

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Buffalo Creek Investments, Inc.,

Plaintiff,

v.

Stephen H. Pettus a/k/a Stephen Pettus
and Christopher Gravley,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2019-CP-29-00617

**ORDER VACATING FORECLOSURE
AND SETTING ASIDE JUDICIAL SALE**

RECEIVED

JUL 16 2020

SC Court of Appeals

This matter came before the Court on January 22, 2020, for hearing on the Motion to Vacate Foreclosure Sale, which was filed by Defendants on November 27, 2019. Appearing at the hearing were Kathleen McDaniel, attorney for Defendants, Phillip Wright, attorney for Plaintiff, and Keith Martens, attorney for Edward G. Young and Barrett M. Maners, who purchased the subject property at judicial sale on November 4, 2019.

FACTS

This matter arose out of a foreclosure action. The real property subject to this matter is located at 2818 Cane Mill Road, Lancaster, South Carolina 29720. The property is owned by Stephen H. Pettus, who purchased the property for \$242,500.00 on October 9, 2017. The publicly available tax record for the subject property shows that the property was assessed at the owner-occupied rate of 4%. No party disputed at the hearing of this matter that Defendants live at the subject property.

Plaintiff initiated this foreclosure action on May 17, 2019. In the Complaint, Plaintiff alleged that the subject property is not owner-occupied, and, therefore, Defendants would not be entitled to the foreclosure intervention protections afforded by the South Carolina

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Supreme Court's Administrative Order No. 2011-05-02-01, issued on May 2, 2011. There are no other mortgages or liens on the property identified in the Complaint, and no party at the hearing on January 22, 2020, introduced any evidence of any other mortgages or liens affecting the subject property.

Despite stating in the Complaint that Defendants do not live at that subject property, Plaintiff sought to serve Defendants at the subject property. The Affidavit of Service, filed on May 20, 2019, states that Defendant Gravley was served at the subject property by delivering the Summons and Complaint to "Stephen H. Pettus-Partner, a person of discretion residing at the Defendant's residence."

The matter was referred to Special Referee Robert W. Davis on June 21, 2019. A reference hearing was scheduled for July 3, 2019. Defendants appeared but Plaintiff did not; therefore, the reference hearing was rescheduled for September 11, 2019. Defendants have averred that they attempted to appear at the September hearing but arrived 10 minutes late and were told by counsel for Plaintiff that the hearing was conducted and completed in their absence. The Special Referee issued the Record of Hearing on September 11, 2019.

On September 20, 2019, the Special Referee issued a Decree of Foreclosure, directing the sale of the subject property at public auction. The subject property was sold at auction on November 4, 2019, to Edwin G. Young and Barrett M. Maners for the purchase price of \$78,750.00. On November 19, 2019, this Court issued its Report and Order Confirming Sale.

On November 15, 2019, this Court issued an Order for Writ of Assistance directing Defendants to vacate the subject property by noon on December 2, 2019. The Affidavit

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of Service for the Order for Writ of Assistance states the subject property as the address for Defendant Pettus.

On November 27, 2019, Defendants filed the Motion to Vacate Foreclosure Sale. The Court initially set a hearing date of December 12, 2019. However, upon reviewing the matter, Plaintiff consented to vacate the foreclosure sale, and informed the Court by email on December 11, 2019, that a hearing would not be needed because Plaintiff consented to vacate the foreclosure. Mr. Young and Mr. Maners then filed a motion to intervene in the matter so as to contest vacating the foreclosure. The Court heard this matter on January 22, 2020.

STANDARD OF REVIEW

A mortgage foreclosure is an action in equity, and the review of a judicial sale, including whether to set aside the sale, is also equitable and is left to the sound discretion of the trial court. *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008); *E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 354, 644 S.E.2d 802, 805 (Ct. App. 2007).

CONCLUSIONS OF LAW

"Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." *Regions Bank v. Wingard Props. Inc.*, 394 S.C. 241, 252, 715 S.E.2d 348 (Ct. App. 2011); *Buckley v. Shealey*, 370 S.C. 317, 323-24, 635 S.E.2d 76, 79 (2006); *Ex Parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983). Courts generally do not set aside a judicial sale unless there are "cogent reasons" to do so and "it can be done without violating principle or doing injustice." *E. Sav. Bank*, 373 S.C. at 355, 644 S.E.2d at 805. A judicial sale will be set aside when either the sale price is so gross as to shock the conscience or the sale "is

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accompanied by other circumstances warranting the interference of the court." *Wells Fargo Bank*, 378 S.C. at 150, 662 S.E.2d at 425.

As to the finality of judicial sales, Section 15-39-870 of the South Carolina Code (2005) provides,

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 the 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.

This statute exists because "sound public policy requires that the validity of judicial sales be upheld, **if in reason and justice it can be done.**" *Cumbie v. Newberry*, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968) (emphasis added).

As explained further herein, there are "cogent reasons" to vacate the foreclosure and set aside the judicial sale. In addition, the sale is "accompanied by other circumstances warranting the interference of the court," and the sale price is "so gross as to the shock the conscience." Furthermore, purchasers Mr. Young and Mr. Maners are not bona fide purchasers for value without notice because they were on notice that the property was owner-occupied and that Defendants had not been afforded the required foreclosure intervention protections. For these reasons, it is equitable and just to vacate the foreclosure and set aside the judicial sale.

