THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 2010-CP-26-11570

Tim Wilkes .....Appellant

vs.

Horry County .....Respondent

FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

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STATEMENT OF THE CASE

On August 5, 2010, the Plaintiff purchased at a judicial sale 1860 Arundel Drive in Myrtle Beach, South Carolina for $196,000.00 cash. The property included a swimming pool. Immediately after the sale, Plaintiff put a "For Sale by Owner" sign on the property. After the judicial sale of the property to the Plaintiff, on August 20, 2010 a Horry County Code Enforcement Inspector served an order on the previous owner, Michael Dixon, to secure the swimming pool on the property because it was not enclosed by a fence. Dixon contracted with Land Services of South Carolina to fill in the pool which was done on or about August 25, 2010. These actions caused substantial property damage to the pool.

Neither Horry County nor its employees contacted Wilkes (who had bought the property) prior to the filling in of the pool. When Plaintiff learned that the pool had been filled in he went to the property and learned that the pool had been damaged. Plaintiff commenced this lawsuit against Horry County because he had not been notified that the County intended to fill in the pool and had ordered the prior owner to immediately comply.

The Circuit Court granted summary judgment finding Plaintiff was not the owner of the property until the Master issued a Deed pursuant to S.C. Code § 15-39-830 and thus

could not bring this suit. Plaintiff filed a Motion for Reconsideration which was denied by the Circuit Court on August 8, 2012.

STANDARD OF REVIEW

This Court must use the same standard in reviewing a grant of summary judgment as the trial court. There must be no genuine issue of material fact to grant summary judgment. Further, summary judgment is a drastic remedy to be cautiously invoked. *Robinson v. Estate of Harris*, 389 S.C. 360, 698 S.E.2d 801 (S.C. 2010); *Bank of New York v. Sumter County*, 387 S.C. 147, 691 S.E.2d 473 (S.C. 2010).

Finally, on appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *USAA Property & Casualty Ins. Co. v. Clegg,* 377 S.C. 643, 661 S.E.2d 791 (S.C. 2008). *Bloom v. Ravoira*, 339 S.C. 437, 529 S.E.2d 710 (S.C. 2000).

ARGUMENT

I. THE PURCHASER HAD VESTED PROPERTY RIGHTS WHEN HE BOUGHT THE HOUSE AT 1860 ARUNDEL DRIVE AT A JUDICIAL SALE.

It is undisputed that the Plaintiff purchased the property at 1860 Arundel Drive for cash on August 5, 2010 at a Master-in-Equity's Sale in Horry County and thus had vested property rights. (Exhibit 2) (R. 34).

The Master-in-Equity in her Report on Sales and Disbursement found:

> Pursuant to Order of Court and after due notice and advertisement, the undersigned sold the property, subject of this action on sales day, August 5, 2010, to Tim Wilkes, his successors and assigns for the sum of One Hundred Ninety-six Thousand Dollars and No/100 ($196,000.00).

Accordingly, based upon the Master's own report (filed in the court records), Tim Wilkes had vested property rights in 1860 Arundel Drive on August 5, 2010. The County's inspector need only check the public website to find Plaintiff had substantial property rights in this real estate.

It is well settled in South Carolina that the public policy of this state favors judicial sales and when the hammer falls at such a sale, the bid is accepted and a valid contract is made. Thus, those sales are final, which is the purpose of the law.[1] See *Appeal of R.B. Pasley*, 94 S.E.2d 57 (S.C. 1956); *Ex parte Eastern Savings Bank v. Sanders*, 644 S.E. 2d 802 (S.C. App. 2007). Accordingly, it would be a simple matter for the County inspectors to review the public website and determine that Wilkes had purchased the property in question and then notify him of the problem with the pool. A Notice of Sale had been published by the Master-in-Equity dated November 16, 2009 (Exhibit 5) (R. p. 37) a

[1] The trial judge refused to accept this policy and stated: "I am granting the motion for summary judgment is until that deed's recorded they're entitled to go by whatever the records show as of the date they give the notice, regardless of who's bid what." (R. p. 72, lines 20-25).

judgment and foreclosure had been issued on March 16, 2010 signed by Cindy Graham Howe as Master-in-Equity (Exhibit 6) (R. p. 38) and Wilkes had placed a sign which stated "waterfront double size lot 130 feet $449,000 by owner 843-446-7075" before the County ordered the prior owner, Dixon, to fill the pool in. (Exhibit 1) (R. p. 33). For those reasons, summary judgment was inappropriate because there were ambiguities and genuine issues of material fact as to whether or not Wilkes and his assigns had vested ownership rights to the property or at the very least had the right to be notified before drastic action was taken which damaged an expensive pool.

