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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph M. Strickland, Master-in-Equity

Opinion No. 5549 (S.C. Ct. App. filed April 4, 2018)

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

v.

Devery A. Hale and Tina T. Hale, ...Petitioners.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

The Court of Appeals issued its decision on April 4, 2018. (App. p. 1). Counsel for Petitioners certify that the Petition for Rehearing was made on April 19, 2018, and denied on June 1, 2018. (App. pp. 12, 17).

QUESTIONS PRESENTED

I. Whether the Court of Appeals erred in adopting the debt method, rather than the equity method, to determine whether the sale price at a foreclosure sale in which a senior lien is not extinguished shocks the conscience of the court.

II. Whether the Court of Appeals erred in finding Petitioners' equity argument unpreserved and, if so, whether the sale should alternatively be set aside under equitable principles.

STATEMENT OF THE CASE

This case arises out of the foreclosure of a homeowners' association lien and subsequent motion to vacate the judicial sale. The Hales dispute the Master-in-Equity and Court of Appeals' use of a debt method to determine if the sale price shocked the conscience such that it should be set aside.

The Hales built their home in 1998 with a mortgage for $104,250.00. (App. pp. 113, 119, 132). They live in the home with their children. (App. p. 132). The Hales always made timely mortgage payments and, as of February 6, 2015, had an outstanding balance of $66,004.00. (App. pp. 132, 135). An October 31, 2014 appraisal of the home found a fair market value of $128,000.00. (App. pp. 118-20).

On February 11, 2014, Respondent Winrose Homeowners' Association, Inc., ("Winrose") filed a foreclosure complaint for $566.41 in unpaid assessments, late fees, interest, and other charges. (App. pp. 100-01). The Hales did not answer, and the Master entered a judgment of foreclosure and sale on July 21, 2014. (App. p. 90). Mrs. Hale stated in an affidavit that she "forgot about" the complaint. (App. p. 133). She later received a $250.00 bill from Winrose, which she

paid, and then received a satisfaction of lien from Winrose's attorney. *Id.* She "thought everything was okay after that." *Id.* At the August 4, 2014 sale of the property, Respondent Regime Solutions, LLC, ("Regime Solutions") was the highest bidder with a bid of $3,036.00. (App. p. 109). The satisfaction of lien Mrs. Hale received referred to satisfaction from the sale proceeds. (App. p. 151 lns. 20-22).

The foreclosure judgment states the total debt is $2,898.67, which consists of: $500 in principal, $80.87 in interest, $542.80 in collection costs prior to the hearing, a $2,025.00 attorney's fee, and a credit for the Hales' $250.00 payment. (App. p. 92). The Hales now may lose their home over a $500 homeowners' association assessment. The judgment states "The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances. Specifically, this sale is subject to a senior mortgage held by Nationsbanc Mortgage Corporation recorded in Book R64 at Page 617." (App. pp. 93-94, ¶ 5.c.).

On September 16, 2014, Regime Solutions filed a rule to show cause seeking to evict the Hales from their home. (App. pp. 105-07). On November 4, 2014, the Hales filed a Motion to Vacate Sale arguing the sale price shocked the conscience and the sale should be vacated based on equitable principles. (App. pp. 113-16). The Honorable Joseph M. Strickland continued the motion to vacate and rule to show cause at a January 16, 2015 hearing because "of an administrative issue" in which he did not have the motions on his docket and was not prepared to hear them. (App. pp. 141-42). At that hearing, the Master asked counsel for Regime Solutions if it was "willing to settle this with the Hales", to which he responded: "Candidly, my client is not being what I consider reasonable in their expectations. The reality is, my clients believe there is

significant equity in the property and that they stand to profit from getting the property and paying the mortgage off." (App. p. 144 lns. 7-14).

At a February 6, 2015 hearing, the parties argued different methods for calculating whether a sale price shocks the conscience such that it should be set aside. The main disagreement is whether and how to consider a senior lien of outstanding mortgage debt in the calculation. Regime Solutions and Winrose argued the court should add the actual sales price to the outstanding mortgage debt balance and then divide that number by the property value. (App. pp. 156-57, 168, 170-71). Applying the calculation to this case, the $3036.00 judicial sale price plus the $66,004.00 mortgage debt totals $69,040.00, divided by the $128,000.00 home value, results in a calculated sale price that is approximately 54% of the home's value. This is the "debt method" adopted by the Master and the Court of Appeals. (App. pp. 6-7, 97).

