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

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 APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

This case presents two questions that are critical to the finality of judicial sales:

1. **Innocent Purchaser Without Notice:** South Carolina Code § 15-39-870 provides that a third party who purchases property at a judicial sale without notice of any defect in the order from which the sale arises is protected against challenges to its interest in the property. This Court has previously confirmed this principle in several decisions. The Appellants purchased property at a judicial sale without notice of any potential defect in the foreclosure judgment underlying the sale, and no such defect was ever suggested until nearly two months after the sale had been closed and a Master's Deed recorded. Nevertheless, the circuit court vacated the sale when a defendant to the underlying case filed a post-sale motion challenging the foreclosure judgment. Did the circuit court err by disregarding the Appellants' status as bona fide purchasers of the property?

2. **Rewriting Foreclosure Judgment After a Judicial Sale:** The circuit court issued a foreclosure judgment that detailed how the proceeds of the judicial sale would be disbursed. That judgment indicated that two senior mortgage lienholders would be paid first, and then the plaintiff—which held a third-position mechanic's lien—would be paid out of the remaining proceeds. Nearly three and one-half months after the circuit court entered its foreclosure judgment, and over two months after the Appellants successfully bid on the property in reliance on the foreclosure judgment, the plaintiff sought to rewrite the foreclosure judgment to exclude the senior lienholders from being paid with the proceeds of the judicial sale. The circuit court granted that motion without undertaking any analysis of Rule 60(b)'s elements or the Appellants' status as bona fide purchasers. Did the circuit court err by changing the terms of a foreclosure order after the judicial sale?

STATEMENT OF THE CASE

The Appellants in this case—Rallis Holdings, LLC, and Oriole Properties, LLC—are essentially strangers to the proceedings underlying the appeal. They were not involved in the case until after they became bona fide purchasers of real property at a judicial sale, and they only became involved when their vested interest in the property was jeopardized by an untimely challenge to the order underlying the judicial sale. Accordingly, this Statement of the Case is prepared largely based on what appears in the Public Index.

I. Clear Skies Restoration brought suit to foreclose a mechanic's lien associated with an unpaid debt for repairing the Martinezes' roof, and it received a default judgment in those proceedings.

Clear Skies Restoration, LLC, commenced this case on June 1, 2018, by filing a complaint against Ivan Martinez asserting claims for breach of contract, quantum meruit, statutory attorneys' fees, and to foreclose a mechanic's lien, all arising out of Clear Skies' work repairing Mr. Martinez's roof. (Compl. *passim* (June 1, 2018); R. p. 39.) Clear Skies served Mr. Martinez with the initial summons and complaint on July 1, 2018. (Aff. of Service (filed July 3, 2018); R. p. 141.) Mr. Martinez did not respond to the complaint, and Clear Skies' attorney filed an affidavit of default on August 15, 2018. (Aff. of Default (Aug. 15, 2018); R. p. 142.) Two orders followed: an order for entry of default, and an order referring the case to Judge Simmons, the Greenville County Master in Equity, to complete the foreclosure. (Order for Entry of Default (Aug. 20, 2018); R. p. 1; Order of Reference (Aug. 24, 2018); R. p. 3.)

After the case was referred to Judge Simmons, and for reasons that do not appear in the record, Clear Skies filed an amended summons and complaint on September 26, 2018. (Summons and Amended Foreclosure Compl. (Sept. 26, 2018); R. p. 64.) As far as the Appellants can tell, the

only change to Clear Skies' pleading was to add Paula Martinez as a defendant, as she was listed as an owner on the title to the property that Clear Skies sought to foreclose. (*Id.*)

Just as before, Clear Skies filed affidavits reflecting service of process on both Mr. and Ms. Martinez. (Affs. of Service (filed October 26, 2018); R. pp. 144, 145.)

