

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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,

Appellant.

**WINROSE HOMEOWNERS ASSOCIATION, INC.'S PETITION FOR
REHEARING**

Respondent, Winrose Homeowners Association, Inc., respectfully submits this Petition for Rehearing. For the reasons set forth below, Winrose hereby petitions the Court for rehearing of Opinion Number 27934, filed December 18, 2019, which reversed the denial of the Hales' Motion to Vacate Foreclosure Sale.

ARGUMENT

1. Notice of Proceedings

The Court states the Hales did not receive notice of any proceedings or orders after the

affidavit of default, “including the judgment of foreclosure or the foreclosure sale.” (Op. p. 2-3.) However, this issue was not argued at any stage below and therefore the briefs and the record did not address pre-sale notice.

Before the trial court the Hales admitted Tina Hale received service of the Summons and Complaint and forgot about them. (App. p. 133.) The Judgment entered July 21, 2014 indicates that all parties were notified of the date and time of the default judgment hearing. (App. p. 90.) Significantly, the Hales have never taken any action to dispute the findings of the Judgment of Foreclosure and Sale or themselves argue that they did not receive notice.

The record does demonstrate Winrose met all legal requirements regarding advertisement of the Notice of Sale. South Carolina statute requires the notice of sale be advertised once a week for three weeks immediately prior to the sale date. S.C. Code § 15-39-650. The Master’s Report on Sale states the property was sold after “due notice and advertisement.” (App. p. 109.) The Hales did not dispute this finding. The South Carolina Court of Appeals has previously upheld a foreclosure sale where, as here, the property owners had actual knowledge of the foreclosure proceedings and merely constructive notice of the foreclosure sale via publication in accordance with applicable statutes. See Bartles v. Livingston, 319 S.E.2d 707, 711, 282 S.C. 448, 454 (Ct. App. 1984).

2. Propriety of the Foreclosure and Sale

Winrose respectfully asserts this Court exceeded its scope of review in opining on the propriety of Winrose’s decision to foreclose. This issue was never raised by any of the parties at any stage of the proceedings and therefore the record is devoid of any evidence showing the measures Winrose took or did not take prior to initiating foreclosure. “Except as

provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.” Rule 210(h), SCACR.

In this case, the Court characterizes Winrose’s use of the foreclosure proceeding as “swift[,],” “ruthless,” and “improper,” without any evidence in the record or argument from any party to support these conclusions. Instead, the only record before the Court demonstrates the Hales had been delinquent in payment of their assessments for 3 years at the time Winrose filed suit. (Op. p. 3; App. p. 100.)

Winrose does not want to foreclose on its members. Winrose would like for its members to promptly pay their assessments and any related costs of collection. However, if owners fail to do so, as the Hales did here for over three years (App. p. 100), Winrose is entitled to foreclose its lien as provided by the restrictive covenants. If, like the Hales, the property owner still does not pay, our state’s public policy says we should encourage as many bidders as possible to participate in the judicial sale. Winrose believes the Debt Method more accurately promotes this public policy.

3. Payment and Satisfaction of Lien

The Court states the Hales paid a bill Winrose sent them and that Winrose sent the Hales notice the lien had been satisfied but did not withdraw its suit. (Op. p. 3). This statement at least implies Winrose accepted the Hales’ funds and misled them into believing the debt was satisfied only to continue to the foreclosure suit in secrecy. However, the record demonstrates this was not accurate. Tina Hale’s affidavit alleges that she received a satisfaction of lien “in November” and references Exhibit B to her affidavit. (App. p. 133.) However, the document attached as Exhibit B is a satisfaction of judgment and is dated

November 6, 2014, two days after Hales' Motion to Vacate was filed. (App. p. 138.) The sale in this matter occurred August 4, 2014. (App. p. 109.) As Winrose explained at the February 2015 hearing, the satisfaction of judgment was sent to the Hales after Winrose received the proceeds of the sale. (App. pp. 151-152.) The Hales did not contest this explanation at any time thereafter.

The record demonstrates that the Hales could not possibly have believed that "everything was OK after that" because the documents in question were not even executed until two days after the Hales had retained counsel and filed a Motion to Vacate the foreclosure sale. It follows that Winrose or its counsel could not have withdrawn the suit after sending the satisfaction of lien because the suit had been ended by a judgement in favor of Winrose. For these reasons Winrose requests the Court withdraw the references to the lien satisfaction and Winrose's continuation of the foreclosure suit.

4. HOA Attorney's Judgments

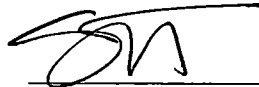
The Court took particular note of an exchange between the trial court and the undersigned at the January 16, 2015 hearing, noting counsel "brazenly bragged" about the number of judgments her firm had received in 2-3 years. The undersigned respectfully suggests the Court has misinterpreted the spirit of that exchange. In the years immediately preceding this hearing, several members of the foreclosure defense bar had advanced a theory that a homeowners' association could not file a lien or foreclose that lien without some state statute authorizing such actions. By January 15, 2015 the undersigned had represented at least six homeowners' associations in cases where the trial court had ruled that homeowners'

associations did not need a statute to file a lien or foreclose.¹ The undersigned was also aware of at least one other decision reaching the same conclusion handled by a different attorney. It was these orders to which counsel was referring in citing seven orders. (App. p. 143; ll. 21-22.) The undersigned was merely answering the question posed by the trial court.

CONCLUSION

For the reason stated herein, Winrose requests the Court grant its petition for rehearing and issue an opinion correcting the factual issues noted herein and adopting the Debt Method in this matter.

Respectfully Submitted,



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¹ See 2013-CP-40-01553; 2013-CP-32-01262; 2013-CP-40-00147; 2011-CP-40-07557; 2014-CP-40-0036; 2013-CP-32-02386

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PROOF OF SERVICE

I certify that I have served Respondent's Petition for Rehearing on the following counsel by depositing a copy of it in the United States Mail, postage prepaid, on January 2, 2020:

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