The Hales argued that using either the property value or the equity value, the sale price shocked the conscience. (App. p. 165 lns. 1-5, pp. 28-31). Using the property value, the court divides the $3,036.00 sale price by the $128,000.00 appraisal value, resulting in a sale price that is 2.37% of the home's value. (App. p. 114). Using the equity value, the court divides the $3,036.00 sale price by the $61,996.00 equity in the home (the outstanding mortgage balance subtracted from the home value), resulting in a sale price that is 4.8% of the equity. (App. p. 31). This is the "equity method", which considers the mortgage debt but uses a different calculation than the debt method.

In addition to the calculation for whether a sale price shocks the conscience, the Hales also argued the Master should vacate the sale for equitable reasons. (App. p. 113-14, 165-66). They argued the "Court has the ability in its gavel to do equity where perhaps equity should be done",

Regime Solutions was "unreasonable in negotiations", and the Hales are "hard-working people" who "deserve this home" and are "not behind on their payments" to the bank. (App. pp. 165-66).

At the January 16, 2015 hearing, the Court asked Regime Solutions if "[t]hey plan to assume the mortgage". (App. p. 144 lns. 15-16). Regime Solutions answered "[t]hey are prepared to pay the mortgage off once they have quiet title to the property." (App. p. 144 lns. 17-18). However, "Richland County public records reveals Regime has purchased 43 properties between November 4, 2013, and September 8, 2015. Of those 43 properties, 18 have entered foreclosure, and 25 have open mortgages of record. Regime does not appear to have paid off one single encumbering lien . . . ." (App. p. 74 n.1). In their brief to the Court of Appeals, the Hales discussed that the bidder in a homeowners' association foreclosure action takes the property subject to a mortgage rather than assuming it and, therefore, is not personally responsible for the balance. (App. p. 29). In response, Regime Solutions stated only that the property is encumbered by the mortgage and was silent as to whether it will pay off the mortgage. (App. pp. 55, 60).

The Master asked the parties about settlement status. Regime Solutions stated the Hales "made an offer to purchase the property back" and "[t]heir offer was not unreasonable in my estimation; however, my client is – my client recognized that the property had equity in it, and they declined their offer." (App. pp. 153-54). The Hales offered $9,000.00, almost three times the bid amount. (App. p. 158 lns. 5-6). Regime Solutions "made a counter offer, which was significantly more than the offer that the former homeowners made, and that is what is necessitating this motion hearing." (App. p. 154 lns. 4-7). Counsel for Regime Solutions further explained he was not certain but believed "[t]here's $70,000 worth of equity in the property and that my client was willing to split the difference with [the Hales] and let them pay half of the equity [$35,000.00] back to" Regime Solutions to settle the matter that arises out of $500.00 in

assessments. (App. pp. 154-55, 158). At the hearing, the Hales stated they could pay $9,000.00 that day to Regime Solutions. (App. p. 158).

The Master denied the motion to vacate. (App. pp. 96-98). He calculated an "effective sales price" as the bid amount ($3,036.00) plus the outstanding mortgage balance ($66,004.00) for a total of $69,040.00, and then divided that by the $128,000.00 property value to find the effective sale price is 54% of the property value. (App. p.97). The Master further found "the practice of homeowners' association foreclosures would effectively be eradicated if the defendants' position came to bear. Virtually no foreclosures of this type would pass scrutiny if encumbrances and liens are not considered when calculating the appropriateness of a bid amount." *Id.*

On appeal, the Hales argued the Master should not have added the senior mortgage to the actual sale price to create an effective sale price, the correct calculation for determining if the successful bid shocks the conscience is to divide the actual sale price by the equity in the property, the foreclosing homeowners' association should investigate the equity value in the property, and the Master should have vacated the sale under equitable principles. (App. pp. 25-37).

A majority of the Court of Appeals affirmed the Master's denial of the Hales' motion to vacate the sale, and Judge Lockemy dissented. (App. pp. 1-11). The majority found no South Carolina case "expressly weighing the Equity and Debt Methods and declaring the preferred method when accounting for a senior encumbrance." (App. p. 5). It held that, under *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 732 S.E.2d 622 (2012), "we should consider the senior mortgage on this property" but *Arrow Bonding* did not establish whether the debt or equity method is the law. (App. p. 6). After discussing a Court of Appeals' opinion that "appeared to utilize the Equity Method", the Court nonetheless held "the Debt Method is the proper method for taking into account a senior encumbrance when deciding whether a successful bid shocks the conscience."

