

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr.
Master in Equity

Appellate Case No. 2019-001821
Circuit Court Case No. 2018-CP-23-3124

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SC Court of Appeals

Rallis Holdings, LLC and Oriole Properties, LLC.....	Third-Party Petitioners,
In RE: Clear Skies Restoration, LLC.....	Plaintiff,
v.	
Ivan Martinez and Paula A. Martinez.....	Defendants,
of which	
Oriole Properties, LLC and Rallis Holdings, LLC, are the	Appellants,
and	
Ivan Martinez, Paula A. Martinez, and Clear Skies Restoration, LLC, are the.....	Respondents.

BRIEF OF RESPONDENTS CLEAR SKIES RESTORATION, LLC

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April 30, 2020

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ARGUMENT

I. The circuit court properly exercised its discretion in setting aside the judgment and foreclosure sale.

Pursuant to South Carolina Appellate Court Rule 208(b)(6), Respondent Clear Skies adopts by reference Part I of Respondents Ivan Martinez and Paula A. Martinez's Brief.

II. The circuit court did not err in granting Clear Skies' Motion to Correct an error in the Order for Judgment and Decree of Foreclosure.

Rule 60(a), SCRPC, provides that "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders." As applied to judgments and decrees, a clerical mistake is "a mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function." *Dion v. Ravenel*, 316 S.C. 226, 230, 449 S.E.2d 251, 254 (Ct. App. 1994). For instance, the spelling of names, mathematical calculations, and scrivener's errors or omissions fall under this section. *See, e.g., Owners Ins. Co. v. Clayton*, 364 S.C. 555, 614 S.E.2d 611 (2005) (noting error in amount of insurance coverage and appellant's right to file Rule 60(a) motion in the circuit court); *Koontz v. Thomas*, 333 S.C. 702, 511 S.E.2d 407 (Ct. App. 1999) (substitution of plaintiff for defendant); *Lee v. Thermal Engineering Corp.*, 352 S.C. 81, 572 S.E.2d 298 (Ct. App. 2002) (adding mandatory pre-judgment interest). Whether to grant or deny a motion under Rule 60 lies within the sound discretion of the trial court. *Tobias v. Rice*, 379 S.C. 357, 665 S.E.2d 216 (Ct. App. 2008).

Respondent's Motion to Correct requested that the May 8, 2019 Order for Judgment and Decree of Foreclosure be corrected regarding (1) the disbursement of funds, and (2) the book and page number in which Plaintiff's Amended Mechanic's Lien was filed. (Rule 60 Motion at 1 (Aug.

21, 2019); R. p. ____.) As set forth in the motion, it was in error for the Order to reference any payment to the undefined "Mortgage Liens," as it is clear from the record that the sale would be subject to any senior liens. (*Id.*; R. p. ____.)

As shown by the filed Affidavit of Publication, the non-parties, and all persons, were on notice that the sale of the property, and their subsequent purchase, would be subject to two senior mortgages:

This Property will be sold subject to the following mortgage(s)/senior encumbrances: Mortgage to Wells Fargo Bank, N.A. dated April 6, 2011 filed in the Greenville County Register of Deeds Office on May 4, 2011 in Book MO 5117 at Page 5827; and Mortgage to Sun Trust Bank dated November 25, 2014 filed in the Greenville County Register of Deeds Office on December 19, 2014 in Book MO 5278 at Page 3522."

(Affidavit of Publication; R. p. ____.)

In addition, the fact that the sale would be subject to the senior mortgages was discussed at length by Clear Skies' counsel and the Court at the public foreclosure hearing. (Hr'g Transcript 2:18-3:23 (Feb. 7, 2019); R. p. ____.) While this discussion must have occurred during the off-the-record discussion reflected by the transcript, the undersigned attorney Holder can confirm, as an officer of the court, that it did happen at the public hearing. The discussions centered around the issue of whether it would be possible to obtain any payoff information from the senior lien holders prior to the sale which could be used to notify potential bidders of the amount of indebtedness on the mortgage loans to which the bidder's purchase would be subject.

