

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable William P. Keesley
Appellate Case No. 2018-001867

Case No.: 2009-CP-18-2200

Rene McMasters, now known as Rene McMasters Ronaghan, Appellant

v.

H. Wayne Charpia a/k/a Howard W. Charpia and Jody E. Charpia, Defendants

Of whom H. Wayne Charpia a/k/a Howard W. Charpia is the Respondent

FINAL BRIEF OF APPELLANT

This 27th day of August, 2019

Respondent of record:
Howard W. Charpia
106 Axtel Drive
Summerville, SC 29485
Respondent

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TABLE OF AUTHORITIES

Ex parte Moore, 550 S.E. 2d 877, 346 S.C. 274 (S.C.App., 2001)3

Lanham V. Jennings, 122 S.C. 461; 113 S.E. 791 (1922)4

STATEMENT OF THE CASE

The Appellant filed this action in the Court of Common Pleas for Dorchester County on August 10, 2009, wherein the Appellant sought the foreclosure of a judgment lien that the Appellant obtained against the Respondent, Howard W. Charpia (R.pp15-20, Order of Foreclosure and Sale).

This is an appeal from the circuit court's denial of the Appellant's request that judgment be entered against the Respondent in the amount of \$315,900. as Respondent defaulted on his bid at the foreclosure sale.

On July 30, 2012, the case came before Judge Edgar Warren Dickson for trial. Judge Dickson issued an Order of Foreclosure and Sale dated October 29, 2012 . The order directed the foreclosure and sale of the subject real estate. The order found that the Respondent owed \$375,156 to the Appellant as of July 30, 2012, with per diem interest accruing at \$62.99. The order contained the following provisions.

2....The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent of the bid as earnest money and as evidence of good faith, provided, however, the Plaintiff shall be entitled to apply the debt or any portion of the debt due her against her bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of its bid by depositing the said five (5%) percent cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the Clerk of Court may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of its bid within thirty (30) days of the final acceptance of this bid, then the Clerk of Court shall readvertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of the bids in cash as prescribed above. The Clerk of Court shall return all deposits except the deposit securing the highest bid.

3. That the Clerk of Court, by advertisement according to law, shall give notice of the time and place of such sale, and the terms thereof; that the Clerk of Court shall convey to the purchaser, or purchasers, a deed to the property sold; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers, should fail to comply with the terms thereof, the Clerk of Court may advertise the said property for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured. (underlining added), R.pp.18-19, Order of Foreclosure and Sale)

On December 28, 2018 the Appellant filed a motion for a rule to show cause as to why judgment should not be entered against the Respondent in the amount of \$315,900. for his failure to comply with his bid at the foreclosure sale held on July 5, 2017. (R.pp.63-75,Motion For Rule To Show Cause).

On August 14, 2018 Judge William P. Keesley issued a Rule to Show cause requiring the Respondent to appear and show cause as to why judgment should not be entered against Respondent in the amount of \$315,900. as referred to in Appellant's Motion For Rule to Show Cause filed on December 28, 2017. (R.pp.24-26,Rule To Show Cause).

The Rule To Show Cause came before Judge William P. Keesley on August 31, 2018 for hearing. On September 13, 2018 Judge Keesley issued an order denying the Appellant's request for entry of judgment. (R.pp.1-9, Order dated September 13, 2018).

Appellant received notice of entry of Judge Keesley's order on September 17, 2018 and served her notice of appeal on October 16, 2018.

STATEMENT OF THE FACTS

Respondent was the high bidder at the foreclosure sale held on July 5, 2017 with a bid of \$375,00. The Respondent failed to comply with his bid as he did not deposit 5% of his bid with the clerk of court even though he was given from July 5, 2012 until July 7, 2012 to pay the deposit. (R.pp.21-23,p.22,Order of Judge Early dated July 31, 2017, p. 2).