Taking all facts presented to the Court into account, the equities weigh in favor of vacating the foreclosure and setting the sale aside. Defendant Pettus paid \$242,500.00 for the property. It appears that he has paid this purchase price in full because no party submitted any evidence of any other mortgages, liens, or encumbrances other than the mortgage of Plaintiff. If the foreclosure is not vacated, Defendants will lose all of the

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money that was paid to purchase the home as well as their home. This would be a significant forfeiture.

Mr. Young and Mr. Maners paid only \$78,750.00 to purchase the subject property at the November 2019 judicial sale. They received a Deed to the property on November 14, 2019. Less than two weeks later, Defendants notified Mr. Maners that they had filed the Motion to Vacate the Foreclosure Sale. Counsel for Plaintiff stated at the hearing that Plaintiff stands ready to refund the \$78,750.00 purchase and re-initiate the foreclosure proceeding against Defendants. Thus, if the foreclosure is vacated and the sale set aside, Mr. Young and Mr. Maners will simply be put back into the same place they were prior to the judicial sale. They will have not lost the money they paid to purchase the property at the judicial sale.

Plaintiff will also be put back into the same position he was prior to the judicial sale because can re-initiate the foreclosure proceeding against Defendants.

There are also cogent reasons and other circumstances warranting the interference of this Court to vacate the foreclosure and set aside the judicial sale.

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Most importantly, the publicly available information for this case and Lancaster County's tax records demonstrate that the subject property was owner-occupied and that Defendants were denied the foreclosure intervention protections required by the Supreme Court's May 2011 Administrative Order.

The property tax bills for 2018 and 2019 show the total appraised value of the land and buildings as \$234,800. The real property was assessed for \$9,390.00, which means that the owner-occupied rate of 4% was applied. This is information that is public record

and any purchaser would be on at the very least constructive notice of the owner-occupied assessed tax rate.

In addition, it is also public record (by virtue of the filed Affidavit of Service) that the Plaintiff purported to serve Defendant Gravley with the Summons and Complaint not by personal service but by claiming to have left those documents "at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein" pursuant to Rule 4(d)(1) of the South Carolina Rules of Civil Procedure. Thus, for the purposes of service of process, Plaintiff must have believed that the subject property was Defendant Gravley's "usual place of abode." The Affidavit of Service states that Defendant Pettus resides at the subject property as would have been required to effectuate good service on Defendant Gravley. Plaintiff's Affidavit of Service is directly contradictory to Plaintiff's allegation in the Complaint that the subject property is not owner-occupied.

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The Affidavit of Service for the Order for Writ of Assistance, which Order was pursuant to the Petition of Mr. Maners, also indicates that the subject property is the residence of Defendant Pettus, indicating that Mr. Young and Mr. Maners knew that Defendants reside at the subject property.

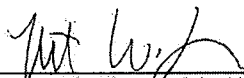
Proper application of the Supreme Court's May 2011 Administrative Order is critical in assuring that foreclosures affecting owner-occupied property are properly handled and that those facing foreclosure receive foreclosure intervention protections before their home can be taken from them. All "citizens are charged with knowledge of existing law." *Labruce v. City of N. Charleston*, 268 S.C. 465, 467, 234 S.E.2d 866, 867 (1977). Thus, Mr. Young and Mr. Maners were on notice that the subject property was

owner-occupied and that Defendants had been denied necessary foreclosure intervention procedures.

Finally, the amount paid by purchasers at the judicial sale shocks the conscience of this Court. The price paid at the judicial sale was only 32% of the price Defendant Pettus paid for the subject property.

For the foregoing reasons, Defendants' Motion to Vacate the Foreclosure Sale is GRANTED and the judicial sale is set aside. Accordingly, this Court will issue a Deed conveying title to the subject property back to Defendant Pettus. Plaintiff is ordered to refund the purchase price of \$78,750.00 to Edward G. Young and Barrett M. Maners within 10 days of the date of this Order.

And it is so ORDERED.



Robert W. Davis
Special Referee for Lancaster County

February 20, 2020

Bershaw, South Carolina

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the following as indicated herein below, by mailing a copy of same on the date below by First Class United States Mail, postage prepaid, addressed to the following:

DOCUMENTS SERVED: ORDER VACATING FORECLOSURE AND SETTING ASIDE JUDICIAL SALE

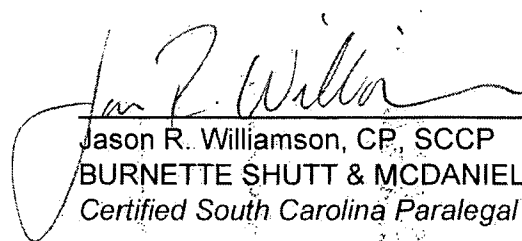
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Jason R. Williamson, CP, SCCP
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Certified South Carolina Paralegal

Columbia, South Carolina

February 24, 2020