And just as before, Clear Skies moved for entry of default as to both defendants and filed affidavits from its counsel of (1) default and (2) non-military service. (Motion for Entry of Default and Exhibits (Dec. 21, 2018); R. p. 146; Aff. of Default (Dec. 21, 2018); R. p. 148; Aff. of Non-Military Service (Dec. 21, 2018); R. p. 150.) Clear Skies also filed a series of public documents—a Title to Real Estate, a property tax bill indicating that they were paying at the "primary residence" rate of 4%, and automobile-registration records—indicating that both Mr. and Ms. Martinez live at the property at issue. (Exhibits to Motion for Entry of Default; R. pp. 151–55.)

On December 31, 2018, Judge Simmons issued an order for entry of default and held: "It appears to this Court that, upon the Court's records, personal service was effectuated on Defendants and that Defendants have failed to plead, appear, or otherwise respond in accordance with the well established law of South Carolina." (Order for Entry of Default (Dec. 31, 2018); R. p. 5.)

A foreclosure hearing was scheduled with Judge Simmons for February 7, 2019. According to the record, Clear Skies provided both Mr. and Ms. Martinez with written notice of that hearing. (Notice of Hearing (Jan. 24, 2019); R. p. 157.)

The hearing went forward as scheduled. Neither of the Martinezes appeared. (Foreclosure Hr'g Tr. 2:5–6 (Feb. 7, 2019); R. p. 101.) Clear Skies' counsel stated on the record the amount of the debt owed, and then requested that Judge Simmons craft his foreclosure order to reflect that Clear Skies' lien is junior to two senior mortgages on the property. (*Id.* 2:17–3:21; R. pp. 101–02.)

On May 8, 2019, Judge Simmons entered a foreclosure order that affirmatively held as follows: (1) the Martinezes had been given "proper, prior notice of the hearing but did not appear"; (2) the property securing the mechanic's lien would be sold at public auction; (3) Clear Skies' lien would be paid after the mortgage liens had been paid, and after the Court's own costs and expenses had been paid; and (4) the Martinezes would "be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said premises so sold, or any part thereof." (Order for Judgment and Decree of Foreclosure Sale at 1, 3–5 (May 8, 2019); R. pp. 7, 9–11.)

II. The foreclosure sale went forward as noticed and advertised, and the Appellants were the successful bidders who received and recorded their title to the property.

Beginning on May 17, 2019 and continuing weekly for three weeks, the *Greenville News* ran an advertisement indicating that the property would sold at a public auction on June 3, 2019. (Aff. of Publication (June 4, 2019); R. p. 159.) Accordingly, as of June 3rd, any interested bidder would have learned that the Martinezes had defaulted in the litigation, that the property was being sold free and clear of any claim to it by the Martinezes, that Clear Skies' lien would be paid only after the senior mortgage liens were satisfied, and that Rule 59's ten-day deadline for challenging the foreclosure order had passed without anything being filed. In other words, nothing in the case's history suggested any kind of defect or potential challenge to the foreclosure order upon which the sale would be based.

Ronald Rallis was the successful bidder at the judicial sale and purchased the property for $120,100. (Aff. of Ronald D. Rallis, Jr. ¶ 9 (filed Sept. 16, 2019); R. p. 200.) He subsequently assigned his bid to Rallis Holdings, LLC, and to Oriole Properties, LLC—the Appellants. (Assignment of Bid (filed June 10, 2019); R. p. 162.) The Appellants closed this real estate transaction on June 7, 2019, and paid the full price to the Court that same day. (Taxation of Costs (June 20, 2019); R. p. 163; Aff. Kevin Brady ¶ 6 (Sept. 16, 2019); R. p. 217.)

The Court issued a Master's Deed, signed by Judge Simmons, to the Appellants on June 10, 2019. (Master's Deed; R. p. 223.) The Appellants recorded their deed the next day. (*Id.*)

III. The Martinezes challenged the judicial sale and underlying foreclosure judgment only after Judge Simmons issued an order ejecting them from the property.

After the Appellants paid for the property and recorded their Master's Deed, Judge Simmons issued an Order for a Writ of Ejectment and authorized the sheriff to assist the Appellants in taking possession of the property. (Order for Writ of Ejectment at 2 (June 12, 2019); R. p. 19.)

