 S.C. 140, 146, 662 S.E.2d 420, 423 (Ct. App. 2008) (quoting *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006)). "In addition, '[t]he bona fide purchaser must show all three conditions—actual payment, acquiring of legal title, and bona fide purchase—occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property.'" *Id.* (quoting *Spence*, 368 S.C. at 117, 628 S.E.2d at 875).

There is no question the Keys paid a portion of their bid to the master and did not know at that time there was any adverse claim against the property. Before the Keys paid the entire purchase price, however, they received actual knowledge that there could be a claim or defect that would affect title to the property.⁹

motion to vacate the foreclosure sale. We disagree. See *Smith v. NCCI, Inc.*, 369 S.C. 236, 247-48, 631 S.E.2d 268, 274 (Ct. App. 2006) ("When a trial court does not explicitly rule on an argument raised, and the *appellant* makes no Rule 59(e), SCRCP, motion to obtain a ruling, the appellate court may not address the issue." (emphasis added)).

⁹ The Keys assert the master erred in considering certain affidavits presented during the hearing on the Rule 59(e) motions. The statements in the affidavits were cumulative to statements made by the Keys during the hearing; therefore, the

Accordingly, the Keys cannot claim status as a bona fide purchaser for value. *Robinson*, 378 S.C. at 146, 662 S.E.2d at 423 ("The bona fide purchaser must show all three conditions—actual payment, acquiring of legal title, and bona fide purchase—occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property." (quoting *Spence*, 368 S.C. at 117, 628 S.E.2d at 875)).

The Keys assert South Carolina bankruptcy decisions indicate the appropriate date to consider in determining bona fide purchaser status is the date of the foreclosure sale. *See, e.g., In re Watts*, 273 B.R. 471 (Bankr. D.S.C. 2000). The court in *Watts* interpreted federal statutes regarding a debtor's right to cure defaults after a foreclosure sale. The *Watts* court found the statute's language to be "clear and unambiguous in establishing the date of the actual foreclosure sale as the cut-off date for curing mortgage defaults." *Id.* at 476. According to the Keys, that same interpretation supports their argument that the applicable date for bona fide purchaser status is the foreclosure sale.

The bankruptcy court's analysis of a federal statute in *Watts* is inapplicable to our determination of the Keys' status as a bona fide purchaser. The South Carolina case law is clear that a purchaser must complete all three requirements prior to notice of a defect to be a bona fide purchaser.¹⁰ Accordingly, the master did not err in finding the Keys were not bona fide purchasers.

CONCLUSION

For the foregoing reasons, the decision of the master is

AFFIRMED.

Keys have waived their right to argue error on appeal. *Campbell v. Jordan*, 382 S.C. 445, 453-54, 675 S.E.2d 801, 805-06 (Ct. App. 2009) (holding failure to object to cumulative testimony at trial waives the issue on appeal).

¹⁰ The Keys also argue the master erred in denying their request for a stay of the July 22, 2014 order vacating the foreclosure sale. Because we affirm the master's order vacating the sale, we decline to reach this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when disposition of prior issues are dispositive).

KONDUROS and MCDONALD, JJ., concur.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2013-CP-10-4248
App. Case No. 2014-002018

RECEIVED

FEB 23 2017

SC Court of Appeals

Belle Hall Plantation Homeowner's Association, Inc.....Plaintiff,

v.

John A. Murray, Trustee of John E. Murray & Gloria C. Murray Family Trust.....Respondent,

David Conor Keys & Karen Keys, Third-Party Plaintiff,.....Appellants.

PETITION FOR REHEARING EN BANC

This Petition is filed pursuant to Rules 219, 221 and 240 of the South Carolina Appellate Court Rules. Rule 219, SCACR governs petitions for rehearing en banc. Rule 221, SCACR governs rehearing. Rule 240, SCACR governs motions and petitions generally.

This Court issued the decision in this matter on February 8, 2017. *See* Op. No. 5467 (Ct. App. Filed February 8, 2017). Petitioner received this Court's Opinion No. 5467 on February 10, 2017. This Petition is therefore timely. *See* Rule 221(a), SCACR.

Appellants moving pursuant to Rule 219, SCACR, respectfully assert that this Court's Opinion in this matter does not maintain uniformity with this Court's decisions in cases including but not limited to *Bloody Point Property Owner's Ass'n, v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (Ct. App. 2014), *Caldwell v. Wiquist*, 402 S.C. 565, 741 S.E.2d 583 (Ct. App. 2013), and *Universal*

Benefits, Inc. v. McKinney, 349 S.C. 179, S.E.2d 659 (Ct. App. 2002). Appellants further moving pursuant to Rule 219, SCACR, respectfully assert this Opinion could have a negative effect on alienability of real property leading to an increase in issues of clouded title and quiet title actions initiated by property owners.

A principle purpose of this Petition is to preserve Appellants' ability to request further review of the arguments Appellants offered to this Court on the merits. To that end, Appellants wish to incorporate by reference all arguments made before the Court and contained in Appellants' Final Brief and Reply Brief. Appellants strongly but respectfully disagree with this Court's decision to affirm and this Court's declining to rule upon the Order denying appellants motion to and request to hold the proceeds in bond.

