

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )  
  
Rene McMasters, now )  
Rene McMasters Ronaghan, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
H. Wayne Charpia, et al., )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
Case Number 2009-CP-18-02200

ORDER ON PLAINTIFF'S MOTION FOR  
JUDGMENT AGAINST H. WAYNE  
CHARPIA FOR NON-COMPLIANCE  
WITH HIS BID AT JUDICIAL SALE

**RECEIVED**

OCT 18 2018

SC Court of Appeals

Date Heard: April 27, 2017  
Plaintiff: Frank M. Cisa, Esquire  
Defendant: Mr. Howard Wayne Charpia, pro se  
Court Reporter: Brenda W. Sigwald

The court granted a Rule to Show Cause (RTSC) against the defendant Howard Wayne Charpia based on his being a defaulting bidder at a judicial sale. The court finds that the plaintiff has failed to present sufficient proof to enable the court to make a determination of the appropriate amount to award to the plaintiff, with the exception that the court finds that the plaintiff is entitled to prevail over any claim that Mr. Charpia has made of entitlement to the \$6,500 being held by the Clerk of Court on deposit for the uncompleted bid by a previous bidder. The request for entry of judgment is denied.

BACKGROUND

This is a foreclosure action that arises from a judgment lien. The original judgment was \$191,600, but increased substantially due to the accrual of post-judgment interest.

By order dated October 29, 2012, filed November 27, 2012, the Honorable Edgar W. Dickson directed the foreclosure and sale of the subject real estate. The order found that Mr. Charpia owed \$375,156 to the plaintiff as of July 30, 2012, with per diem interest running at \$62.99. The order contained the following provisions.

2. . . . The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent of the bid as earnest money and as evidence of good faith, provided, however, the Plaintiff shall be entitled to apply the debt or any portion of the debt due her against her bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of its bid by depositing the said five (5%) percent cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the Clerk of Court may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of its bid within thirty (30) days of the final acceptance of this bid, then the Clerk of Court shall readvertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of the bids in cash as prescribed above. The Clerk of Court shall return all deposits except the deposit securing the highest bid.

3. That the Clerk of Court, by advertisement according to law, shall give notice of the time and place of such sale, and the terms thereof; that the Clerk of Court shall convey to the purchaser, or purchasers, a deed to the property sold; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers, should fail to comply with the terms thereof, the Clerk of Court may advertise the said property for sale on the next, or some subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured.

Mr. Charpia appealed. The South Carolina Court of Appeals affirmed Judge Dickson's order of foreclosure and sale in an unpublished opinion (2016-UP-423) which was filed on October 5, 2016. Mr. Charpia sought to have the Supreme Court of South Carolina grant certiorari. On February 8, 2017, the Supreme Court denied certiorari.

The property was then offered for sale at public auction on April 4, 2017. Mr. Claude Soles was the successful bidder for a price of \$130,000. He paid earnest money of \$6,500 for the 5% required by Judge Dickson's order, and subsequently paid \$64,400 to the Clerk of Court, for a total of \$70,900. He understood that there was a 30-day compliance period for paying the total bid, but had reservations about going through with the sale. He submitted an affidavit reflecting that he attempted to discuss the matter with the Clerk of Court on May 4, 2017, without success, and that he withdrew his bid on May 5, 2017.

Apparently, Mr. Soles was given a check for \$64,400 by the Clerk of Court's office. The \$6,500 amount is being held by the Clerk of Court pursuant to a directive of the court. The property was put up for sale again.

By the time of the second sale on July 5, 2017, over 59 months had passed from the July 30, 2012 calculation of the amount of the debt set out in Judge Dickson's order. The debt had risen to approximately \$488,000. Mr. Charpia and the plaintiff were bidding on the property, and Mr. Charpia was the successful bidder for a price of \$375,000. The plaintiff's last bid was \$374,000. Mr. Charpia failed to deposit 5% of the bid and failed to pay the amount that he bid.