July 2, 2019—after the time for filing a Rule 59 motion had lapsed, after the deadline for filing a notice of appeal had lapsed, after the judicial sale had taken place, after the Appellants had paid for the property, after the Master's Deed had been issued and recorded, and after the trial court had issued a writ of ejectment—was the first time that either of the Martinezes spoke up in this case. That day, Mr. Martinez filed a handwritten "motion to stay" the ejectment, in which he stated that Clear Skies "took advantage" of him and "started to bully" him. (Motion to Stay at 1 (July 2, 2019); R. p. 165.)

Judge Simmons scheduled a hearing for July 17, 2019, to take up the motion to stay with the Appellants and Mr. Martinez. Shortly before the hearing, Mr. Martinez filed an untimely motion for relief from judgment and motion for new trial, in which he claimed to have been generally unaware of the foreclosure proceedings. (Ivan Martinez Motion for Relief from Judgment (July 17, 2019); R. p. 171.)

The hearing commenced, during which Mr. Martinez's counsel explained that Mr. Martinez may have been personally served with process in the case, but he just does not remember receiving service for a variety of personal reasons. (Hr'g Tr. 7:19–8:8 (July 17, 2019); R. pp. 111–12.) However, because Mr. Martinez filed an eleventh-hour motion that required Clear Skies'

presence, Judge Simmons held the hearing in abeyance in order to allow notice of the hearing to Clear Skies' counsel. (*Id.* 9:8–16; R. p. 113.)

The hearing was rescheduled for August 1, 2019. The day before that hearing, Ms. Martinez filed an untimely motion for relief from judgment and motion for new trial, in which she claimed to have not been served with process. (Paula Martinez Motion for Relief from Judgment (July 31, 2019); R. p. 178.) Beyond Mr. Martinez's alleged poor recollection of being served, this was the ***very first time*** that anyone had ever suggested any possible defect in the underlying foreclosure judgment, and it came ***nearly two months after*** the Appellants had purchased the property at the judicial sale.

The August 1st hearing proceeded as scheduled. During that hearing, the Appellants argued repeatedly that their status as bona fide purchasers without notice trumped any of Mr. or Ms. Martinez's post-sale objections to the foreclosure judgment. (*E.g.*, Hr'g Tr. 7:25–11:19 (Aug. 1, 2019); R. pp. 122–26.) Judge Simmons orally denied Mr. Martinez's motion at the hearing, and took Ms. Martinez's motion under advisement. (*Id.* 24:13–17; R. p. 139.)

While the matter was still under advisement, Clear Skies filed its own post-sale motion and requested that Judge Simmons rewrite the foreclosure order to pay Clear Skies' third-position mechanic's lien before either of the two senior mortgage liens were paid. (Rule 60 Motion at 1 (Aug. 21, 2019); R. p. 186.) The Appellants opposed that motion because (1) the foreclosure judgment contained exactly what Clear Skies had told Judge Simmons it wanted during the foreclosure hearing; and (2) the Appellants had successfully bid on the property, paid for the property, recorded their Master's Deed, and anticipated a profit of over $130,000 after renovating the property, all in reliance on the payment schedule contained in the judgment. (Response in

Opposition to Rule 60 Motion at 1 (Sept. 4, 2019); R. p. 188; Second Aff. of Jonathan D. Custer *passim* (Sept. 4, 2019); R. pp. 190–93.)

IV. Judge Simmons disregarded the Appellants' statutory status as bona fide purchasers and relied on equitable principles to set aside the foreclosure judgment and judicial sale.

On September 4, 2019, Judge Simmons entered an order granting Ms. Martinez's post-judgment motion. In it, he acknowledged that South Carolina Code § 15-39-870 creates certain rights for purchasers at judicial sales, but he weighed those rights against whether "in reason and justice can this sale be upheld?" (Order at 9 (Sept. 4, 2019); R. p. 30.) He concluded that the Appellants' status as bona fide purchasers without notice "is outweighed" by Ms. Martinez's post-sale motion. (*Id.* at 10; R. p. 31.) The order ended by granting Clear Skies' request to rewrite the priority of paying the liens that attached to this property, finding that "all parties" should be allowed to litigate "the terms of any necessary judicial sale." (*Id.* at 11; R. p. 32.)