INTRODUCTION

This case is about the uniform application of the law. This Court held, because Appellants learned a Motion to Vacate was to be filed in the future, then Appellants acquired notice that there *could be* a defect in title to the subject real property. The Court *did not* hold that knowledge of a motion to be filed was notice of defect in title. Instead, it held that said knowledge *could be* a defect in title. However, because Appellants acquired that knowledge, the Court held Appellants cannot claim to be Bona Fide Purchaser for Value (hereinafter "BFP"). The Court has created a new precedent where a party is deemed to have notice of things that have not yet occurred, and may never occur. The Precedent is akin to a party being put on notice of all things which *could* possibly occur in the universe. Appellants recognize the grandiosity of that statement, but make it to emphasize how much they disagree with the Court's ruling and to impart the magnitude of impact this Precedent will have upon our laws. Appellants would respectfully request this Court

grant their petition for rehearing and apply the facts of the case in uniformity with this Court and the Supreme Court's relevant case law and precedent.

ARGUMENT

1. APPELLANTS ARE BONA FIDE PURCHASERS FOR VALUE.

To be declared a bona fide purchaser for value “the bona fide purchaser must show all three conditions – actual payment, acquiring of legal title and bona fide purchase – occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property.” *Robinson v. Estate of Harris*, 378 S.C.140, 146, 662 S.E.2d 420, 423 (Ct. App. 2008) (quoting *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 875 (2006)).

This Court held Appellants were not Bona Fide Purchasers for Value (hereinafter “BFP”) because Appellants did not meet all three elements of BFP prior to receiving “actual knowledge that there *could* be a claim or defect that would affect title to the property” and that the date for determining whether notice occurred should not be the date of sale. Opinion No. 5467. The Court held because Appellants learned of Respondent’s *intent* to file a Motion to Vacate prior to tendering the remainder of the purchase price, Appellants failed to “actually pay” prior to learning of a defect in the title to the real property. The Court has created a new precedent that a motion constitutes notice of a defect in title to real property. Though, Court focuses on the payment element of BFP, its clear in applying the new precedent that Appellants did not meet any of the elements of BFP prior to receiving notice the Motion was to be filed. Appellants would respectfully, assert that it is not uncommon in a foreclosure sale in this state that a third-party purchaser would not meet one of the three BFP elements prior to a motion being filed in the case.

A. The Court Omitted Addressing Why The Motion Constituted a Notice of Defect in Title.

Appellants argued Respondent's Motion to Vacate did not constitute notice to Appellants of a defect in title to the real property. The Court does not address why the motion constitutes notice of a defect in title. However, the new precedent, respectfully, is going to have a noticeably negative impact upon the alienability of real property.

According to Core Logic, a nationally recognized company that maintains annual statistics on real estate transactions including foreclosure sales, the number of South Carolina completed foreclosure sales for the 12 month period ending in October of 2016, totaled 8,581 sales. <http://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-october-2016.pdf>, page 8. Appellants assert that a significant number foreclosure actions in this state a post-sale motions is filed by a defendant prior to the third party purchaser tendering the remainder of the purchase price and/or prior to the court delivering the deed to a third party purchaser. If five percent of foreclosure actions fit this scenario then pursuant to the Core Logic statistic this would have occurred 429 times last year. Therefore, the new precedent that a motion constitutes notice of a defect in title to real property could have clouded title to property sold in 429 sales last year.¹ In a case where the motion is denied and the defendant appeals but no bond is posted², even if title remains with the third party purchaser that title would be clouded until the conclusion of the appeal process. These are the facts of *Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander*³ Appellate Case No. 2011-198986.

¹ The Court ruled that only knowledge of a parties intent to file a motion constituted notice, not actual knowledge of the substance of the motion. Therefor the motion itself and not the substance of a motion is what constitutes notice of a defect in title to real property.

² Pursuant to South Carolina Code Ann. §18-9-170, if a bond is not posted to stay a foreclosure judgment then the sale shall proceed.

³ Appellants would request that this Court take judicial notice of the facts of the case currently pending before this Court. *Wachesaw Plantation v. Alexander, Todd*, Appellate Case No. 2011-198986.

In *Wachesaw*, an HOA initiated a foreclosure against the defendant. The defendant received notice of the action prior to the order of foreclosure, but failed to respond prior to the order of foreclosure and sale. Immediately after the sale on June 7, 2011, the defendant was contacted by the third party purchaser. The defendant attempted to pay the outstanding debt on June 16, 2011. The defendant filed a motion to vacate on June 17, 2011. On June 21, 2011 the Motion to Vacate was heard. The third-party purchaser tendered the remainder of the purchase price on June 24, 2011. On August 9, 2011 an order denying the motion was filed. Thereafter, the master delivered the deed to the third party purchaser. *Wachesaw* Record on Appeal, <http://ctrack.sccourts.org/public/caseView.do?csIID=40893>. The defendant appealed the order without posting a bond and this Court dismissed the matter by order dated May 25, 2012. Thereafter the Supreme Court overturned this Court, and at present, the case is waiting to be heard on oral argument by this Court. *Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander*, 414 S.C. 355, 778 S.E.2d 898 (2015). In *Wachesaw* because the third-party purchaser did not tender the remainder of the purchase price or acquire title prior to the motion to vacate being filed this precedent means the purchaser has held clouded title to the property for nearly six years at present. The Court erred in holding notice of an intent to file the Motion constituted notice of a defect title to real property.