(App. pp. 6-7). The Court gave various reasons for its holding, including "the successful bidder is required to satisfy the senior encumbrance dollar for dollar prior to obtaining clear title", "the Debt Method is consistent with our general policy of upholding properly conducted judicial sales because the Debt Method will result in fewer set asides", and "Regime cannot truly access the equity in the property without satisfying the senior encumbrance because any future sale of the property would be subject to the senior encumbrance." *Id.* The Court of Appeals then agreed with the Master that, applying the debt method, an effective bid of approximately 54% of the property's fair market value did not shock the conscience. (App. p. 7). Finally, the Court of Appeals found the Hales' equity arguments unpreserved. (App. p. 9).

Judge Lockemy dissented in a separate opinion. He agreed that the mortgage debt should be taken into account but "would utilize the Equity Method as a better vehicle to determine whether a bid shocks the conscience" because it "seeks to encourage judicial sales while also being fair to property owners." (App. p. 10). Judge Lockemy noted "[t]he evidence in this case shows [the Hales] have continued to pay the mortgage for a home for which they have no title because they will suffer the consequences of default if they do not. The buyer has paid nothing." *Id.* He explained, "I do not believe it proper to give a judicial sale buyer credit for assuming a debt which it is not legally required to pay." *Id.* Judge Lockemy disagreed with the majority's reliance on supposed fewer sales set aside under the debt method. He "suggest[ed] virtually no sales will be set aside under these circumstances. Buyers need only bid a minimal amount and if a property is encumbered by a mortgage of at least 10% of the home's value, the bid is not subject to attack for being grossly inadequate." (App. p. 11). He believes the debt method would "swallow" the rule "that judicial sales must produce bids that are not grossly inadequate." *Id.*

The Hales filed a timely petition for rehearing resubmitting "the arguments from its briefs" and, specifically, arguing the debt method should not be adopted because the successful bidder is not legally responsible for the mortgage debt such that it only *paid* $3.036.00 and *might* later pay the mortgage debt. (App. pp. 12-14). They argued using the equity method will not have a chilling effect on foreclosure sales because a potential bidder can easily calculate equity using publicly available information including the original mortgage amount and the tax value of the home. (App. p. 15). Further, the debt method requires a fair market value, which must either be the tax value or obtained from a third party. *Id.* Finally, the Hales argued the Court erred in finding their equitable arguments unpreserved. (App. p. 16). The Court of Appeals denied the petition for rehearing on June 1, 2018, and this Petition for a Writ of Certiorari is timely filed.

ARGUMENT

This case involves a novel issue because South Carolina appellate courts have not squarely addressed whether the debt or equity calculation method is used for determining if the sale price at a foreclosure sale in which a senior lien is not extinguished shocks the conscience. The majority of the Court of Appeals erred in adopting the debt method, and this Court should reverse and find Judge Lockemy's dissent correctly utilizes the equity method.

"[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." *Eastern Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 356, 644 S.E.2d 802, 806 (Ct. App. 2007). The Hales seek to set aside the sale for the first reason—the price is so low as to shock the conscience of the court—and based on equitable principles. "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." *Id.* at 359, 644 S.E.2d at 807. "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.* (citing *Investors Sav. Bank v. Phelps*, 303 S.C. 15, 19, 397 S.E.2d 780, 782 (Ct. App. 1990) (citing *Polish Nat'l Alliance of Brooklyn, U.S.A. v. White Eagle Hall Co.*, 98 A.2d 400 (N.Y. App. Div. 1983))).

This Court should grant the petition and reverse the Court of Appeals because the equity method is the proper calculation method for determining whether the sale price at a foreclosure sale in which a senior lien is not extinguished shocks the conscience of the court or, alternatively, because the sale should be vacated for equitable reasons.

I. The Court of Appeals Should Have Adopted and Utilized the Equity Method to Determine whether the Sale Price at a Foreclosure Sale in which a Senior Lien is Not Extinguished Shocks the Conscience of the Court.