This ruling came as a shock to the Appellants, as the arguments raised by Mr. and Ms. Martinez's post-sale motions were expressly addressed and rejected by this Court's decision in *Robinson v. Estate of Harris*, 378 S.C. 140, 662 S.E.2d 420 (Ct. App. 2008). Accordingly, the Appellants filed two motions: (1) a motion to intervene in the underlying litigation, and (2) a motion to alter or amend the September 4th ruling. (Motion to Intervene (Sept. 16, 2019); R. p. 194; Motion to Reconsider (Sept. 16, 2019); R. p. 202.)[1]

The Appellants accompanied those motions with a series of affidavits that explained in great detail how they had examined the foreclosure file and the property's records to ensure that they would have clear title and status as bona fide purchasers once they received the Master's

[1] As September 14, 2019, was a Saturday, the Appellants' Rule 59 motion was timely filed and served within the rule's ten-day deadline.

Deed. (*See* Aff. of Kevin Brady *passim* (Sept. 16, 2019) (discussing the numerous steps required to close a real estate transaction arising from a judicial sale, including those taken here, and explaining that it would be untenable to require purchasers to investigate and independently confirm every factual finding contained in a foreclosure judgment); R. pp. 216–20; Second Aff. of Jonathan D. Custer *passim* (Sept. 4, 2019) (explaining the steps that Oriole Properties undertook to investigate and purchase this property); R. pp. 233–36; Aff. of Ronald D. Rallis, Jr. *passim* (Sept. 3, 2019) (explaining the steps that Rallis Holdings undertook to investigate and purchase this property and estimating its profit at $180,000 after renovating the property); R. pp. 198–201.)

In response to the Appellants' motions to reconsider the September 4th order, Clear Skies and the Martinezes stipulated to dismissing this case. (Stipulation of Dismissal (Sept. 16, 2019); R. p. 237.)

On September 19, 2019, the trial court entered an order granting the Appellants' motion to intervene, but denying their motion to alter or amend the September 4th order. (Order (Sept. 19, 2019); R. p. 36.) This appeal followed.

STANDARD OF REVIEW

While a decision to set aside a foreclosure sale is within the trial court's discretion, a trial court abuses its discretion "when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 66, 762 S.E.2d 729, 731 (Ct. App. 2014) (*quoting Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012)). This Court reviews questions of law de novo. *Ex parte TLC Laser Eye Ctrs. (Piedmont/Atlanta), LLC*, 404 S.C. 385, 392, 745 S.E.2d 105, 109 (2013).

ARGUMENT

When a third party purchases property at a judicial sale, South Carolina law jealously protects that purchaser's interest in the property unless he had notice of a defect in the underlying judgment ***at the time*** of the judicial sale. Despite this unambiguous point of law—which has been codified by the General Assembly and reinforced time and again by this Court—the circuit court set aside the Appellants' interest in real estate they purchased at a foreclosure sale because of an alleged procedural defect in the underlying case that was unknown at the time of the sale and, in fact, was unknown until after the Appellants began ejectment proceedings. The Court should reverse this legal error, reinstate the results of the foreclosure sale, and uphold the finality of judicial sales as required by the General Assembly.

I. As a matter of South Carolina law, a bona fide purchaser without notice of an alleged defect in the underlying judgment has an unchallengeable interest in property acquired through a judicial sale.

South Carolina has a well-established policy of protecting good-faith purchasers and upholding the finality of judicial sales. *Robinson v. Estate of Harris*, 378 S.C. 140, 144, 662 S.E.2d 420, 422 (Ct. App. 2008). The legislature has codified this policy at South Carolina Code § 15-39-870, which provides that judicial sales are final as to innocent purchasers:

> Upon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction that proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court. Judicial sales shall be res judicata as to innocent purchasers, even without confirmation.