1. This Opinion Is Out Of Uniformity With The Court's Opinion In *Bloody Point*.

In *Bloody Point Property Owner's Ass'n*, the appellant citing *Cumbie v. Newberry* asserted the third-party purchaser was not a bona fide purchaser arguing 1) the purchaser failed to inquire as to the jurisdiction of the court, 2) whether appellants where properly before the court, and 3) that the order of publication did not comply with the publication requirements of South Carolina

Code Ann. §15-9-740.⁴ *Bloody Point*, 410 S.C. at 67-68. *Cumbe* states: “that a purchaser in good faith at a judicial sale is not affected by irregularities in the proceedings or even error in judgment, under which the sale is made; but is required at his peril only to make inquiry as to the jurisdiction of the court which ordered the sale, and whether all proper parties were before the court when the order was made.” *Id* at 68 (quoting *Cumbe*, 251 S.C. at 37.) (emphasis added.) In *Bloody Point* the third party purchaser responded to the defendant by citing *Gladden v. Chapman*, which states: “It must be presumed from the judgment rendered that the Court considered and adjudicated . . . the issuance of service of process upon the defendants, and the rights and interests of the parties . . . and although the conclusions with respect to those matters, or any of them, might have been erroneous, so that they would have been reversed on appeal, they do not make the judgment void collaterally.” *Id.* (quoting *Gladden*, 106 S.C. 486, 91 S.E. 796, 797 (1917). (emphasis added). This Court, in response to the parties arguments, ruled the third-party purchasers were bona fide purchasers and noted “[w]hile the [a]ppellants assert the master lacked jurisdiction to sell the Property because of defect in service, the *Robinson* court held the foreclosure purchaser was a bona fide purchaser for value without notice such that claims of defective service in the foreclosure action did not affect the purchaser’s title.” *Id.* at 68-69. (emphasis added).

In Case at hand, this Court held

“There is no question the Keys paid a portion of their bid to the master and did not know at that time there was any adverse claim against the property. Before the Keys paid the entire purchase price, however, they received actual knowledge that *there could be* a claim or defect that would affect title to the property. Accordingly, the Keys cannot claim status as bona fide purchaser for value.” Op. 5467. (emphasis added).

⁴ The facts of *Bloody Point* are nearly identical to this case except in this case the third party purchasers are the appellants rather than the defendant.

The Court notes that Appellants only received “actual notice of Murray’s *intent* to file a motion to vacate the sale.” *Id.* (emphasis added). By taking such a stance, this Court creates a precedent that the motion itself NOT the substance of the motion, constitutes notice of a defect in title to real property⁵. The Court does not address why notice that a motion was to be filed constitutes notice of a defect in title to the real property. The decision stands in conflict with the opinion in *Bloody Point*, and the omission has the effect of overruling *Bloody Point* by implication. The ruling and analysis set forth in *Bloody Point* are the argument and citation Appellants raised to support their assertion that Respondent’s Motion did not constitute notice to Appellants of a defect in title, and respectfully, the Court erred in ruling it did.

2. If The Motion Constituted Notice Of A Defect In Title, Then The Sale Was Not Bona Fide And Appellants Did Not Acquire Title Prior To Notice.

Black’s Law Dictionary does not define a “bona fide purchase.” *Blacks Law Dictionary*, Abridged 6th Ed. Appellants define a bona fide purchase as a purchase at a bona fide sale. A “purchase” is the “transmission of property from one person to another by voluntary act and agreement, founded on a valuable consideration. To own by paying or by promising to pay an agreed upon price which is enforceable by law . . . relative to land, generally means the acquisition of real estate by any means whatever except by descent” *Id.* A “bona fide sale” is “a completed transaction in which seller makes sale in good faith, for valuable consideration without notice of any reason against the sale.” *Id.* To complete a real property transaction, the deed must be delivered. “The proper execution *and delivery* of a deed is effective to convey real property from a grantor to grantee.” *Spence* 368 S.C. at 119. (emphasis added). “South Carolina Code section 15-39-870 provides: Upon the execution *and delivery* by the proper officer of the court of a deed

⁵ Additionally the Court stated only that the motion constituted notice that *there could* be a defect in title, not that there actually was. However, the Court ruled that sufficient to preclude BFP status.

for any property sold at a judicial sale under decree of a court of competent jurisdiction that proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers . . .” *Robinson v. Estate of Harris*, 378 S.C. 140, 662 S.E.2d 420 (Ct. App. 2008) (emphasis added.)

