

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS
Judge William Keesley

RECEIVED

MAR 06 2019

SC Court of Appeals

Case # 2009-CP-18-2200
APPELLANT CASE # 2018-001867

RENE McMASTERS.....APPELLANT

VS.

HOWARD W. CHARPIA & JODY E. CHARPIA.....DEFENDANTS
WHOM HOWARD W. CHARPIA IS THE RESPONDENT

INITIAL BRIEF OF RESPONDENT

Howard W. Charpia
106 Axtell Drive
Summerville, SC 29485

cc: Attorney Frank M. Cisa

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of the Case.....	1
Statement of the Facts.....	2,3,4
Argument.....	
1. The Circuit Court did not err in failing to award a judgment against the Respondent in the amount of \$ 315,900.	
2. Said "judgment" was rendered against Howard W. Charpia and Charpia Residentials LLC on August 5 , 2004 .	
3. There is no "judgment" in/under Case # 2009-CP-18-2200 ,i.e., Howard W. Charpia and Jody E. Charpia.	
4. Pursuant to S.C. Code 15-39-20 , et al ; judgment has lost it's active energy.	
5. The "highest" bidder is the "winning" bidder .	
6. There is no mention of a "defaulting" bidder in the non-statutory Order of Foreclosure of Judge Dickon's , dated October 29, 2012 .	
Conclusion.....	4,5,6

TABLE OF AUTHORITIES

Ex parte Moore , 550 S.E. 2d 877 , 346 S.C 274 (S.C. App. 2001).....

Rule 71 , SCRCP

STATEMENT OF THE CASE

Judgment was rendered against Howard W. Charpia and Charpia Residentials LLC on August 5, 2004. There is no "judgment" in case # 2009-CP-18-2200 ; i.e. , Howard W. Charpia and Jody E. Charpia .

There is no "statutory" rule or regulation to "Foreclose on a Judgment Lien" in the state of South Carolina . Pursuant to the South Carolina Supreme Court , Opinion 2016-UP-423 ; "executions" is the only process to enforce a judgment in South Carolina and S.C Code of Laws 15-39-30 , "exsecutions."

McMasters never "executed on said property .

In Attorney's Cisa brief , he quotes/argues : Ex parter Moore ; "The terms and conditions of a judicial sale are controlled by the Court order , Rule 71 SCRPC, the practice and custom of the county in which the property is being sold , and by "statute."

None of these terms were followed in the sale and satisfaction of said judgment.

No "affidavits", no witnesses produced and no documentary evidence were presented at the hearing of August 31, 2018 by Attorney Cisa or McMasters

STATEMENT OF THE FACTS

There have been two (2) sales of said property to satisfy the judgment rendered in 2004 , case # 2002-CP-18-932 . A Sheriff's sale in May 2009 and an "upset" bid sale in June 2009 by the Sheriff's office pursuant to Rule 71 , SCRCF (Ex parte Moore) .

Unless the pleadings state that no personal or deficiency judgment is demanded or any right to such judgment is expressly waived in writing, the bidding shall not be closed upon the day of sale but shall remain open until the thirtieth day after such sale exclusive of the day of the sale.

Attorney Cisa and the lower Court fabricated a "non-statutory" action , i.e. "Foreclosure of A Judgment Lien". Cisa filed another suit under this caption , Case # 2009-CP-18-2200. There is no "statutory" rule of this nature in South Carolina. "Executions" of judgment fall within/under 15-39-30 , et al.

Said judgment lost it's active energy on August 5 , 2014 pursuant to the Laws and SCRCF. (S.C. Code of Laws 15-39-30 , et al)

The third sale was held in April 2017 in which the Clerk of Court conducted the sale, which fell outside the "practice and custom of the County." (Ex parte Moore) A third party bidder (Claude Soles) was the high bidder at \$ 130,000.00.

Attorney Cisa filed a "Rule to Show Cause" against Mr. Soles and tried to obtain a judgment from Mr. Soles for \$ 64,400.00. After numerous attempts to complete the sale by Mr. Soles with the Clerk of Court and the denial to release the "Homestead Exemption" amount of \$ 59,100.00 to Charpia by the Clerk , Mr. Soles withdrew his bid.

Mr. Soles's settled the claim against him by McMasters and Cisa for \$3,500. No evidence has been shown that Mr. Soles paid any monies to McMasters or Cisa.

