

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joseph M. Strickland
Master in Equity

Case No. 2014-000140

Bank of America, N.A.,Respondent

v.

Duce Staley, Felicia Woods a/k/a Felicia B. Woods, SCBT, N.A., South Carolina Department of Revenue, Palmetto Health, Manheim Automotive Financial Services, Inc., and Spring Valley Homeowners' Association, Defendants,

And Willie Zimmerman, Third Party Participant,Appellant

FINAL BRIEF OF APPELLANT

Mr. Robert P. Jackman, Esquire
Korn Law Firm, P.A.
1300 Pickens Street (29201)
Post Office Box 12369
Columbia, South Carolina 29211-2369
Telephone: (803) 252-5817
Attorney for Respondent

Willie Zimmerman, Pro Se
Post Office Box 2013
Irmo, South Carolina 29063
Telephone: (803) 466-1372

Mr. John B. Kelchner, Esquire
Post Office Box 8237
Columbia, South Carolina 29202
Attorney for Respondent

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Other Counsel of Record:

Mr. John S. Kay, Esquire
Post Office Box 8237
Columbia, South Carolina 29202
Attorney for Respondent

Mr. Christopher S. Truluck, Esquire
Post Office Box 12369
1300 Pickens Street
Columbia, South Carolina 29211-2369
Attorney for Respondent

Mr. Noah M. Hicks, II, Esquire
1300 Pickens Street
Columbia, South Carolina 29201
Attorney for Respondent

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STATEMENT OF THE CASE

Appellant, Willie Zimmerman, was the successful bidder on a foreclosed residential property (25 Sunturf Circle, Columbia, South Carolina 29223) at the Richland County Courthouse (the bid). On June 21, 2013, Appellant was contacted by Susan Goldston (Manager, Master-in-Equity) to give notice that the Master wanted to hold a status conference at the courthouse to discuss the loan proceedings.

On July 30, 2013, the Master signed the Order to Vacate Sale and later returned the 5 percent deposit to the Appellant.

FACTS

On April 1, 2013, Appellant, Willie Zimmerman, was the successful bidder on a foreclosed residential property (25 Sunturf Circle, Columbia, South Carolina 29223) at the Richland County Courthouse (the bid). Appellant also remitted the required 5 percent deposit of \$17,600.00. Appellant and Movement Mortgage, LLC (Lender) received an electronic copy of the signed purchase agreement (the contract) from Bernstein Law Firm (Closing Attorney). On or about April 16, 2013, the Lender requested from Bernstein Law Firm an extension of time to comply with the bid. The request was sent to Korn Law Firm. Korn Law Firm (E-mail from Amber Gee) gave written approval to extend the compliance deadline to May 15, 2013.

On May 09, 2013, Appellant called Earle Reese (Paralegal/Post Sale Manager at Korn Law Firm) to give a status report and to inquire if Bank of America NA would accept \$10,800.00 less than the \$352,000.00 bid price. Knowing that the compliance deadline was six days away, Appellant was looking at "all available options" in an effort to close by May 15, 2013. Earle Reese instructed the Appellant to attach a formal letter to an e-mail, requesting an adjustment.

Appellant waited a total of 40 days to hear from Respondent on whether the May 10 request had been accepted. Appellant logged more than ten calls and five e-mails requesting updates. On June 18, 2013, Earle Reese sent Appellant an e-mail approving the adjusted price of \$341,200.00.

1. BECAUSE APPELLANT IN NO WAY CONTRIBUTED TO THE MISTAKE MADE BY THE RESPONDENT, THE COURT ERRED IN SETTING ASIDE THE FORECLOUSE SALE2
2. BECAUSE THE JUDICIAL SALE NEITHER INVOLVED AN INADEQUATE PRICE SO GROSS AS TO SHOCK THE CONSCIENCE, NOR WERE THERE OTHER CIRCUMSTANCES THAT WARRANTED INTERFERECNE FOR THE COURT, THE COURT ERRED IN SETTING ASIDE THE FORECLOURE SALE.....2

The law is well established that the policy of the Courts is to uphold judicial sales when regularly made, and when it can be done without violating principle or doing injustice. A judicial sale will not be set aside except for cogent reasons. The purpose of the law and of proceeding in which a sale has been decreed is that it shall be final. Spillers v. Clay. 233 S.C. 99, 104, 103 S.E. 2d 759, 761-62 (1958).