In this Case, the sale was not bona fide, nor did Appellants acquire title prior to notice of the motion. The Court misstated when the property was conveyed to Appellants, stating “[o]n May 16, 2014, the Keys paid the remaining balance of their bid amount. That same day, the Master issued a deed to the Keys conveying the property.” The Deed was executed May 16, 2014, however the Master did not deliver the deed to until May 23, 2014 and thereafter Appellants walked straight to the RMC office and recorded the deed, as recommended in a race-state.⁶ The Master, the seller in this instance, did not complete the transaction by delivering the deed to the Appellants until four days after the Respondent’s Motion was filed. By not delivering the deed, the Master did not complete the sale in good faith without notice of any reason against the sale. Appellants did not acquire title to the real property prior to both the Master and Appellants having Notice of Respondent’s filed Motion. This Precedent could call into question the validity of every

⁶ See. *Appellants Final Brief footnote 19*, p. 34 (Appellants recorded the Deed the day the Master presented it to Appellants. Upon presentment of the deed the Master’s Office asked Appellants if they knew about the Motion to Vacate. The Master knew about the Motion to Vacate prior to presenting the deed to Appellants, but nonetheless present the deed. Therefore, Appellants recorded the Deed.); *Respondent’s Final Brief p. 6* (The Respondent, by and through his counsel, asserts with a great degree of confidence that the Master would not have executed the deed three weeks early had he been aware of the circumstances let alone approved its release to the Appellant on May 23, 2015 (sic).”) *Appellants’ 8/1/14 Mtn. Reconsider, R. p. 84* (“The following Friday on May 23, 2014, the Master’s Office contacted Third-Party Purchasers to inform them they could now pick up the Deed from the Master’s Office. On May 23, 2014, the Third-Party Purchaser recorded the Deed in the RMC Office. . . Further the deed was not delivery to the Third-Party Purchasers by the Court until after the Master had actual knowledge of the Defendant’s Motion to Vacate.”); *Appellants’ 9/2/14, Mtn. Reconsider, R.p. 103* (Appellants repeated verbatim the previous quotation from Appellants’ 8/1/14 Motion to Reconsider); *Respondent’s 8/18/14 Memorandum, R.p. 347-48* (“30. On May 23, 2014, pursuant to his Motion to Reconsider the Order Vacating the Judgment of Foreclosure and Setting Aside the Sale, Third Party Purchaser accepts the deed from the Court and causes it to be recorded in the RMC Office for Charleston County.”);

foreclosure sale where a master or court fails to deliver a deed to a third party purchaser prior to a motion to vacate being filed.

3. The Court Has Created A New Standard Third Party Purchasers Must Undertake To Protect Their Interest In Property.

If a motion constitutes a notice of a defect in title, then a third party purchaser, to protect his interest in a property against future events of which he has no knowledge or control must tender to entire purchase on the date of sale in order to ensure meeting the “actual purchase” element of BFP. By requiring the tender of the entire purchase price on the sale date this Court establishes a new precedent which has the potential for significant adverse effects on the sale process. Most, if not all, of the courts in this state practice a standard of requiring the winning bidder to pay five percent on the purchase price on the day of sale and tender the remainder within 30 days. However, this new precedent has created a heightened standard. If the successful bidder wants to obtain BFP status to protect his newly acquired interest in the property the purchaser must tender the entire purchase price on the date of sale or risk losing his BFP status if the Defendant files a motion prior to the remainder of the purchase price being paid. Appellants would respectfully assert that the date of purchase which is the date of sale should be the date for determining whether the “actual payment” element of BFP has been met prior to receiving notice of a defect in title.

B. The Court Erred In Ruling Appellants Did Not Preserve For Appellate Review The Issue Of Whether Respondent Preserved Its Defenses To Appellants’ Assertion Of BFP Status.

The Court erred in finding Appellants failed to file a motion pursuant to Rule 59(e), SCRCP, requesting the Master issue a ruling after the Master declined to rule whether Respondent preserved the right to raise defenses to Appellants assertion of BFP status. Op. 5467.

“When a trial court does not explicitly rule on an argument raised and the appellant makes no Rule 59(e), SCRCP, motion to obtain a ruling, the appellant court may not address the issue.”

Smith v. NCCI, Inc., 369 S.C. 236, 247-48, 631 S.E.2d 268, 274 (Ct. App. 2006). However, “this Court does not require parties to engage in futile actions in order to preserve issues for appellate review.” *Staubes v. City of Folly Beach*, 339 S.C. 406, 415, 529 S.E.2d 543, 547 (2000); *Fettler v. Gentner*, 396 S.C. 461, 469, 722 S.E.2d 26 (Ct. App. 2012) (Once a party moves for a directed verdict on an issue, and that motion is denied, the party is not required to object again to the subsequent jury instruction regarding that issue.) “If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling. We strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place. *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 25, 602 S.E.2d 772 (2004). The “losing litigant is not entitled to return to trial court indefinitely hoping for change of heart or a more sympathetic judge, or string out arguments one at a time over months because “[t]here must be finality, a time when the case in the trial court is really over and the loser must appeal or give up” *Id.* at 20 (citation omitted).

The issue is not whether the Master eventually, after multiple orders, ruled upon Appellants status as BFP. The issue is whether Appellants, filed a Rule 59(e), SCRCP, motion, to preserve their argument that the Respondent did not preserve a defense to Appellants assertion of BFP status. In the present matter, Appellants filed four motions pursuant to Rule 59(e), SCRCP. Appellants asserted the issue in successive Rule 59(e), SCRCP, motions and at successive motion hearings. The Master did not address the issue in any of the five orders he issued in which it would have been appropriate for him to address the issue. As to this issue Appellants “beat the proverbial

dead horse” and this Court’s own recitation of the facts acknowledges that. The Court erred in ruling Appellants did not address the issue in a Rule 59(e), SCRCP motion.