To enjoy the protection afforded by this statute, a purchaser must show two things: (1) that the court issuing the order forming the basis of the judicial sale was "a court of competent jurisdiction," and (2) that the purchaser is a bona fide purchaser. *Id.* Appellants readily satisfy both

of these elements, and the circuit court thus erred as a matter of law when it did not enforce the innocent-purchaser statute according to its plain terms.

A. The circuit court had jurisdiction to issue the order underlying the judicial sale.

First, the circuit court had jurisdiction to issue its foreclosure order. The order directing the judicial sale stated the following:

(1) A *lis pendens*, summons, and complaint were filed with the Greenville County Clerk of Court on June 1, 2018;

(2) An amended *lis pendens*, amended summons, and amended complaint were filed on September 26, 2018;

(3) The defendants had been served;

(4) The defendants were in default;

(5) No defendants were in active military service;

(6) All parties were notified of the foreclosure hearing;

(7) The plaintiff's mechanic's lien was junior to two mortgage liens;

(8) The defendants could pay the amount owed on the mechanic's lien before any judicial sale occurred to avoid the sale;

(9) If the defendants did not pay the sum owed on the mechanic's lien, the property would be sold by the Master in Equity at a public auction; and

(10) How the proceeds of any judicial sale would be distributed among the various interests in the property, including paying the senior mortgage liens, the court costs, and the mechanic's lien.

(Order for Judgment and Decree of Foreclosure at 1–5 (May 8, 2019); R. pp. 7–11.)

Each of these statements—the pleadings, service of the pleadings, the defendants' default, the sum owed—was fully supported by documentation available in the Public Index. And the deed transferring ownership of the property to the Appellants was a Master's Deed issued pursuant to

the judicial sale, as the circuit court recognized when issuing a writ of ejectment. (Master's Deed (recorded June 11, 2019); R. p. 223.)

Despite its unambiguous finding of jurisdiction in the foreclosure order, the circuit court ultimately decided after the judicial sale that it lacked jurisdiction—and thus rendered South Carolina Code § 15-39-870 inapplicable—because Ms. Martinez alleged that she had not been personally served with process. (*See* Order at 10 (Sept. 4, 2019) ("In this case, the court that held the sale and issued the judgement and new deed was not a 'court of competent jurisdiction' because personal jurisdiction never attached as to Defendant Paula A. Martinez."); R. p. 31.) This ruling is incorrect as a matter of law and, in fact, is squarely contrary to this Court's decision in *Robinson*.

In *Robinson*, a family of foreclosure-defendants attempted to undo a judicial sale by arguing—exactly like Ms. Martinez argues here—that they were not properly served with process in the foreclosure action that gave rise to the judicial sale. 378 S.C. at 143, 662 S.E.2d at 421–22. This Court rejected that argument and held that the circuit court did have jurisdiction sufficient to trigger Section 15-39-870 despite the after-the-fact objection to service because:

> The [foreclosure] judgment stated (1) service was made upon defendants, Kathleen and Bobbie; (2) both Kathleen and Bobbie were in default; (3) the attorneys of record were notified of the hearing; and (4) neither Kathleen nor Bobbie was in the United States military service. The judgment further indicated the property was to be sold by the Charleston County Master-in-Equity and listed the terms of the sale.

Id. at 145, 662 S.E.2d at 423.

The facts of this case are identical to those of *Robinson* in every material respect. There is no way to square the circuit court's determination that it lacked jurisdiction because of a post-sale objection to service and this Court's holding in *Robinson* that such an objection cannot disrupt a judicial sale. The circuit court's ruling should be reversed accordingly.

B. The Appellants acquired their interest in the property without notice of Ms. Martinez's objection to service, which came well after the judicial sale had been closed and the circuit court had issued a writ of ejection.

The Appellants likewise meet the second element required to enjoy Section 15-39-870's protections, as they are bona fide purchasers of the property. To claim the status of a bona fide purchaser, one must show (1) actual payment of the purchase price of the property; (2) acquisition of legal title to the property, or the best right to it; and (3) a bona fide purchase, "*i.e.*, in good faith and with integrity of dealing, without notice of a lien or defect." *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874–75 (2006).