If neither the officer making the sale, nor the purchaser contributed to the mistake and the sale was fair and regularly conducted, the sale shall not be set aside. The Court erred in setting aside the sale because of a mistake of the Respondent, Bank of America. The voiding of the sale by the Master-in-Equity should be reversed.

Respondent argues that Appellant did not make a timely objection to the July 30, 2013 Court order vacating the sale. Respondent concedes that there was no mistake on the part of the Appellant. Respondent further argues that a contemporaneous objection is required to preserve an issue for appellate review. Respondent cites *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 23, 698 S.E. 2d 612, 624 (2010). Respondent cites the cases as authority, rather than the fact that those were arguments made in the case on appeal.

The court clearly ruled that the assertion made by the Respondent assertion in that case, which is the same assertion of the Respondent, in this case, is without merit. The failure to preserve and issue for appeal does not deprive an appellate in Appellate Court of jurisdiction to hear the appeal. To deprive the Appellant the right to appeal an erroneous ruling would represent a denial of appellant's right to procedural and substantive due process. The appellant has a right to be heard and certainly should not be deprived of property rights with due process of law. Appellant followed the correct procedures in the bidding process and the sale was vacated because of an error that was of no fault of the Appellant.

Similarly, the respondent argues that this appeal was filed more than thirty day after the execution of the order and subsequent to the second order vacating a second sale issue on December 17, 2013. Respondents appear to have overlapped the concepts of issues of preservation and timely notice of appeal. The respondent's argument is clearly without merit and was clearly rejected in *Hill vs. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 23, 698 S.E. 2d 612, 624 (2010).

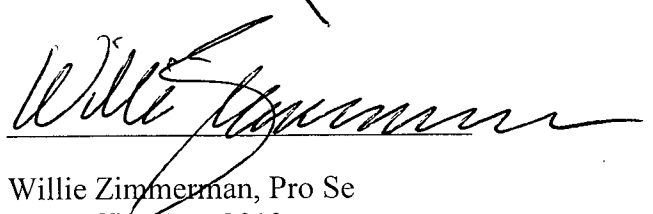
CONCLUSION

The Court erred in setting aside the sale because of a mistake of the Respondent, Bank of America. The voiding of the sale by the Master-in-Equity should be reversed.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Briefing complies with Rule 211(b), SCACR.

October 8, 2014



Willie Zimmerman, Pro Se
Post Office Box 2013
Irmo, South Carolina 29063
Telephone: (803) 466-1372

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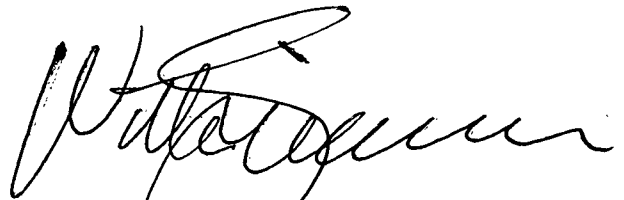
And Willie Zimmerman, Third Party Participant,Appellant

PROOF OF SERVICE

I, Willie Zimmerman, served upon the Respondent this FINAL BRIEF OF APPELLANT by placing the same in the United States Mail, first class postage prepaid, addressed to the following as shown this 8th day of October, 2014.

Mr. Robert P. Jackman, Esquire
Korn Law Firm, P.A.
1300 Pickens Street (29201)
Post Office Box 12369
Columbia, South Carolina 29211-2369
Telephone: (803) 252-5817
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