In 1934, this Court first adopted the law that a judicial sale may be set aside for "inadequacy of price [when it is] . . . so gross as to shock the conscience." *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 157, 177 S.E. 24, 27 (1934) (internal quotation marks omitted). In cases that involve a mortgage foreclosure of the senior lien, our appellate courts consistently compared the actual sale price at the judicial sale to the property value to determine if the sale price shocked the conscience of the court and, thus, should be set aside. *See Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 149-50, 152, 662 S.E.2d 424, 425-26 (Ct. App. 2008) (comparing actual sale price of $3,000.00 to mortgage evidence of property value of $82,050.00 to find sufficient evidence supported special referee's holding that "bid was so grossly inadequate as to shock the conscience"); *Eastern Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 352-53, 644 S.E.2d 802, 804-05 (Ct. App. 2007) (comparing actual sale price of $246,000.00 with property value of $550,000.00 to find sales price not "so inadequate as to shock the conscience of the court"); *Investors Sav. Bank v. Phelps*, 303 S.C. 16, 19, 397 S.E.2d 780, 783 (Ct. App. 1990) (holding actual sale price of

$510.00 for property with a note in the amount $48,340.00 "was so grossly inadequate so as to shock the conscience"); *Poole*, 174 S.C. at 158-61, 177 S.E. at 27-28 (comparing actual sale price of $500.00 to property value of $5,000.00 to determine price "wholly inadequate" and shocked the conscience).

When addressing motions to set aside a sale of foreclosure of a junior lien where a senior lien remains on the property, our appellate courts have used multiple calculation methods.

In *Fed. Nat'l Mortgage Ass'n v. Brooks*, 304 S.C. 506, 405 S.E.2d 604 (Ct. App. 2006), the Court of Appeals affirmed a master's decision to set aside a judicial sale. The foreclosure involved a second mortgage, and the bid of $875.00 was subject to a first mortgage balance of $24,270.00. *Id.* at 508, 405 S.E.2d at 605. The successful bidder argued the mortgage balance added to his bid price was adequate because it represented 49% of the total property value, found by the master to be $52,500.00. *Id.* at 509, 405 S.E.2d at 605-06. The Court of Appeals found the "inadequacy of the bid price when considered with the other incidents of noncompliance with the terms of the foreclosure decree afford a sufficient basis for setting aside the foreclosure sale." *Id.* at 509, 405 S.E.2d at 606. After noting "'disparity between the accepted bid and the fair value of the property'" is a proper consideration, the Court found: "It cannot be gainsaid that the payment by [the bidder] of $875 for equity of over $27,000 was adequate, albeit, it is not so grossly inadequate as to shock the conscience of the court." *Id.* at 510, 405 S.E.2d at 606 (quoting *Spillers*, 233 S.C. at 104, 103 S.E.2d at 761). The Court compared the actual sale price (not an effective sale price that included the outstanding mortgage as argued by the bidder) to the equity in the property.

In *Arrow Bonding Co. v. Warren*, 399 S.C. 603, 732 S.E.2d 622 (2012), this Court affirmed the denial of a motion to set aside a judgment execution sale. Warren acted as a surety for bonds

that someone forfeited. *Id.* at 604-05, 732 S.E.2d at 623. The bond company got a judgment against Warren and then filed for foreclosure of the judgment. *Id.* at 605, 732 S.E.2d at 623. Warren defaulted, and the bond company successfully bid $2,500.00 on Warren's real properties at a judicial sale for a $7,693.31 debt. *Id.* Warren moved to set aside the sale based on an inadequate sales price because the tax assessment records showed a combined property value of $263,121.00. *Id.* at 606, 732 S.E.2d at 623. Rather than comparing the $2,500.00 sale price to the property value, the master added the outstanding mortgages ($88,000.00) and tax liens ($12,000.00) for a newly calculated sales price of $102,500.00 and compared that to the property value, finding a 39% figure did not shock the court's conscience. *Id.* at 606, 732 S.E.2d at 624. On appeal, Warren argued "the Master erred in not judging inadequacy by directly comparing the sales price to the properties' value, without considering mortgages or liens." *Id.* at 607, 732 S.E.2d at 624. This Court disagreed "under the circumstances of [the] case." *Id.* The court explained, "[i]n a judgment execution sale such as this, the buyer takes the property subject to the mortgage as well as other liens" and the master could consider the mortgage amount and liens "in determining the true value of the properties to the buyer at an execution sale." *Id.* at 607, 732 S.E.2d at 624. As a basis for affirming the master, this Court found Warren failed to show gross inadequacy of the sales price because "the record is devoid of evidence of the true value of the properties." *Id.* at 608, 732 S.E.2d at 624.