Here, there is no legitimate dispute that the Appellants meet all three elements. They actually paid the purchase price of $120,100 and closed on the property on June 7, 2019. (Second Aff. of Jonathan D. Custer ¶¶ 7, 14 (Sept. 4, 2019); R. pp. 234–35.) They acquired legal title through a Master's Deed that the circuit court even sought fit to enforce through a writ of ejectment. (Order for Writ of Ejectment at 1 (June 12, 2019); R. p. 18.) And they had no notice of any potential problem with the underlying foreclosure action, including Ms. Martinez's untimely service objection. (*E.g.*, Aff. Ronald D. Rallis, Jr. ¶¶ 15–16 (Sept. 3, 2019); R. p. 201.)

Critically, the circuit court never found that the Appellants had notice of any alleged improper service. Instead, it simply declared that any failure of service on Ms. Martinez "outweigh[s]" the Appellants' status as bona fide purchasers. (Order at 10 (Sept. 4, 2019); R. p. 31.) But there is no balancing of interests to be performed here, as the South Carolina Code's protections for innocent purchasers vest as a ***matter of law***. *See, e.g.*, *Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 117, 580 S.E.2d 100, 108 (2003) ("The function of equity is to supplement the law, not to displace it."); *Spoone v. Newsome Chevrolet-Buick*, 309 S.C. 432, 434, 424 S.E.2d 489, 490 (1992) (reiterating that "equity will not prevail over a positive enactment of the legislature").

Rather than balancing competing interests, the dispositive inquiry is whether the purchaser had notice of a potential defect at the time it became a purchaser. If the purchaser did not have notice—and there is no dispute that the Appellants lacked notice here—then the purchaser's rights to the property must prevail.

Not only is this the outcome commanded by the General Assembly, but this Court has reinforced this result in prior decisions. *See, e.g.*, *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 69, 762 S.E.2d 729, 733 (Ct. App. 2014) ("[T]here is no evidence the Fingerhuts had any notice of Appellants' claims they were not properly served. Thus, the Fingerhuts were bona fide purchasers and their title to the Property was not affected by Appellants' claims of defective service of process in the foreclosure action."); *Robinson*, 378 S.C. at 146–47, 662 S.E.2d at 423 (explaining that because the purchaser did not have notice of the foreclosure-defendants' objection to service, its title to the property "is not affected by Appellants' claims of defective service of process in the foreclosure action" (citing S.C. Code Ann. § 15-39-870)); *cf. Belle Hall Planation Homeowners' Ass'n v. Murray*, 419 S.C. 605, 620, 799 S.E.2d 310, 318 (Ct. App. 2017) (holding that the purchasers were not bona fide purchasers because "[b]efore the [third-party purchasers] paid the entire purchase price . . . they received actual knowledge that there could be a claim or defect that would affect title to the property").

Nor does it suffice to suggest, as Ms. Martinez did in her post-judgment motion, that the existence of a 2016 divorce file in the Greenville County Family Court's records somehow put the Appellants on notice that Ms. Martinez may not live at the property and, therefore, service was potentially improper there. Once again, the General Assembly anticipated this problem and resolved it through a statute that holds third parties to be without notice of the impact of divorce proceedings on real property unless a "Notice of Pendency of Action" has been filed. S.C. Code

Ann. § 20-3-670(A)(1)(a). Real estate closing attorneys count on such filings in order to clear title, just as the Appellants' closing attorney did here. (Aff. Brady ¶¶ 9–16; R. pp. 217–19.) There is no dispute that no such "notice" was ever filed with respect to this property. (*Id.* ¶ 12; R. p. 218.)

Moreover, numerous ***more recent*** public records that Clear Skies filed in conjunction with its motion for default—including property tax records and motor vehicle registration records—showed that Ms. Martinez still lived at the property in 2018 despite the prior divorce. (Exhibits to Motion for Entry of Default; R. pp. 151–55.) There is simply nothing in the record that could plausibly have put the Appellants on notice that anyone would challenge the foreclosure judgment nearly two months after they purchased the property at a judicial sale and recorded their Master's Deed.