The plaintiff filed a motion to prohibit Mr. Charpia or anyone on his behalf from bidding at the next sale. By order filed July 31, 2017, The Honorable Doyet A. Early issued an order granting that relief. In his order, Judge Early indicated, as did Mr. Charpia in oral argument on the RTSC hearing, that Mr. Charpia had provided the money to the bidder in the April 4, 2017 sale (Mr. Soles), and that the property had been advertised for sale on three different occasions at that point. The order referred to an

email sent by Mr. Charpia to the Clerk of Court indicating that Mr. Charpia was the source of the \$6,500 deposit and the additional \$64,400 that had been paid into the Clerk of Court (for a total of \$70,900) on the April 2017 bid. The record reflects the effort by Mr. Soles and Mr. Charpia to seek return of the entire amount paid into the Clerk of Court from that bid. Judge Early found misconduct on the part of Mr. Charpia in frustrating the bidding process.

A third sale was conducted on August 1, 2017, resulting in the plaintiff making the successful bid of \$59,100.<sup>1</sup> The plaintiff assigned her bid to Green Wave Alum, LLC on the same day, and that entity finalized the bid and acquired the property. The court is unaware of any proof in this record as to the amount paid to the plaintiff by the LLC to purchase the bid.

The plaintiff asserts that she is entitled to a judgment against Mr. Charpia in the amount of \$315,900 (his unconcluded bid of \$375,000, minus the completed third-sale bid of \$59,100). The amount of \$59,100 coincides with the amount determined to be the applicable homestead exemption by order of the Honorable Carmen Mullen. Those homestead exemptions funds were also being held by the Clerk of Court, but were released to Finance of America Reverse, LLC (FAR) upon that corporation's intervention. Judge Early issued the order directing that the Clerk pay those funds to FAR.

In addition to the RTSC issued against Mr. Charpia, the plaintiff also pursued a RTSC against Mr. Soles seeking a judgment against him. The plaintiff asserted in that motion that she is entitled to be paid the \$6,500 being held by the Clerk, as well as to

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<sup>1</sup> Mr. Charpia filed an appeal on September 1, 2017, (actually an additional notice in a pending appellate case) wherein he challenged the judicial sale that was conducted on August 1. By order entered on March 6, 2018, the South Carolina Court of Appeals dismissed this aspect of the appeal based on Mr. Charpia's withdrawal of that challenge, leaving only his appeal of the denial of a homestead exemption for his brother.

have judgment entered against Mr. Soles in the amount of \$64,400 due to the failure of Mr. Soles to complete the sale by paying \$130,000 (\$130,000, minus \$59,100, minus \$6,500 = \$64,400).

#### DISCUSSION

The essence of this dispute is the interpretation of the language in Judge Dickson's order wherein a non-complying bidder assumes the risk of the failure to comply with his bid. In more routine situations, the phrase would be easily understood. If the subsequent sale results in a lower sales price than the previous non-complying bid, the prior bidder has to make up the difference between his bid and the lower sales price. Here, there were three judicial sales following the remand on appeal.

In the first, Mr. Soles bid \$130,000. In the second, Mr. Charpia bid \$375,000. In the third, the plaintiff bid \$59,100, which coincided with the amount of the homestead exemption ruling (that amount being admitted by the plaintiff).

Mr. Charpia argued in the RTSC hearing that entering an additional judgment against him is inequitable. Much of what he argued relates to matters that the court has no authority to go back and undo. As mentioned in a previous order, this court is bound by rulings made by other judges, by appeals courts, and by abandonment of appeals. Mr. Charpia makes many of the same arguments over and again.

There may have been other means short of imposing a complete bar to allowing anyone on behalf of Mr. Charpia to bid in the final judicial sale, but that issue was decided and the appeal that challenged the sale abandoned. The questions raised by Mr. Charpia about alleged non-compliance with the 30-day window for leaving bidding open were lost when he filed an appeal challenging the sale, then abandoned the appeal. The

court cannot go back and re-litigate Mr. Charpia's assertions about the impropriety of the original judgment.

