

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

Appellate Case No. 2018-001238

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

v.

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

BRIEF OF PETITIONERS IN REPLY TO BRIEF OF RESPONDENT WINROSE
HOMEOWNERS' ASSOCIATION, INC.

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INTRODUCTION

Petitioners Devery A. Hale and Tina T. Hale submit this Reply to Respondent Winrose Homeowners' Association's brief. Petitioners incorporate the arguments made in their initial Brief and respond here to only a few specific arguments made by Winrose.

ARGUMENT

I. THE COURT OF APPEALS SHOULD HAVE USED THE EQUITY METHOD AND SET ASIDE THE JUDICIAL SALE

The parties' respective positions as to the equity method versus the debt method are adequately explained in the briefs. Petitioners respond to only two points raised by Winrose.

First, Winrose argues that the only evidence in the record is that Regime Solutions will satisfy the Hales' outstanding mortgage when the foreclosure is finalized. (Br. of Resp't p. 3). This is not dispositive of the appeal because, regardless of Regime Solutions' actual intent, the equity method should still be utilized for the reasons stated in Petitioners' Brief. However, Winrose and the Court of Appeals are incorrect about the evidence. At the hearing in the lower court, the Master asked counsel for Regime Solutions, "They plan to assume the mortgage?", and counsel responded, "They are prepared to pay the mortgage off once they have quiet title to the property." (App. p. 144 lns. 15-18). This is not a commitment to pay off the mortgage, but a statement by counsel that his client is "prepared to" do so. Regardless, "[i]t is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence." *Ex parte Morris*, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006) (citing *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (stating appellate courts repeatedly have held "that statements of fact appearing only in arguments of counsel will not be considered"); *S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("arguments made

by counsel are not evidence”)). The statement by counsel is not evidence and the Court of Appeals erred in relying on it.

The Appendix contains evidence that Regime Solutions does not pay off mortgages for the properties that it buys. In a Reply Brief to the Court of Appeals, Petitioners noted that the “Richland County public record 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.” (App. p. 74 n. 1). Petitioners’ Petition for Rehearing to the Court of Appeals states:

At oral argument, the Court inquired of counsel for the Respondent if he knew how much debt was being paid by the Respondents on the properties it had purchased. Counsel answered that he didn’t know. Appellant’s counsel informed the Court that the Respondent had purchased forty-three properties in Richland County and that not one nickel had been paid in debt since the purchases. Most of the properties have slipped into foreclosure when the owners were ejected. This was not disputed by Respondent’s counsel.

(App. p. 14). Footnote 4 of the Brief of Petitioners to this Court is simply an “updated search of the Richland County public records” regarding the same evidence presented to the Court of Appeals. (Br. of Petitioners p. 12 n.4). Neither Respondent in this action points to evidence to the contrary.

Second, Winrose argues that the equity method will chill judicial sales because it requires a potential bidder to “divine the amount of equity in the property.” (Br. of Resp’t p. 4). Winrose’s point is that a potential bidder does not know the current mortgage balance. *Id.* This argument is unavailing for two reasons. First, both the debt method and the equity method require knowledge of the outstanding balance. The only difference is how each method employs the balance in the calculation. For example, Winrose argues the Court should use “the outstanding mortgage of \$66,000” to calculate an “aggregate bid [that] is more than 53% of the fair market value of the

property.” (Br. of Resp’t p. 3). Because both parties’ calculation methods require knowledge of the outstanding balance, Winrose’s argument on this point is irrelevant.

Winrose is also incorrect that a potential bidder cannot approximate the outstanding mortgage balance. While a mortgage may not necessarily include the monthly payments and interest rate¹, the public record provides ample information for a potential bidder to approximate an outstanding balance to enable the bidder to determine an adequate foreclosure sale price. In this case, the public record includes a deed showing a sale price of \$104,250.00 for the lot and “the improvements thereon”. Richland County ROD Book/Page: R 64/615, recorded on May 6, 1998. The mortgage is for \$99,037.00, secured by a note payable on May 1, 2028, making it a thirty-year mortgage. Using easily-available information, a potential bidder could determine that, in 1998, the thirty-year fixed mortgage interest rate was 7.14%.² Using only the mortgage amount, thirty-year term, and fixed-rate mortgage interest rate, a loan amortization calculator³ would have shown Regime Solutions an approximate principal balance of \$69,858.00 at the time of the foreclosure sale in August 2014. This calculation is only an illustration but it demonstrates that any potential bidder can use public information to calculate the approximate equity in a property before deciding on a bid amount. *See Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 151, 662 S.E.2d 424, 426 (Ct. App. 2008) (“A purchaser at a judicial sale is deemed to have notice of all things disclosed by

¹ The mortgage is not part of the Record in this case. Petitioners’ Brief states this information is in the mortgage; however, counsel received a copy of the mortgage after filing the brief and it does not state the amount of monthly mortgage payments or interest rate.

² Freddie Mac, 30-Year Fixed-Rate Mortgages Since 1971, <http://www.freddiemac.com/pmms/pmms30.html>.

³ *See, e.g.*, <https://www.amortization-calc.com/mortgage-calculator/>. For comparison, this mortgage calculator showed a balance of \$68,319.00 in February 2015, and Mrs. Hale submitted an affidavit that month stating the balance was currently \$66,004.00. (App. p. 132, 135).

the record.”). Using the equity method will not chill judicial sales but, instead, ensure that the sale prices are adequate. *See Bonham v. Cave*, 102 S.C. 308, 311, 86 S.E. 681, 682 (1915) (stating a judicial sale “fairly made” may be set aside for “inadequacy of price” when “it is so gross as to shock the conscience”). The Court should adopt the equity method and set aside the judicial sale in this case.

II. THE COURT OF APPEALS SHOULD HAVE SET ASIDE THE SALE BASED ON EQUITABLE PRINCIPLES

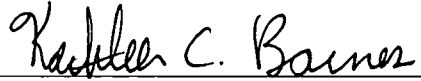
Petitioners rely on their initial Brief as to the preservation of the equity argument. Winrose incorrectly argues that Petitioners should not receive equitable relief because they did not answer or appear. Mrs. Hale explained in her affidavit that, after she received notice of the lawsuit, she paid a \$250.00 bill to Winrose and then received a letter from the law firm representing Winrose “telling us that the Lien had been satisfied” and she “thought that everything was OK after that.” (App. p. 133, 137-38). The Judgment of Foreclosure and Sale specifically includes in the debt calculation a \$250.00 credit for Petitioners’ payment. (App. p. 92). Therefore, while Petitioners may have been mistaken as to the judgment satisfaction, it is undisputed that they made a debt payment during the pendency of the foreclosure and Winrose still proceeded to foreclose on a \$250.00 principal debt. Petitioners did not slumber on their rights but, instead, made a payment for the debt they believed resolved the issue.

“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. If the Court reaches this issue, it should reverse the Court of Appeals.

CONCLUSION

The Hales request the Court reverse the decision of the Court of Appeals and vacate the sale.

Respectfully submitted,



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May 2, 2019

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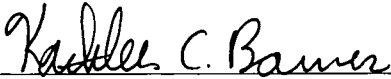
PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing *Brief of Petitioners in Reply to Brief of Respondent Regime Solutions, LLC*, and the *Brief of Petitioners in Reply to Brief of Respondent Winrose Homeowners' Association, Inc.*, have been served upon the following counsel of record by mailing one copy by United States Mail, addressed as shown below on May 2, 2019.

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