This Court specifically noted, "[t]he propriety of this method of calculating value is not challenged on appeal", thus leaving open the consideration of another method such as the equity method. *Id.* at 606 n.5, 732 S.E.2d at 624 n.5. The Court did not hold the calculation method used in *Arrow Bonding* is the only calculation to be used but simply found the master did not abuse his discretion. *Id.* at 607, 732 S.E.2d at 624. Therefore *Arrow Bonding* does not stand for the

proposition that this State exclusively uses the debt method, and the Court of Appeals erred in adopting it in reliance on *Arrow Bonding*.

The most recent appellate decision on a motion to set aside a sale alleging a sale price that shocks the conscience does not address the issue in this case. *Bloody Point Prop. Owners Ass'n v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (Ct. App. 2014) appears to be the only case involving the foreclosure of a homeowners' association lien. The master found a successful bid of $8,800.00 plus $2,793.20 in taxes resulted in an $11,593.20 payment and used a property value of either $10,000.00 based on a prior tax sale price or $17,000.00 based on an appraisal from the successful bidders. *Id.* at 65, 70, 762 S.E.2d at 731, 734. On appeal, the owners challenged the master's use of the successful bidders' evidence on property value rather than their purchase price and appraisal evidence. *Id.* at 70, 762 S.E.2d at 734. The Court of Appeals affirmed, finding "the master's decision is supported by the evidence in the record." *Id.* at 71, 762 S.E.2d at 734. Neither the calculation method nor the addition of taxes to the successful bid were an issue on appeal.

The arguments the Hales present in this case have not previously been presented to an appellate court and, therefore, are not squarely answered by any of the cases cited above. The Court of Appeals should have adopted the equity method. Its main basis for adopting the debt method is based on a false premise—that the successful bidder is acquiring the debt attached to the property rather than the equity in the property. (App. p. 6). The debt method is a legal fiction because it assumes, with no basis, that the successful bidder will pay off the mortgage debt, the bidder's purpose in purchasing the property is to obtain clear title, the bidder cannot profit from its purchase unless it pays off the debt, and the evicted homeowners will not pay the mortgage and risk the ruination of their credit and other consequences of mortgage foreclosure. *See, e.g.*, *Purvis v. Commercial Casualty Co.*, 160 S.C. 484, 487, 159 S.E. 369, 370 (1931) (stating the "rule that

the law knows no fractions of a day is . . . a mere legal fiction, and therefore, like all other legal fictions, is never allowed to operate against right and justice . . ."). In a homeowners' association foreclosure sale, the successful bidder is not personally liable for the mortgage and is not legally required to pay it. The evidence is that Regime Solutions does not pay off the mortgages for the homes it buys from foreclosure sales. (App. p. 74 n.1, p. 14-15). A successful bidder may not intend to get clear title or profit by paying off the debt because it could easily list the property for sale for an amount more than the mortgage balance, and have the buyer pay off the mortgage as part of the purchase, thereby profiting without ever personally paying the mortgage. The evicted homeowner has personal liability and other financial incentive to continue paying a mortgage on a home he no longer owns (resulting in more of a windfall and profit to the successful bidder) to avoid damaged credit and a deficiency balance after a foreclosure sale or being taxed on any amount of forgiven debt as taxable income. Judge Lockemy correctly stated in his dissent that it is improper "to give a judicial sale buyer credit for assuming a debt which it is not legally required to pay." (App. p. 10).

The equity method is the more reasonable method because it takes a senior lien into account but, rather than creating a fictional, effective sales price with the lien, it uses the lien amount to calculate the equity in the property. While "it is the policy of the Courts to uphold judicial sales when regularly made", "in proper cases the Court will set aside a judicial sale." *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 156, 177 S.E. 24, 26 (1934). This is a proper case to set aside a sale because, if the sale is not set aside, Regime Solutions will receive a windfall of at least $61,996.00 in equity that it purchased for only $3,036.00. The Hales will be evicted from their home, lose over $61,996.00 in equity, and remain personally liable for approximately $66,004.00 in mortgage debt for a home they no longer own all because of a mere $500.00 debt to Winrose.

