THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master in Equity

Hon. Joseph M. Strickland, Master-in-Equity

Case No. 2015-001807

Winrose Homeowners Association, Inc.
and Regime Solutions, LLC,..... Respondents,

v.

Devery A. Hale and Tina T. Hale..... Appellants.

PETITION FOR REHEARING

This petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs petitions for rehearing, while Rule 240 governs motions and petitions in general.

The Court issued its decision on April 4, 2018. See Op. No.5549. This petition is timely under Rule 221(a).

Appellants respectfully resubmit the arguments from its briefs, and wish to reserve such arguments for further review. In addition to those arguments, Appellants respectfully submit that the Court may have overlooked or misapprehended the following points in its April 4, 2018 decision:

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Trial and appellate courts have not until this time, determined a method on calculating how a bid amount at a foreclosure sale may "shock the conscience" of the court. The cases, before the one at bar, have not always had information about the value of the property and the equity in the property. In *Bloody Point Property Owner Ass'n vs. Ashton*, 410 S.C. 62, 71, 762 S.E. 2d 729, 734 (Ct. App. 2014) the trial court was presented two appraisals. The court did not have an agreement between the parties as to value of the property. The court discussed that there was a question of fact about the value and made a determination of value through county records. The property, in the court's opinion, was worth far less than appellants hoped. The court did not have to make a determination of which method (Debt or Equity) to use, because either method did not mathematically shock the conscience of the court.

Here, an appraisal and the mortgage balance was part of the record for the trial court. The parties agree that the value of the Hale's property was $128,000 and that the equity was over $62,000. The only determination left for the court was to decide the basis for one of two methods to make a finding of how the Court's conscience would be shocked by a bid at a foreclosure sale with senior lien holders still having mortgages on the property. As this Court points out, there has not been an express ruling in South Carolina on which is the preferred method. The two methods are the Debt Method and the Equity Method.

The opinion finds the Debt Method is the preferred method for determining whether a successful bid shocks the conscience because the successful bidder is required to "satisfy the senior encumbrance dollar for dollar to obtain clear title to the property," Slip op. at 7 ¶ 1. Respectfully, the bidder is not *responsible* for the debt. The owner, the person who signed the

Note and Mortgage, is the only person responsible for the debt that is still on the property after the sale. When the owners are evicted from their home, they must still pay or be accountable to the bank that holds the Note. As the dissent comments, the "Appellants have continued to pay the mortgage for a home for which they have no title because they will suffer the severe consequences of default if they do not." Slip op. at 10 ¶ 5.

Respondent's counsel told the trial court, "my clients paid roughly 54 percent of the value of the property" (Record, Page 37, L. 2-3), but Respondent only *paid* in dollars, the bid amount. That amount paid was only 4.89% of the value. The rest of the amount is what *might have* to be paid if the property is sold at a later sale. The real amount paid was under half of what has been said is necessary to shock the conscience. The record also shows that the Appellants have continued to pay the mortgage for the home. The Respondent has paid nothing toward the payments since it bought the property over four years ago. As the dissent pointed out, the judicial sale buyer "takes the property subject to the lien, but the buyer is not responsible for its payment." Slip op. at 10 ¶ 5. The fair, legal method to determine a threshold to shock the conscience is the Equity Method, which the dissent adopts.

At oral argument, the Court inquired of counsel for the Respondent if he knew how much debt was being paid by the Respondents on the properties it had purchased. Counsel answered that he didn't know. Appellant's counsel informed the Court that the Respondent had purchased forty-three properties in Richland County and that not one nickel had been paid in debt since the purchases. Most of the properties have slipped into foreclosure when the owners were ejected. This was not disputed by Respondent's counsel. This demonstrates, empirically, what happens when a homeowner's association lien is foreclosed. Mortgages go unpaid and another

foreclosure, filed by the mortgage holder, follows.

* *

The Respondents further argue that the Debt Method is the preferred method because, in part, to use the Equity Method would create a "chilling effect" on foreclosure sales. This is supported by the faulty position that potential bidders would be unable to determine the amount of equity at the sale because of a "host of statutes" prohibiting disclosure of mortgage balances and the equity would be hard to calculate. The calculations are not difficult. The Register of Deeds has the original amount of the mortgage(s) of record. The potential bidder can easily calculate the approximate balance without violating any privacy laws or statutes.

A bidder has a good idea of the time a loan has been paid by the owner and the value of the property by easy– and now more available–searches, on line. The harm to the homeowner who is still responsible for the debt on the home as a borrower should outweigh the benefit to a potential bidder who doesn't know the precise amount of the debt balance any more than they know the equity amount. There would be no chilling effect on foreclosures because the information is not hidden or incapable of being determined. If the Debt Method is preferred over the Equity Method because the math is difficult, both methods employ the same amount of difficulty. Both the debt and the equity are calculable within reason. If the Equity Method is used, there is no chilling effect. As a practical matter, the only way either of these methods are invoked is when a homeowner files for a hearing on the valuation *after* the sale. The court does not have a duty to calculate anything until a party files a Motion to set aside the sale, or files a motion similar to a borrower invoking the right of appraisement when a deficiency judgment is sought in

a foreclosure. The court doesn't have to investigate or provide any math calculation until a party files for inquiry.

The argument that there would be a chilling effect on foreclosures of Home Owner's Association liens doesn't hold water.

* * *

Respectfully, the equitable maxim argument, the Appellant believes, is preserved. Although there is no specific maxim used at the trial court, the argument was made that the "court had the ability in (his) gavel to do equity were perhaps equity should be done." The equitable maxim would be that "Equity will not suffer a wrong to be without a remedy." To dismiss that preservation is simply form over substance. The equitable argument should be preserved.

Conclusion

The Court should grant this petition and issue an opinion using the Equity Method and set aside the trial court's Order.

Respectfully submitted,

April 19, 2018

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PROOF OF SERVICE
For The
APPELLANTS' PETITION FOR REHEARING

I, Brian L. Boger, hereby certify that on 19 April 2018, I served a copy of the Appellant's Petition for Rehearing on counsel for the Respondents via United States Mail, postage pre-paid, addressed as follows:

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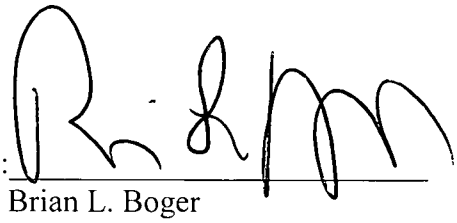
Signed: 

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