To the extent the Court asserts that to preserve the issue for appellate review, Appellants were required to file a fifth Rule 59(e), SCRCP, motion in response to the April 9, 2015, Order, Appellants would respectfully assert it would have been futile to file a fifth motion to reconsider in this matter. Appellants already properly preserved the issue for appeal.

2. THE MASTER ERRED IN VACATING THE FORECLOSURE SALE.

A. Laches

“Under the doctrine of laches, if a party, knowing his rights, does not reasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights.” *Eldridge v. Eldridge*, 398 S.C. 113, 121-22, 728, S.E.2d 24 (2012). The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice.” Op. 5467 (quoting *Emery v. Smith*, 361 S.C. 2017, 216, 603 S.E.2d 598, 602 (Ct. App. 2004)).

In this case, the Court ruled “[w]e find Murray’s actions were not sufficient to establish a defense of laches. *We are troubled by Murray’s delay* in formally responding to the foreclosure action after receiving notice in late March 2014. However, by May 2014, Murray hired an attorney who filed a motion to vacate the foreclosure judgment. We do not believe this delay was unreasonable.” (emphasis added). Op. 5467. The Court, omits to address that the Respondent’s delay in formally responding to the foreclosure was the last in a pattern of unreasonable delays which prejudiced multiple parties involved in this foreclosure action. For years prior to making an appearance in this matter, the Respondent failed to pay the assessments he owed to the Plaintiff and failed to provide the Plaintiff with his mailing address despite having known or having should

known his obligations to Plaintiff. Plaintiff was prejudiced by this unreasonably delay and incurred the expense of hiring an attorney and initiating this action. Thereafter on March 26, 2014, Respondent obtained actual knowledge that a hearing of foreclosure had been held the week before, and yet Respondent waited nearly two months after the hearing was held before obtaining counsel and formally appearing in this matter. Respondents delay in appearing was unreasonable under the circumstances. Respondent's unreasonable delay prejudiced the Plaintiff and the Court who had to undertake the time and expense of advertising the sale and selling the property. Finally, Appellants as a result of Respondent's unreasonable delay were prejudiced in ways including: having entered into an obligation with the Court, paying the purchase price for the property, obtaining insurance upon the property, hiring an attorney to undertake a title search, incurring the costs of litigating this matter, and losing the benefit and use of both the property and the purchase money held by the Master for the last two and a half years. This Court erred in ruling that Respondent's delay was not unreasonable and the doctrine of laches did not apply.

B. Plaintiff Did Not Violate The Publication Statute.

Appellants argued the affidavits were not facially defective. The Court erred in ruling they were. Moreover, the Court erred in ruling Plaintiff attempted service on the wrong defendant.

"Where a party contests the validity of an order of publication based on a lack of diligence in attempting to locate the party, this court has held that the trial court is without authority to overrule the finding of the clerk of court" absent fraud collusion or a facially defective affidavit of service in violation of the publication statute. *Caldwell v. Wiquist*, 402 S.C. 565, 569-72, 741 S.E.2d 583 (Ct. App. 2013). South Carolina Code Ann. §15-9-710, states:

When the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State and (a) that fact appears by affidavit to the satisfaction of the court or judge thereof, the clerk of the court of common pleas, the master, or the probate judge of the county in which the cause is pending and (b)

it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made or that he is a proper party to an action relating to real property in this State, the court, judge, clerk, master or judge of probate may grant an order that service be made by the publication of the summons in any one or more of the following cases. . . (3) when the defendant is a resident of this State and after diligent search cannot be found;. S.C. Code Ann. §15-9-710.

1. The Affidavits Of Service Were Not Facially Defective And Did Not Violate The Publication Statute.

This Court held “[t]his case is similar to *Caldwell* because the affidavit presented to the Clerk of Court was facially defective. . . Belle Hall failed to comply with the publication statute because the attached search demonstrates it attempted service on the wrong defendant.” Op. 5467. Appellants argued before this Court during oral argument that this case is distinguishable from *Caldwell* and in this case the affidavits of the process servers show that attempted service was made upon the Respondent. Further in this case the process servers affidavits, unlike the affidavits in *Caldwell*, evidence that in this case the process servicers did use due diligence.

In *Caldwell*, the process servers affidavits were facially defective because on their face affidavits stated that the process server attempted to serve a known non-resident of Beaufort County only in Beaufort County. *Caldwell* at 571. This Court found the affidavits violated the publication statute because they did not attempt to find and serve the Defendant throughout the state, and that the affidavits did not evidence due diligence in attempted service. *Id.* at 571-72. The Court noted *Caldwell* was distinguishable from *Yates v. Gridley*, 16 S.C. 496 (1882); *Montgomery v. Mullins*, 325 S.C. 500, 480 S.E.2d 467 (Ct. App. 1997); and *Wachovia Bank of S.C., N.A. v. Player*, 341 S.C. 424, 535 S.E.2d 128 (2000), “because those cases involved affidavits that included at least some facts concerning efforts to locate the defendant.” *Id.* at 570.