The Court should reverse the Court of Appeals by adopting the equity method and finding the sale price shocks the conscience of the Court.

Regime Solutions' argument that it could never know whether equity exists in a home is contradicted by its own representations to the Master. It represented that it "believe[s] there is significant equity in the property and that [it] stand[s] to profit from getting the property and paying the mortgage off." (App. p. 144, lns. 12-14). At the hearing, Regime Solutions gave the Master "a copy of the mortgage and the UCC, as well as the print out for – from the Register of Deeds Office with regards to the taxable value on the property" and described these documents as "part of the public record." (App. p. 169 lns. 6-12). Therefore, from the public record, the Respondents could have calculated the mortgage payments made, thus giving them an equity value in the home, and determined a present value for the home from the tax value. "A purchaser at a judicial sale is deemed to have notice of all things disclosed by the record." *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 151, 662 S.E.2d 424, 426 (Ct. App. 2008). The basis for Regime Solutions' settlement negotiations with the Hales is the amount of equity in the home. (App. p. 153-55). The debt method adopted by the Court of Appeals requires that a purchaser know the outstanding mortgage amount to calculate if the "effective" sales price is over 10% of the home's value because it is added to the judicial sale price. (App. p. 97). Finally, neither Respondent offered any proof that setting aside the sale in this case will stop homeowners' association foreclosure sales for unpaid dues. Rather, the result may be that the sales prices in those foreclosure sales do not shock the conscience.

II. Petitioners' Equitable Arguments are Properly Preserved.

The Court of Appeals erred in finding the Hales did not preserve their equitable arguments. It ruled the "arguments regarding equitable maxims unpreserved because they did not properly

raise them to the master and the master did not rule on them." (App. p. 9). Both of these findings are incorrect.

First, the Hales properly raised equitable arguments to the Master. In the Motion to Vacate Sale, the Hales stated the motion was made pursuant to Rule 60(b)(5), SCRCP, which includes a basis for relief from a judgment when "it is ***no longer equitable*** that the judgment should have prospective application." (emphasis added) (App. pp. 113-14). At the hearing, counsel for the Hales argued they offered to pay $9,000.00 to settle, "a 300 percent profit to" Regime Solutions, but it was rejected. (App. pp. 158-59). The Hales further argued the "Court has the ability in its gavel to do equity where perhaps equity should be done", Regime Solutions was "unreasonable in negotiations", and the Hales "deserve this home" and are "hard-working people" that are "not behind on their [mortgage] payments." (App. pp. 165-66). Counsel for Winrose acknowledged "there's been a lot of talk about equity." (App. p. 166 lns. 16-17). That the Hales did not use specific equitable maxim names does not render the argument unpreserved. "A party need not use the exact name of a legal doctrine in order to preserve the issue for appellate review, but it must be clear the argument was presented on that ground." Toal, Jean Hoefer, et al., Appellate Practice in South Carolina (3d ed.) 186.

Second, the Master ruled on the equitable argument by denying the motion to vacate. This satisfies the requirement that an argument is raised to and ruled upon by the lower court. That the Master did not expressly state his rejection of the equitable argument in the Order does not mean the Hales were required to file a Rule 59(e), SCRCP, motion. *See Bailey v. Segars*, 346 S.C. 359, 364-65, 550 S.E.2d 910, 913 (Ct. App. 2001) (finding issues preserved even though the lower court "did not explicitly rule on the issues" and the appellant did not file a Rule 59(e) motion because the appellant raised the issues, presented them in the record on appeal, and the motion "was denied

in a form order").[1] "Post-trial motions are not necessary to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not yet ruled upon by it." *Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (finding an issue preserved where the parties argued clearly conflicting amortization schedules and "the trial court ruled on Seller's objections by expressly adopting Buyer's amortization schedule in its order").

The Hales raised an equitable argument to the Master, and he ruled on it by denying the motion to vacate. Therefore, the issue is preserved.

III. As an Alternative to the Inadequate Sales Price Argument, the Court of Appeals Erred in Failing to Find Equitable Principles Demand the Court Vacate the Sale.

If the Court agrees with the Court of Appeals as to the debt method but finds the equitable arguments preserved, it should find that equity favors vacating the sale. "Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011). The Master erred in not exercising his discretion and inherent power to grant equitable relief to the Hales.