If one accepts Mr. Charpia's argument that the plaintiff's judgment was based on grossly overstated or untrue claims of improper construction of the home, that the actual repairs or corrections made post-judgment cost only about \$30,000 (a fraction of the amount claimed in the underlying lawsuit), and that the house was eventually sold (apparently by the LLC after the judicial sale) for \$555,000, one can understand why Mr. Charpia is upset. One can have empathy for the difficulties that the judgment contributed to his inability to work at his chosen profession. Unfortunately for his position, the court is not allowed to litigate those claims and cannot punish the plaintiff for any windfall. (The court cannot determine, based on this record, whether there was an ultimate "windfall" and, if so, whether it was the LLC or the plaintiff or both who obtained it.)

What the court has before it is a question of whether the plaintiff has proven that she is entitled to a judgment in the amount claimed against Mr. Charpia due to his failure to comply with his bid. Plaintiff's counsel has argued in previous hearings that he believes that this is a matter of simple mathematics. He may be right, and most assuredly he would be in most situations. In this particular situation, the court disagrees.

The situation is complicated by the number of sales and the fact that the plaintiff ultimately was the high bidder. If the plaintiff were allowed to recover the amounts claimed due from Mr. Soles (\$64,400) and Mr. Charpia (\$315,900), that would give the plaintiff judgments totaling \$380,800, which would seem to involve double recovery to some extent. The purpose of the judicial sale would seem to be to give the plaintiff the value of the asset being sold. Ultimately, she acquired the right to possess and control the

ownership of the asset by paying only the amount she admitted to be due for the homestead exemption on that property. The court was presented no evidence about the fair market value of the asset on the day of the final judicial sale.

Even if the court were to give Mr. Charpia credit for the amount claimed to be due from Mr. Soles, the end result would be to have the plaintiff with the house, plus a large judgment. If the plaintiff were not the high bidder, the court's interpretation may have been different. But, it appears inequitable and excessively punitive under these circumstances to enter judgment without any proof that the plaintiff actually suffered damages from the non-complying bid.

Mr. Charpia properly argued at the RTSC hearing that the plaintiff presented no sworn evidence or exhibits, and that there is a question in interpretation about the statutes and the wording of Judge Dickson's order.

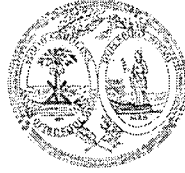
In previous hearings and status conferences, all of which were on the record, the court has indicated that it does not agree that this is a matter of simple calculation of one high bid versus another high bid. The court has expressed that this is not the routine case mentioned at the beginning of this discussion and that a hearing would be required where evidence would be allowed. In spite of that, no affidavits were presented at the RTSC hearing, no witnesses were produced, and no documentary evidence presented. Because of the unique factual issues involved here and the procedural posture of this case, the court finds that the plaintiff has failed to prove the proper amount to award to her for Mr. Charpia's non-compliance with his bid, with the exception that the court finds that any claim that Mr. Charpia is asserting to the \$6,500 deposit being held by the Clerk of Court is resolved in favor of the plaintiff.

The court acknowledges that the lack of precedent on this issue leaves a situation where the court may certainly be wrong and that the court may be requiring too much from the plaintiff. It is certainly reasonable to construe bidding at one's risk is an absolute: that it means that the defaulting bidder is always responsible for the difference between his bid and the complying bid. The court is not accepting the argument of Mr. Charpia that the extensive delays in this case are attributable to the plaintiff. Most of the extended delay and the resulting increase in the judgment amount appear to be due to the repetitive filings of Mr. Charpia. Nonetheless, the court finds that it is inequitable in this circumstance to grant the relief requested, and that it is too punitive in nature to be sanctioned by the court where there is a failure of proof as to actual loss.

THEREFORE, IT IS ORDERED that the plaintiff's motion for entry of judgment against Mr. Charpia is denied, with the exception that the plaintiff is determined to have priority over Mr. Charpia for any claim to the \$6,500 deposit presently being held by the Clerk of Court.

AND IT IS SO ORDERED.

[Electronic signature follows on separate page.]



Dorchester Common Pleas

**Case Caption:** Rene McMasters VS H Wayne Charpia , defendant, et al  
**Case Number:** 2009CP1802200  
**Type:** Order/Judgment For Relief

Circuit Judge (Code #2050)

s/ William P. Keesley