Per Cisa's argument , Rule 71(b) SCRPC state that "requires waiver of the demand for a deficiency judgment in the pleadings or in writing" before the bidding will be closed on the day of the sale, i.e. an upset bid shall be conducted. There was no "upset bid" sale held pursuant to Rule 71(b) , SCRPC.

Per Cisa's argument , Ex parte Moore; a judicial sale shall also be controlled by statute. This would fall under SC Code 15-39-30 , et al . No "executions" were initiated.

Attorney Cisa submitted an "affidavit" dated August 1, 2017 stating that The "FAIR MARKET VALUE" is \$ 59,100.00 for said property.

And that the \$ 59,100.00 is the Homestead Exemption to be received by Charpia pursuant to Judge Mullen's Order .

Charpia has yet to receive the Homestead Exemption of \$ 59,100.00 .

Attorney Cisa's "highest" bid on August 1, 2017 (final sale) was the "winning" bid. Said bid secured the property and satisfied the judgment against Charpia.

Attorney Cisa's has no "standing" to bring any further action in this case.

CONCLUSION

Judgment was rendered in case # 2002-CP-18-932 in August 2004 for \$191,600.00 against Howard W. Charpia and Charpia Residentials LLC . The lower Court allowed and conspired with the Appellant (McMasters) to file a "non-statutory" action in case # 2009-CP-18-2200 against Howard W. Charpia and Jody E. Charpia (Defendants) .

Jody Charpia has never been a party to the judgment . She did own $\frac{1}{2}$ interest in said property before any "Lis Pendens" were filed in this case. She has never received her "homestead exemption" pursuant to 15-41-30 (1)(a) , i.e. "multiple owner".

The Appellant (McMasters) was the "highest" bidder at the "final" sale of August 1, 2017 , bid was \$ 59,100.00 . This winning and final sale satisfied the judgment .

McMasters and Attorney Cisa have no "standing" to even bring this action after the final sale secured the property for McMasters.

There is no mention of a "defaulting" bidder in the non-statutory" action to "Foreclose on a Judgment Lien" Order.

In Cisa's "Statement of the Facts", Charpia's bid of \$ 375,000.00 at the sale of July 5, 2017 was stified by Attorney's Cisa's bid of \$ 374,000.00 that day.

Judge Early issued an Order to "prohibit" Charpia OR anyone acting on his behalf to bid at any further sale.

Judge Early abused his discretion by denying Charpia access the Court by his Order.

Judgment was rendered in August 2004 and the Appellant had 10 years to initiate an "execution" pursuant to 15-39-30, et al and did not follow the rules and laws of South Carolina.

No affidavits , no sworn testimony nor any documentary evidence was presented at the RTSC hearing with Judge Keesley to show the Appellant was damaged.

Charpia has followed all the rules and laws of the Court throughout his 13 year battle with the Appellant (McMasters and her Attorney).

Charpia lost his 24 year "residential builders license" because of said Judgment . Charpia lost his "commercial" license also because of this judgment.

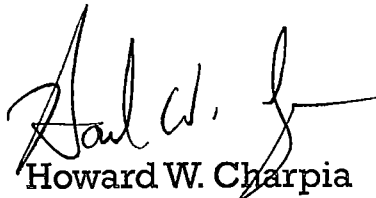
Charpia and his "dependent" , a mentally retarded brother lost their home with no mortgage to the Appellant .

Charpia and his brother are now destitute from this judicial system .

Charpia is 68 years of age now and has been devastated by the fraudulent actions of the Appellant.

Based upon the foregoing and the Order of Judge Keesley and that no proof has been submitted to damages by the Respondent (Charpia) , Charpia prays that this Court uphold Judge Keesley's Order and find in favor of Charpia, the Respondent.

6.


Howard W. Charpia

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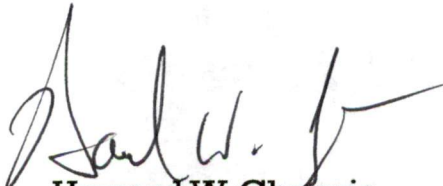
PROOF OF SERVICE

I, Howard W. Charpia , hereby certify that I mailed the RESPONDENT'S
INITIAL BRIEF to:

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Date mailed March 4, 2019


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