Further still, the undersigned attorney Bullington was present during the actual foreclosure sale and can confirm, as an officer of the court, that: (i) the same Court interrupted the bidding on the sale of the subject property for the sole purpose of reminding the bidders that the sale would

be subject to the existing mortgage liens; and (ii) the Third-Party Petitioner/Appellant made at least one additional bid after that clear instruction from the Court, to include their high bid at issue.

The mistake in the order regarding disbursement is further evidenced by the fact that the Court disbursed the sales proceeds to the Plaintiff, and none to the senior mortgage holders. Notably, the senior mortgage holders were not made parties to the action, and were not, therefore, provided notice of any sale that would have resulted in their mortgages being cancelled of record.¹

Additionally, Respondent's counsel did not become aware of the clerical error in the judgment until a member and attorney for the Appellant, Oriole Properties, LLC, contacted undersigned counsel Holder prior to the court hearing on Thursday, August 1, 2019 and informed him of the disbursement language. Respondent's counsel immediately informed Oriole's attorney that it was a clear mistake of which Respondent's had no prior knowledge. The undersigned explained to Oriole's attorney that the incorrect disbursement referenced in the Order was not at all what was discussed with the Court prior to the sale and not at all how any of the proceedings were handled.

Considering all of the above, the Master in Equity chose to exercise his discretion in granting Respondent's motion to correct the clerical error. The amendments to the May 8, 2019 Order for Judgment and Decree of Foreclosure merely reflected what had already occurred in the proceedings up to that point. Finally, because the Respondent's motion requested the correction of a clerical error pursuant to Rule 60(a) – not Rule 60(b) – no analysis of the Rule 60(b) factors was required. The Master in Equity properly exercised his discretion in granting Respondent's

¹ The Third-Party Petitioners/Appellants never made an effort to join these mortgagees, despite the positions now being taken by the Third-Party Petitioners/Appellants in regards to the practical effect of the proceedings – that being, the cancellation of the mortgages without the mortgagees having any prior notice or opportunity to be heard. Of course, the reason the Respondent did not name the mortgagees is because the Respondent always pursued the foreclosure as though any sale would be subject to those existing mortgages.

motion under Rule 60(a) in setting aside the foreclosure judgment and sale. This Court should refuse to overturn a decision that was a proper exercise of discretion by the trial court.

CONCLUSION

Based on the glaring jurisdictional issue together with the issues giving rise to the Motion to Correct, it remains abundantly clear that the lower court properly exercised its discretion to vacate the foreclosure sale. To reach a contrary conclusion would be to ignore fundamental notions of justice and equity. For the foregoing reasons, Respondent respectfully asks this Court to affirm the Master in Equity's Order vacating the foreclosure judgment and sale.

Respectfully submitted,



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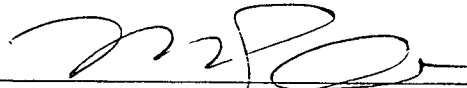
CERTIFICATE OF SERVICE

I, the undersigned attorney for the Respondent, Clear Skies Restoration, do hereby certify that I have served the below parties in this action with a copy of the Respondents' Brief and Designation of Matter by mailing a copy of the same via U.S. Mail to the following addresses:

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RE: Oriole Properties, LLC v. Ivan Martinez
Appellate Case No. 2019-001821

Dear Clerk of Court:

Please find enclosed the original and one (1) copy of Respondent Clear Skies Restoration, LLC's Brief, with Certificate of Service, and the original and one (1) copy of Respondent Clear Skies Restoration, LLC's Designation of Matter to be included in the Record of Appeal, with Certificate of Service in the above referenced matter.

By copy of this letter, we are serving one copy of each upon all counsel of record. Thank you for your assistance in this matter and please do not hesitate to contact our office if you have any questions.

Regards,

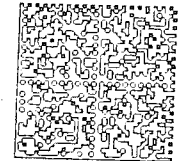
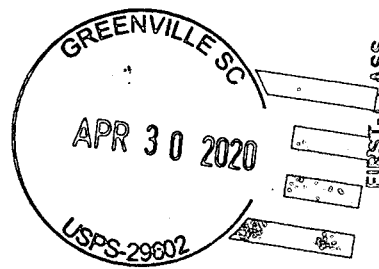
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