This case is also distinguishable from *Caldwell* because in this case the process servicers affidavits of attempted service evidence efforts of due diligence to locate the Respondent. This

case is analogous to *Player*. The Court notes in *Caldwell* that in *Player* the “court affirmed the master’s refusal to set aside service of process despite the fact that the petition requesting service by publication contained an untrue statement. . . . Our supreme court reviewed the petition requesting service by publication and affidavit of non-service together, finding it is clear from the reading the two documents together that the petition is inaccurate, *but that the process server’s affidavit reflects due diligence by her.*” *Id.* at 51. (emphasis added). The same is true in this case, here this Court takes issue with the Affidavit of Publication of Plaintiff’s Attorney, which is analogous to the petition requesting service by publication in *Player*. Like in *Player*, here the petition contains an inaccuracy, namely an exhibit containing potential addresses for John E Murray instead of the Respondent John A Murray. However, when read together with the affidavits of the process servers it is clear that the process servers attempted to serve John A Murray. The Court erred in ruling Plaintiff “attempted service on the wrong defendant.” Additionally, here like in *Player* the affidavits of attempted service evidence due diligence on the part of the process servers. For example the affidavit of attempted service by the process server dated August 2, 2013, states “checked property address above, resident (white female, approx.. 42 yrs old) stated John A. Murray does not live here, they rent this house from him. They did not know his address, they deposit the rent payment in an account, his phone number is 843-316-1266- Called this number – a recording states – number is not in service.” (R.p. 220)

Here, a collective reading of the petition/affidavit for publication in combination with the process servers affidavits of attempted service, evidence that the process servers attempted to serve the Respondent and they used due diligence in attempting to do so. Respectfully, this Court erred in ruling the Affidavits were facially defective and violated the publication statute because service was attempted upon the wrong defendant.

2. To Affirm, This Court Used An Alternative Sustaining Ground Which Was Not Ruled On By The Master Nor Raised By Respondent.

Respectfully, the Court failed to comply with Rule 220(c), SCACR, or at least affirmed the Master's ruling based upon a reasoning which could be viewed as unjust applied given that is wasn't raised, ruled on, or requested.

"The appellate court may affirm any ruling, order, decision or judgment upon any grounds(s) appearing in the Record on Appeal." Rule 220(c), SCACR. "Under the present rules, a respondent – the "winner" in the lower court – may raise on appeal any additional reasons the appellate court should have affirmed the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. . . The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment. An appellate court may not rely on Rule 220(c), SCACR, when the reason does not appear in the record, or when the court believes it would be unwise or unjust to do so in a particular case." *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419-20, 526 S.E.2d 716 (2000).

In this case this Court upheld the Master's Order as to attempted service on an alternative sustaining ground. The Master by order filed February 10, 2015, states:

"the Court . . . finds most disturbing and relevant certain facts. The Plaintiff, in spite of conducting a Westlaw Address search on a prior holder and not the Defendant, had actual notice of Defendant's address. The Plaintiff had five possible addresses and attempted to service at the first three . . . Plaintiff did not attempt to serve the fourth address or the fifth address. . . The fourth address was the dwelling place of the Defendant and was not served. The Plaintiff did not mail the Summons to address last known to them pursuant to the Order of Publication and South Carolina Code §15-9-740, but instead mailed it to the fifth address, an address at which service was not attempted. . . this Court Amends it Order of July 22, 2014 to include the following conclusions of law" . . 2) Service was defective;" (R.p. 46, 50).

The Master by order filed April 9, 2015 states:

Here, the Plaintiff attempted service at three of the five addresses it had available to it before they pursued Service by Publication on the local Charleston County owner. This was a significant factor in this Court's Court Determination. (R.p. 52).

This Court held “the affidavit presented to the Clerk of Court was facially defective. . . Belle Hall failed to comply with the publication statute because the attached search demonstrates it attempted service on the wrong defendant.” Op. 5467. However, the process servers affidavits of service evidence attempted service of the Respondent. The Master never held the affidavits were facially defective and never ruled service was attempted on the wrong Defendant. The Respondent never raised before the Master or subsequently raised as an alternative sustaining ground, that the affidavits of service were facially defective. The master did not hold the publication statute was violated. He and the Respondent did raise a potential violation, that after publication the Plaintiff failed to mail a copy of the summons and complaint to the *correct* last known address in compliance with the statute.⁷ (R.p. 46). But that is not the reason this Court asserts for violation of the Publication Statute.

Respectfully this Court did not Comply with Rule 220(c), SCACR. The Courts reasoning for affirming the Master is not found in the Master’s Order, nor did Respondent argue the reasoning before the Master or raise it in his brief as an alternative sustaining ground.⁸ At the very least Appellants would assert that given that reasoning was not ruled on by the Master nor raised by the Respondent.

C. Relief Should Not Have Been Granted Under Rule60(b)(4), SCRCF

1. In The Present Matter This Court’s Circular Argument Regarding Rule 60(b)(4), SCRCF, Lacks Uniformity With *Universal Benefits*, To The Point Of Overturning That Opinion By Implication.

⁷ Respondent cited *Caldwell* in its brief but not for purpose this Court cites, rather Respondent asserted Plaintiff did not strictly comply with the publication statute by mailing the summons and complaint to the *correct* last known address of Respondent. (Respondent’s Brief, p. 14).