To be sure, finding that the Appellants had notice of a defect here would require an impossible undertaking of bidders at judicial sales. Not only would bidders no longer be able to rely on the plain, unambiguous terms of a judgment from the circuit court, but they would also be required to independently investigate and verify every facet of every case: the validity of the claims asserted, the validity of service of process, whether notice of a foreclosure hearing was properly provided to all parties, and so forth, to anticipate potential future collateral attacks on the judgment. The list could be endless. And this is exactly why the General Assembly has legislated the finality of judicial sales in South Carolina Code § 15-39-870.

At bottom, because the Appellants are bona fide purchasers who had no notice of Ms. Martinez's untimely service objection at the time they paid for the property and acquired title to it, they are innocent purchasers whose interest in the property cannot be set aside based on general equitable notions. The circuit court's ruling is thus an error of law. It should be reversed accordingly, and the foreclosure judgment and Master's Deed should be reinstated.

II. Clear Skies' "motion to correct" is insufficient as a matter of both law and fact to set aside the judgment and foreclosure sale.

In addition to reinstating the Appellants' rights to the property, the Court should reverse the circuit court's decision to vacate how the proceeds of the judicial sale are to be disbursed.

The Appellants purchased the property with the expectation that the proceeds would be used to fully satisfy all liens on the property, as that is what the foreclosure judgment explained would happen with the sales proceeds. (Order for Judgment and Decree of Foreclosure at 4–5 (May 8, 2019); R. pp. 10–11.) But months after the bidding closed, after the Appellants paid for the property, after the Appellants recorded their Master's Deed, and after the Appellants sought and received a writ of ejectment, Clear Skies filed its "motion to correct" the foreclosure judgment and argued for the first time that it alone should be paid from the sales proceeds and that the Appellants should take the property subject to, rather than free and clear of, the senior mortgage liens.

The circuit court granted that motion and set aside the judgment and foreclosure sale "in an effort to place all parties in the position of fully and fairly litigating all issues, including the amounts actually owed Plaintiff, if any, and the terms of any necessary judicial sale." (Order at 11 (Sept. 4, 2019); R. p. 32.) This was error for several reasons.

A. The circuit court improperly disregarded the statutory protections of South Carolina Code § 15-39-870 when revisiting how the proceeds of the judicial sale were to be distributed several months after the sale had closed.

First, the Appellants' status as bona fide purchasers without notice vests them with statutory protection against exactly this kind of post-sale posturing by Clear Skies.

The Appellants purchased this property at a judicial sale with an understanding and expectation that the terms of the foreclosure judgment would be honored and that they "would be purchasing the property free and clear of any liens (assuming the bidding was high enough to pay off all three mortgages/liens)." (Aff. Rallis ¶ 6(d); R. p. 199.) And, in fact, Clear Skies shared that

exact same expectation, as it participated in the bidding to drive the price above the amount needed to fully pay off the senior mortgage liens and Clear Skies' mechanic's lien. (*Id.* ¶ 8; R. pp. 199–200.)

By South Carolina Code § 15-39-870's plain terms, the judicial sale has a res judicata effect to insulate the Appellants from post-sale attempts to reinstate mortgage liens that were supposed to be fully paid from the sale's proceeds. The circuit court erred as a matter of law by setting aside the terms of its foreclosure order that were in place when the Appellants purchased the property.

B. There is no "mistake" in the foreclosure judgment that needs to be corrected.

In addition to the statutory prohibition against Clear Skies' requested relief, its request should have failed on its merits because there is no evidentiary support that could justify such an extraordinary post-judgment motion.