II. PUBLIC POLICY MILITATES AGAINST SUMMARY JUDGMENT IN THIS CASE.

There are valid public policy reasons for an order of summary judgment not being granted against the Plaintiff. First, judicial sales are never to be set aside except for cogent reasons. (*Parrott v. Dickson*, 148 S.C. 704, 151 S.E. 114 (S.Ct. 1929)). Also, South Carolina has long held that a successful bidder makes himself a party to the cause when he buys the property at a sale. (*Farrow v. Farrow*, 88 S.C. 333, 70 S.E.2d 459 (1911)). The rule of this jurisdiction has always been to uphold judicial sales and the vested rights of the successful bidder. (*Brownlee v. Miller*, 208 S.C. 252, 37 S.E.2d 658 (1996)). Finally, the courts may require a successful buyer to close on the property and to uphold the contract. See *Spillers v. Clay*, 103 S.E.2d 759 (S.C. 1958); *Harrington v. Blackston*, 311 S.C. 459, 429 S.E.2d 826 (Ct.App. 1993) (purchaser at judicial sale secures the same title and rights in property as the person whose interest was sold). See also *Goethe v. Cleland*, 323 S.C. 50, 448 S.E.2d 574 (Ct.App. 1994) (when no deficiency judgment requested, bidding need not remain open for thirty days).

With these principals in mind, the Appellant had a vested interest in the property once he paid the $196,000.00 on sales day regardless of whether or not the deed was in his name. The Appellant was bound to purchase the property once he was the successful bidder and accordingly had a significant and compelling interest in the property such that the County Building Inspector should have contacted Appellant before ordering the prior owner to fill in an expensive pool and damage it. The Building Inspector for the County only needed to turn on his computer and look at the public records to find that Appellant was the successful bidder and had valuable property rights which should have been protected. Further, Wilkes had a "For Sale Sign" on the property (with phone number) which the inspector could have called when he visited the site. (R. p. 33). For this reason alone, the trial court should not have granted summary judgment since the Appellant could have been required by the Court to purchase the property even if he didn't want to after becoming the successful bidder (especially since no deficiency was requested).

When Wilkes paid $196,000.00 at a judicial sale for real property, he had a due process right to be notified by the County prior to any action being taken by the County. In *South Carolina Ambulatory Surgery Center Assoc. v. South Carolina Workers' Compensation Commission*, 699 S.E.2d 146, 389 S.C. 380 (S.C. 2010) the Supreme Court held that the State Constitution, Article I, Section 22 required any person who was bound by an administrative agency affecting private rights has a right to notice and an opportunity to be heard. In this case, Wilkes was deprived of that right when Horry County failed to notify him of the action it required regarding the pool on the property he had purchased at the sale. Here, Wilkes had established the requisite property interest to invoke these constitutional

protections and thus the trial court erred in holding that summary judgment should be granted since Appellant had equitable title to the property and thus had a right to be notified.

III. WILKES' DEPOSITION CREATES GENUINE ISSUES OF MATERIAL FACT.

At the Motion for Summary Judgment and on reconsideration before the Court, Wilkes presented his deposition which indicated as follows: The property was purchased at an auction on August 5, 2010. (Depo. R. p. 86, lines 11-15); Wilkes believed that the County knew that he owned the property because there was a For Sale sign on the property in huge block letters with his phone number it. (Depo. R. p. 97, lines 1-25).

Also, Horry County Zoning Ordinance § 1300 entitled "Administration and Enforcement" provided as follows:

> The Horry County Council shall fund sufficient personnel to administer and enforce the provisions of this ordinance. If the Zoning Administrator shall find that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal uses of land, buildings or structures; removal of illegal buildings or structures or of illegal additions....

The County's own ordinance requires that it shall notify in writing the person responsible for such violations. Here, the County Code Enforcement Officer did not notify Wilkes who had successfully purchased the property for cash at a foreclosure sale on August 5, 2010 -- fifteen days prior to the County requiring the former owner to fill in the pool, thus damaging it. The violation of this ordinance was more than enough for the Court to deny summary judgment

Wilkes also indicated in his deposition that the for sale sign was "a big sign" (Depo. R. p. 86, lines 15-18); that the prior owner (Dixon) knew I was the owner (Depo. R. p. 97,

lines 1-25); and that the sign had been up since Wilkes had paid the money at the sale on August 5, 2010 (Depo. R. p. 98, lines 21-25).

Appellant suggests to the Court that since he had bought the property at a foreclosure sale, he was the person entitled to be notified in writing of the violations of any ordinances pursuant to § 1300 of the Horry County Zoning Code and that failure of the County to notify him created an issue of fact especially since the County code enforcement officials could have easily looked on the County website and seen that Wilkes had just purchased this property prior to the enforcement action taking place. It goes without saying that § 1300 of the County's Zoning Code requires the Zoning Administrator to use reasonable efforts to notify the person who is responsible for a violation in writing. This was not done in this case and thus created an issue of fact for a jury. Accordingly, the circuit court should not have granted summary judgment.

IV. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT.