⁸ The Respondent’s brief does contain a section for an alternative sustaining ground, but the ground(s) cited by the Respondent are Rule 60(b)(1),(3), or (5), SCRCF.

“There is a difference between a want of jurisdiction, in which case the court has no power to adjudicate, and a mistake in the exercise of undoubted jurisdiction, in which case the court’s action is not void, but is subject to direct attack on appeal. The failure of Universal to invoke the procedural remedies provided under Rule 59 and the SCACR is a result of its own inaction and not a denial of due process.” *Universal Benefits, Inc.*, 349 S.C. at 184. “A judgment will not be vacated for mere irregularity which does not affect the justice of the case, and which the party could have availed himself, but did not do so until judgment was rendered against him.” *Id.* (quoting *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C.286, 291, 457 S.E.2d 340, 343 (1995)).

In this case This Court’s factual recitation acknowledges the Respondent had actual notice of this action nearly two weeks prior the filing of the Order of Foreclosure. The Court in its analysis of the relief granted pursuant Rule 60(b)(4), SCRCP, states “[w]e acknowledge Murray had an opportunity to request reconsideration of the order of foreclosure,” but then goes on in a circular argument to state that the relief pursuant to 60(b)(4), SCRCP was appropriate because the court never had personal jurisdiction over Murray. Op. 5467. This Court in *Universal Benefits*, made it clear that where a defendant has actual notice of a proceeding in time to file a motion to reconsider and if necessary a subsequent appeal then the individuals due process rights were protected. Subsequent relief for such an individual who did not avail himself of such remedies is improper under rule 60(b)(4), SCRCP. The Court in *Universal Benefits*, notes that though in such an instance there may have existed an irregularity or mistake as to personal jurisdiction of the defendant which could be subject to attack on appeal, nonetheless the defendant’s due process rights remained intact. The mistake or irregularity did not make the order of the court void abinitio. Here the facts are nearly identical to those in *Universal Benefits*. The Court seemingly

acknowledged this, but then refused to apply its own applicable precedent. Respectfully, the Court erred, the precedent of this case will have the effect of overturning *Universal Benefits* by implication.

2. Respondent Did Not Preserve Relief Sought Under Rule 60(b)(4), SCRPC.

The Respondent did not request relief under Rule 60(b)(4), until after the Order of July 22, 2014. “While it is true that pleadings in the [] court must be liberally construed, this rule cannot be stretched so as permit the judge to award relief not contemplated by the pleadings. Due process requires that a litigant be placed on notice of the issues which the court is to consider.” *Heins v. Heins*, 344 S.C. 146, 152, 543 S.E.2d 224. “Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advance earlier.” *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). A motion “shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.” Rule 7, SCRPC. Rule 60(b), SCRPC covers a number of distinct forms of relief within each individual subsection, (b)(1) is relief for mistake, (b)(2) is relief after newly discovered evidence, (b)(3) is relief due fraud or misrepresentation, (b)(4) relief because is judgment is void, and (b)(5) is relief because a judgment has be satisfied. Rule 60(b), SCRPC. These are very distinct and separate grounds of relief and they must be plead with specificity.

In the present matter this Court held that Respondent did preserve its ability to seek relief under Rule 60(b)(4), SCRPC because “[d]uring the hearing on the motion to vacate, Murray requested the master set aside the order of foreclosure pursuant to Rule 60(b), SCRPC.” The Court contends that was sufficient to put the Master on notice of the specific relief the Respondent was seeking given the context of the case. Op. 5467. The Respondent’s Motion requested relief “pursuant to SCRPC Rule 59 or, alternatively Rule 60. . . The grounds for this motion are that the

plaintiff presented a false, misrepresentative or fraudulent, and fatally defective affidavit of due diligence.” (R.p. 68.) Thereafter at the Motion hearing the Respondent stated: “We believe that we have grounds under Rule 60(b). . . there was an Affidavit of Service that was a misrepresentation to the Court. And that misrepresentation to the Court we would argue was fatal.” (R.p. 129). Respectfully, the Respondent did not make clear to the Master that it was seeking relief pursuant to Rule 60(b)(4). If anything the relief sought would presume to be under Rule 60(b)(3), SCRCp.⁹ For purposes of seeking relief Pursuant to Rule 60(b)(4), SCRCp, the Respondent’s Motion failed to comply with Rule 7, SCRCp, and further the Respondent failed to raise the relief sought prior to the Order of July 22, 2014. The Court erred in ruling that the Respondent preserved relief sought under Rule 60(b)(4), SCRCp.

3. THIS COURT ERRED IN DECLINING TO RULE ON MASTER’S ORDER DENYING APPELLANT’S MOTION FOR STAY AND REQUEST THAT THE MASTER HOLD THE PROCEEDS OF SALE IN BOND.

On July 22, 2014, Appellants filed a Motion requesting that Master stay the Order of July 22, 2014, vacating the Order of Foreclosure and Sale and further an Order of Supersedeas, holding the proceeds of sale in bond. The Master denied the Motion without out even hearing oral argument on the matter. This Court affirmed the Master’s denial, stating that the Court declined to reach the issue because the Court’s ruling affirming the Order Vacating the Sale was dispositive and the Court did not need to address the remaining issue.