Numerous equitable principles favor vacating the sale. "[E]quity will not suffer a wrong without a remedy. Where, as here, a wrong has been suffered, and no adequate legal remedy exists, it is well within the court's powers to fashion an equitable remedy." *Key Corporate Capital, Inc. v. Cnty. of Beaufort*, 360 S.C. 513, 518-19, 602 S.E.2d 104, 107 (Ct. App. 2004) (internal quotation marks and citations omitted), *rev'd on other grounds* 373 S.C. 55, 644 S.E.2d 675 (2007). Without an equitable remedy, the Hales will suffer the wrongs of the loss of their home and equity while

[1] *See also Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291, 312, 578 S.E.2d 16, 26 (Ct. App. 2002) ("[T]here is no blanket requirement that the trial court set forth a separate explanation on all of its rulings on post-trial motions.").

remaining legally bound to pay a mortgage. If the Court grants equitable relief and vacates the sale, the Hales will pay Winrose and Regime Solutions will receive a refund of its money.

"A court of equity abhors forfeitures, and will not lend its aid to enforce them. . . . The court has the power in equity to deny or delay forfeiture when fairness demands." *Regions Bank*, 394 S.C. at 256, 715 S.E.2d at 356 (internal quotation marks and citation omitted). The sale should be vacated because upholding it would result in a forfeiture to the Hales and an unfair windfall to Regime Solutions. The Hales will forfeit their home and $61,996.00 in equity while remaining personally liable for a $66,004.00 mortgage debt. Regime Solutions will, for the price of $3.036.00, obtain the home without any legal liability to pay the mortgage and may choose a number of options to maximize its profit. This is inequitable and should be prohibited.

"He who seeks equity must do equity." *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) (internal quotation marks omitted). Regime Solutions failed to act equitably by bidding barely over $3,036.00 for property it knew had significantly more equity value. It also failed to negotiate in good faith with the Hales, who offered almost three times the sale price to settle the matter, by demanding an excessive settlement amount of approximately $35,000.00 for a matter that arises out of a $500.00 debt.

"Equity looks to substance rather than form." *Regions Bank*, 394 S.C. at 253, 715 S.E.2d at 354 (internal quotation marks omitted). This maxim "evolved out of judicial regard for that which ought to be done. [It] applies by dispensing with pure formalities which would otherwise defeat the equity. *Id.* at 253, 715 S.E.2d at 354-55 (internal citation and quotation marks omitted). "When applying this principle, courts look to the substance and intent of the parties, and give a construction consistent with such intent." *Id.* at 253, 715 S.E.2d at 355. The Court of Appeals and the Master applied a calculation that applied form over substance and ignores the intent of the

parties. The calculation of whether a bid shocks the conscience is intended to result in fair bid amounts and should be based on the realities of the parties' legal obligations and actions. Here, the bid amount of $3,036.00 for over $60,000.00 in equity and a property worth $128,000.00 is not a fair price. Further, a finding to the contrary ignores the fact that Regime Solutions is not legally obligated to pay the mortgage but the Hales are obligated to do so and stand to suffer severe negative consequences if they do not pay it.

CONCLUSION

The foreclosure of homeowners' association liens is widespread in South Carolina, and the use of the equity method will ensure that judicial sales may proceed but at a fair price. Any other result ignores the reality that a successful bidder can and does profit from the equity in a home without ever intending to pay or actually paying off any senior liens. The Hales request the Court grant certiorari and reverse.

Respectfully submitted,

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~~June~~ 7/3/, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph M. Strickland, Master-in-Equity

Opinion No. 5549 (S.C. Ct. App. filed April 4, 2018)

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

v.

Devery A. Hale and Tina T. Hale,
.....Petitioners.

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CERTIFICATE OF SERVICE

I certify that I have served the Petition for Writ of Certiorari, Appendix, and Motion on the following individuals by delivering by hand to the South Carolina Court of Appeals and by depositing a copy of it in the United States Mail, postage prepaid to Stephanie C. Trotter and Eric C. Hale on July 3, 2018.

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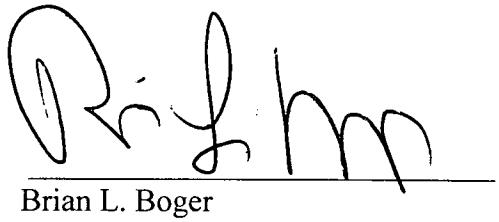

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