

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Hon. Edgar W. Dickson, Judge

Case No. 2019-00-1676

Charles E. Houston, Jr.

Appellant

v.

Dean B. Bell, individually and
Law Offices of Dean B. Bell, LLC and
B. Hammel Properties, LLC

Respondents

BRIEF ON VENUE

QUESTION PRESENTED: The appeal taken herein was filed with this Court on October 7, 2019. The appeal is from orders of the Circuit Court for Beaufort County granting summary judgment to the defendants in case # 2018-CP-07-1559. The Appellant venues the appeal to this Court under a judgment involving a constitutional challenge to a state statute. The Court upon reviewing the Orders of

the Circuit Court questions the finding of a constitutional challenge to a state statute being raised or addressed or contained in the orders and requests a briefing by appellant on the existence of this issue.

BRIEF OF APPELLANT

The case below was filed as an action to quiet title on real property and as a collateral attack upon the prior case of Cornelia H. Hall et.al. v Charles E. Houston, Jr as Case # 2011-CP-07-5141 This prior action was instituted as an action for the partition of real property among tenants in common.

In his complaint (Attached as Exhibit#1) and his Affidavit in Opposition to the Motion for Summary Judgment (Exhibit # 2) Appellant raised constitutional challenges and alleged derivation of his rights under the South Carolina and United States Constitution. Appellant's assertion was that the Master -in Equity assuming arguendo that the Master -in Equity in the underlining case had acquired subject matter jurisdictional over the property subject to the action, yet under state statute SECTION 14-11-100 The Master -in Equity lacked the authority to (1) order the property sold and (2) lacked the authority under SECTION 14-11-160 to grant to the plaintiff carte blank power of attorney to sell Appellant's interest in the property and otherwise precluding the Appellant from exercising his possessory rights of ownership in his property as provided by the South Carolina Constitution. (See Order attached as (Exhibit#1)

SECTION 14-11-160 reads as follows: Master may sell real estate in any county under order by consent.

Whenever real estate is adjudged to be sold by a master such sale may take place by consent of the parties to the cause or their attorneys or, when infants are parties, by the consent of the guardians ad litem of such infants or their attorneys in any county which the court may direct. All such sales heretofore made and otherwise valid are hereby confirmed.

HISTORY: 1962 Code Section 15-1824; 1952 Code Section 15-1824; 1942 Code Section 3687; 1932 Code Section 3694; Civ. C. '22 Section 2231; Civ. C. '12 Section 1382; Civ. C. '02 Section 975; R. S. 846; 1885 (19) 7.

Therefore, the Master -in Equity's order to sell the property at private sale as applied by **SECTION 14-11-160** exceeded his constitutional authority granted by this state statute. A court must vacate any judgment entered in excess of its jurisdiction. Lubbar V. Selective System Local Board No 27 453 F.2d 645(1st Cir. 1972) also 1 Freeman on Judgments 120C

Secondly: The Master in Equity only acquired limited subject matter jurisdiction over the action. The only subject matter jurisdiction the Master acquired was to order that the property be sold by public sale. While the matter was pending in Circuit Court upon Plaintiff's Motion for Summary Judgment the Appellant moved to dismiss the complaint on the ground that the Probate Court had

jurisdiction of the actions for rent and accounting among the heirs as tenants in common and that appellant was opposed to a private sale and upon the authority of Zimmerman v. Marsh 365 S.C. 383, 618 S.E.2d 989 and Pruitt v. Pruitt 298 S.C. 411, 380 S.E.2d 862 the property could only be sold by public auction. The Circuit Court Judge then rather than dismissing the plaintiff's complaint ordered that plaintiffs amend their complaint accordingly.

A subsequent judge cannot and is prohibited from overruling or modifying the order issued by a prior judge in a case. Albeit, though the Circuit Courts Order did not contain all the Circuit Courts rulings issued from the Bench, the fact that the Order required the Plaintiffs to amend their complaint makes implicit that there was more ordered than what was contained in the order drafted by Plaintiff's counsel. Additionally, the Master in Equity knew that the Appellant did not consent to the property being sold at a private sale and the in Court ruling of the Circuit Court stating the action had to proceed by public auction, yet, nevertheless, the Master in Equity proceeded with a private sale over Appellant's objections.

Appellant sets forth the authority of the case holdings in Wachovia Bank of S.C. v. Player, 341 S.C. 424, 535 S.E.2d 128 (2000) the Federal case of Calloway v. Ford Motor Co., 281 N.C. 496, 189 S.E.2d 484 (1972) and a state case from our same federal Fourth Judicial Circuit, being, First Fin. Ins. Co. v. Commercial Coverage Inc., 154 N.C. App. 504, 572 S.E.2d 259, 262 (2002) that it is illegal and against the tenets of the judicial system for a Master in Equity to set aside the prior Order of the presiding judge of the Court of Common Pleas

Thirdly, rather than amending its complaint, as directed and ordered by the Court, the Plaintiff disobeyed the Court and filed the same complaint over again only stating that it was an Amended Complaint. (see Exhibit 4&5).

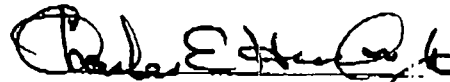
Fourthly, The Master -in Equity's Order granting one tenant in common the exclusive power to sell the property at a price only satisfactory to her, chose the real estate company and unilaterally agree to its commission and the fees of the closing attorney were never alleged or requested in Plaintiff's Amended Complaint resulting in the Master In Equity improperly granting relief not sought in the Amended Complaint. However, in deference to the Master in Equity, he relied upon the integrity of Plaintiff's counsel to submit a proposed Order accurately reflecting the record. Plaintiff's counsel inserted this provision in the Order. Plaintiff's counsel, during the time the Master in Equity was considering the matters, had initiated ex parte communications with the Master in Equity. Appellant contends that this Order was procured by extrinsic fraud by Plaintiff's counsel when he sent an e-mail to the Master in Equity requesting to submit an order to him. (See Exhibit#6)The email falsely represented to the Master in Equity that a copy of it had been sent to the Appellant. It was intentionally sent to an incorrect e-mail address. It is reasonable to assume that the Master in Equity would have thought that the proposed order was without objection from Appellant since no communication was received from him to the contrary.

In order for the Appellant to prevail in this proceeding the Circuit Court judge would have to find that his peer , the Master In Equity, was in error ; a task most unwelcomed. An appellate court sitting above the fray could better judge upon the issue. As evidence of this assertion, this hearing was held on June 10, 2019 and not July 10, 2019 as stated in the Order. A period of over sixty days had expired before I received an email from opposing counsel stating that the judge had requested him to prepare an order ruling in their client's favor without stating his findings of fact or conclusions upon which the order would be drafted.

CONCLUSION

SECTION 14-11-160 is the state statute that has been applied to deny rights of the Appellant under both the South Carolina and the Federal Constitution and this case may raise issues this Court may deem important to be addressed for benefit of the judiciary, bar and the public at large.

Respectfully, submitted



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Appellant, Pro Se

October 18, 2019
Fayetteville, Georgia