Appellants’ would respectfully assert that the affirmation of the Order Vacating the Order of Foreclosure and Sale is not dispositive as to whether the Master should have denied Appellants Motion to Stay and request for an Order of Supersedeas. The orders are separate and distinct

⁹ Respondent did not clarify the relief it was asking for from the Master with its amended order moving pursuant to “Rule 8(f), 52(a), 52(b), 55(c), (59)a, 59€, 60(b), and all other applicable rules.” (R.p. 93) The motion then goes on request relief in a conclusory remark pursuant to Rule 60(b)(1)(3)(4) and (5) without citation, support, or presenting a basis for the relief requested.

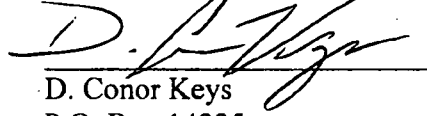
Orders which were each appealed. The damages claimed Appellants pursuant to each issue and/or order are separate and distinct as well. South Carolina Code Ann. §18-9-170 states: "If the judgment appealed from direct the sale or delivery of possession or real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the party of the appellant, with two sureties, to the effect that during the possession of such property by 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." S.C. Code Ann. §18-9-170. This is what appellants requested the Master grant. Had the Motion to Vacate been denied then the Respondent would have been required to post a bond to stay the sale and prevent delivery of possession of the property to Appellants. Appellants simply requested that they be afforded the same opportunity and protection which Respondent would have been afforded if the tables had been turned. Appellants' would respectfully assert that the affirmation of the Order Vacating the Order of Foreclosure and Sale is not dispositive as to whether the Master should have denied Appellants Motion to Stay and request for an Order of Supersedeas.

CONCLUSION

For the reasons stated above, Appellants request the Court withdraw its previous decision and issue a decision that that Appellants are BFP, the Master Erred in Vacating the Order of Foreclosure and Sale, and the Master Erred in denying Appellants Motion to Stay and request for an Order of Supersedeas.

RESPECTUFLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC

A handwritten signature in dark ink, appearing to read "D. Conor Keys", is written over a horizontal line.

D. Conor Keys

P.O. Box 14225

Charleston, SC 29422

Phone: 843-906-3998

conor@dconorkeyslaw.com

*As Appellant and Attorney
for Appellant.*

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 23 2017

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2013-CP-10-4248
App. Case No. 2014-002018

Belle Hall Plantation Homeowner's Association, Inc.....Plaintiff,

v.

John A. Murray, Trustee of John E. Murray & Gloria C. Murray Family Trust.....Respondent,

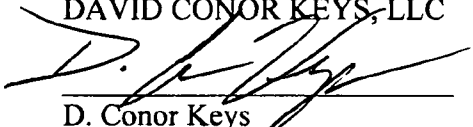
David Conor Keys & Karen Keys, Third-Party Plaintiff,.....Appellants.

PROOF OF SERVICE

I, the undersigned do hereby certify that I have on this 22nd day of February 2017, mailed
a true and correct copy of the Appellants' Petition for Rehearing to the following counsel of record:

Amanda Megan Reece
Reece Law Firm
217 Lucas Street Unit J
Mount Pleasant, SC 29464
Attorney for Respondent

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC


D. Conor Keys

THE LAW OFFICE OF
DAVID CONOR KEYS LLC
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CONOR@DCONORKEYSLAW.COM
843-906-3998

February 22, 2017

Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

FEB 23 2017

RE: Belle Hall Plantation v. John Murray (David Keys) **SC Court of Appeals**
Appellate Case No. 2014-002018

With regard to the above referenced matter, please find enclosed an Original Petition for Rehearing and six copies of the same along with a check for the petition fee.

With kind regards,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC


D. Conor Keys

Enclosures:
(as stated)

CC:
Amanda Reece

The South Carolina Court of Appeals

Belle Hall Plantation Homeowner's Association, Inc.,
Plaintiff,

v.

John A. Murray, Trustee of John E. Murray & Gloria C.
Murray Family Trust, Respondent,

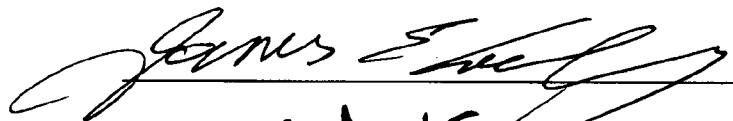
and

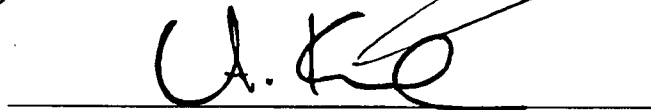
David Conor Keys & Karen Keys, Appellants.

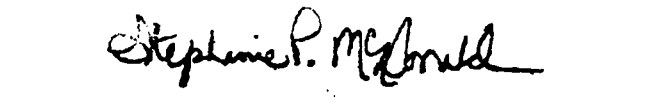
Appellate Case No. 2014-002018

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

FILED
May 26, 2017

cc:

David Conor Keys, Esquire

Amanda Megan Reece, Esquire

Stephanie Carol Trotter, Esquire

The Honorable Mikell R. Scarborough