On July 31, 2017 Judge Doyet A. Early issued an Order On Plaintiff's motion to prohibit Respondent from bidding at the sale of real estate that is the subject of this foreclosure action. The order prohibited the Respondent, and anyone acting on his behalf from bidding at the sale of the property. Judge Early also found that the Respondent's conduct had frustrated the bidding process and that he had not acted in good faith relative to the sale process and did not bid in good faith. Judge Early's order was not appealed. (R.pp.21-23,p.22 Order On Plaintiff's Motion To Prohibit

Defendant H. Wayne Charpia From Bidding; (R.pp.76-77,p.76,paragraph 7, Affidavit of Howard W. Charpia filed November 16, 2017).

Pursuant to the order of Judge Dickson, the property was readvertised and sold on August 1, 2017. The Appellant was the high bidder with a bid of \$59,100.00. The difference between Respondent's bid of \$375,00 and the completed sale bid of \$59,100 is \$315,900.

STANDARD OF REVIEW

"A real estate foreclosure action is an action in equity. In an action in equity...this court may take its own view of the preponderance of the evidence although it is not required to disregard the findings of the master or referee." Ex parte Moore, 550 S.E. 2d 877, 346 S.C. 274, 283 (S.C. App., 2001)

ARGUMENT

I. The Circuit Court erred in failing to award the Appellant judgment against the Respondent in the amount of \$315,900 which is the difference between Respondent's bid of \$375,000 and the completed sale bid of \$59,100.

The Order of Foreclosure and Sale provides as follows: "Should the last and highest bidder fail to comply with the terms of its bid within thirty (30) days of the final acceptance of this bid, then the Clerk of Court shall readvertise and resell the property on the same terms on a subsequent date at risk of such bidder." (R.pp.15-20,p.18, paragraph 2, Order of Foreclosure and Sale).

"The terms and conditions of a judicial sale are controlled by the court order, Rule 71,SCRCP, the practice and custom of the county in which the property is being sold, and by statute." Ex parte Moore, 346 S. C. at 283-284.

The procedure for the judicial sale was followed in accordance with the Order of Foreclosure and sale. The Respondent's bid was \$315,900 more than the high bid of \$59,100 at the final sale. As set forth in Judge Keesley's Order On Plaintiff's Motion For Judgment, the Appellant bid \$59,100 which was the amount of the homestead exemption determined by order of Judge Carmen Mullen. If

the Respondent had complied with his \$375,00 bid , the Appellant would have received \$315,900 which is the difference between Respondents bid and the \$59,100 homestead exemption, which is less than the Appellant was owed on the judgment.

In Lanham V. Jennings, 122 S.C. 461, 113 S. E. 791, 792(1922) the foreclosure “decree contained a provision to the effect that, in case a purchaser at such sale should fail or refuse to comply with the terms of his bid, then the master should resell on the same or subsequent sales day the said property at the risk of the defaulting purchaser, the terms of the second sale to be the same as at the first.” In Lanham, the master readvertised the property for sale. At the second sale the property sold for \$1,200 less than the first. Upon petition of the master the circuit court issued a rule as to the defaulting purchaser as to why judgment should not be entered against him for the deficiency and the costs of the sale. The circuit court also addressed the issue of whether or not the master had followed the proper procedure for holding a defaulting purchaser liable for a deficiency at a second sale. The Circuit Court stated in it’s decree that “ The decree is the chart which governs the master in making a judicial sale like the one in question. In the case at bar he followed strictly the terms of the decree, and in doing so committed no error.”

In the case at hand , the clerk followed the Order of Foreclosure and sale. The property was resold at the risk of the defaulting bidder. Judgment should have been entered against the Respondent in the amount of \$315,900.

CONCLUSION

Based upon the foregoing it is respectfully requested that the Order On Plaintiff's Motion for Judgment Against H. Wayne Charpia For Non-Compliance With His Bid At Judicial Sale be reversed and judgment be entered against the Respondent in the amount of \$315,900 together with prejudgment interest.

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This 27^d day of August, 2019
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b) SCACR.


Frank M. Cisa

August 27, 2019
Mt. Pleasant, SC