South Carolina law recognizes that summary judgment is normally not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. See *USAA Property & Casualty Ins. Co. v. Clegg,* 377 S.C. 643, 661 S.E.2d 791 (S.C. 2008). Further, if evidentiary facts are not disputed but the conclusions or inferences to be drawn from them are then summary judgment should always be denied. See *Hoard v. Roper Hospital, Inc.,* 377 S.C. 503, 661 S.E.2d 113 (S.C. App. 2008).

In this case, there is no dispute as to the evidentiary facts, but the conclusions or inferences to be drawn from them are disputed. They include the following facts: Wilkes bought 1860 Arundel Drive on August 5, 2010 and paid $196,000.00 in cash on sales day (R. p. 151); he immediately placed a sign on the property offering it for sale (R. p. 33); the

property had been foreclosed and an Order signed by the Court on March 17, 2010 (R. p. 38); the trial court's own rendition of the facts indicates that a notice to correct a hazardous condition was served on the prior owner, Michael Dixon, on August 20, 2010 some fifteen days after Wilkes' bought the property (R. p.1); an Horry County Zoning Ordinance requires that prior to ordering action on property all reasonable efforts must be taken to locate the owner (Horry County Zoning Ordinance § 1300).

Here, the trial court inappropriately weighed conflicting evidence at the summary judgment stage of litigation in coming to a conclusion. This the court cannot do. See *Shirley's Iron Works, Inc. v. City of Union*, 387 S.C. 389, 693 S.E.2d 1 (S.C. App. 2010).

In summary, this Court of Appeals must view the evidence and all inferences which can reasonably be drawn from the evidence in the light most favorable to Wilkes. All inferences are that Wilkes had vested property rights when he paid $196,000.00 for the property. Further, a deficiency judgment was waived since the Master executed the deed 19 days after the sale. (R. pp. 22-23, 36, 37). In this case, the court failed to follow the reasonable inference rule and thus improperly granted summary judgment. See *Faile v. S.C. Dept. of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002) (summary judgment reversed based on inferences from the evidence). Here, specific facts were presented which show that the Plaintiff had a vested interest in the property in question (1860 Arundel Drive) and that Plaintiff had not been notified despite the County's ordinance requiring employees to notify the owner in writing. (Horry County Ordinance § 1300). Finally, Wilkes had placed a sign on the property immediately after purchasing it on August 5, 2010 advertising it for sale and the previous owner who had been foreclosed was aware that Wilkes was the owner. (Depo. R. p. 137, lines 20-25; p. 138, lines 1-25). Also, the Master issued an Order

foreclosing the mortgage and ordering the property to be sold on March 17, 2010 over five months prior to the County Enforcement officer ordering that the pool be filled in thus damaging Plaintiff's property. Finally, the Horry County public website indicated Appellant was the successful purchaser on August 5, 2012.

In light of all this evidence, the inferences and ambiguities summary judgment should not have been granted against Appellant since summary judgment is a drastic remedy and should be cautiously invoked to insure that a litigant is not improperly deprived of a trial on disputed factual issues. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (S.C.App. 2008).

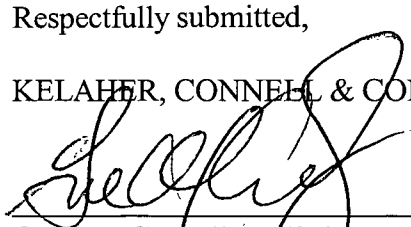
CONCLUSION

The trial court erred in granting summary judgment in this matter. Numerous South Carolina cases have held that when the burden of proof is by a preponderance of the evidence, a non-moving party need only present a scintilla of evidence to withstand summary judgment. *Hancock v. MidSouth Management Co.*, 381 S.C. 326, 330, 673 S.E.2d 801 (2009). Here, Appellant presented numerous factual matters to the court regarding the ownership rights in the property. Those factual matters include a purchase by Wilkes at a judicial sale (R. pp. 22, 23, 24; p. 120, lines 12-23); payment of the entire bid amount in cash (R. p. 34); evidence of a sign on the property showing ownership (R. p. 33); and evidence that the County must notify in writing the owner to comply with its own ordinances. Accordingly, there was a dispute as to the evidentiary facts and the conclusions to be drawn thus rendering summary judgment inappropriate. *Brockbark v. Best Capital Corp.*, 341 S.C. 322, 378, 534 S.E.2d 688 (2000).

Thus, the Appellant prays this Court reverse the grant of summary judgment and remand this matter for trial.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.A.



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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b) SCACR.

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PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served **Appellant's Final Brief** on the Respondent, through its attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Walker H. Willcox, Esq.
Willcox Buyck & Williams, PA
P.O. Box 1909
Florence, SC 29503-1909

DATE OF MAILING: February 28, 2013

Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 28th day of February, 2013

Notary Public for South Carolina
My Commission Expires: 2-25-19