Rule 60(b), SCRCP, sets forth a series of circumstances under which a trial court may relieve a party from a final judgment. These reasons include: "mistake, inadvertence, surprise, or excusable neglect;" newly discovered evidence; fraud; and a void or satisfied judgment. *Id.* Here, Clear Skies asserted that there was a "mistake" in the foreclosure judgment with respect to how the proceeds of the judicial sale are to be disbursed among lienholders, an argument that arises under Rule 60(b)(1). (Rule 60 Motion at 1 (Aug. 21, 2019); R. p. 186.)

In determining whether to grant relief under Rule 60(b)(1), the circuit court must consider the following factors: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." *Mictronics, Inc. v. S.C. DOR*, 345 S.C. 506, 510–11, 548 S.E.2d 223, 226 (Ct. App. 2001). Although the decision to grant or deny a Rule 60(b) motion is within the circuit court's discretion, such discretion is abused when the order resolving the Rule 60(b) motion is controlled by an error

of law or contains factual findings for which there is no evidentiary support. *Ware v. Ware*, 404 S.C. 1, 10, 743 S.E.2d 817, 822 (2013).

Clear Skies—who has the burden of proof on this issue—never provided the circuit court with any evidence (or even argument) at all to support its "mistake" position. This is because there was no "mistake" in the foreclosure judgment. The judgment expressly states that the sales proceeds would first pay the senior mortgage lienholders (R. pp. 10–11), and this is exactly what Judge Simmons discussed with Clear Skies at the February 7th foreclosure hearing:

> Counsel: Your Honor, there is—there exists now, from what I can tell, two senior mortgages on the property. And it's my understanding that it's the Court's preference as to whether, if the foreclosure sale is ordered, the debt or the payoffs on those senior mortgages are announced at the sale. We would respectfully request that the Order—and we're happy to agree to provide notice of that Order on those mortgagees, and we would—and I don't know the custom, Your Honor, but I would ask that in the Order that we provide to those mortgagees, that they provide that payoff information within a certain period of time.
>
> [Off the Record Discussion]
>
> The Court: We've been off the record discussing the practical realities of the first and second mortgage holders. So I understand, Mr. Holder, you will set out the priority of these and also the date and time of the original principal sums, and then you will attempt to contact attorneys for the first and second mortgage holders to see if they're in a position to provide a payoff. They may or may not be. If you'll do that, and then just email the proposed Order to Ms. Hanks, my court reporter.

(Hr'g Tr. 3:3–23 (Feb. 7, 2019); R. p. 102.)

Because the foreclosure judgment contained exactly what Judge Simmons and Clear Skies' counsel discussed it should contain—and presumably was even drafted and submitted by Clear Skies, as indicated in the above exchange—there is no evidence at all to suggest that the judgment's provisions to pay off the senior mortgage liens first was a "mistake."

Nor did the circuit court analyze any of the Rule 60(b)(1) factors when considering the motion. But those factors are dispositive here.

Clear Skies waited silently from May 8, 2019, until August 21, 2019—nearly three and one-half months, and through multiple hearings—to raise this "mistake" issue, and it has not provided any explanation or excuse for this delay. If allowed to stand, however, that delay would work an extreme prejudice to the Appellants, as they would now be required to pay an additional $75,000 to satisfy the mortgage liens that the Appellants thought they were paying off when bidding at the judicial sale. (Aff. Rallis ¶¶ 6–9; R. pp. 199–200.)

Because the circuit court failed to account for the Rule 60(b)(1) factors—including Clear Skies' unexplained delay and the hardship that modifying the payment scheme memorialized in the foreclosure judgment would cause the Appellants—its decision to modify the foreclosure judgment is an error of law and should be vacated for this additional reason.

CONCLUSION

The General Assembly's protections for innocent purchasers at judicial sales and this Court's unbroken line of prior cases enforcing those protections make the outcome of this case inescapable. The circuit court erred as matter of law when it disregarded those protections as part of an equitable "weighing" of competing interests. Accordingly, the Appellants respectfully request that the Court vacate the circuit court's orders of September 4, 2019, and September 19, 2019, and reinstate the Appellants' rights in the property as they were as of the time they acquired it: reinstate the Master's Deed, free and clear of any preexisting liens or encumbrances.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

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

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