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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS
Judge William Keesley**

**Case # 2009-CP-18-2200
Appellant Case # 2019-001516**

Howard W. Charpia , et al.....Appellant

vs.

Rene McMasters.....Respondent

INITIAL BRIEF

MOTION TO VACATE SALE

Howard W. Charpia
106 Axtell drive
Summerville, SC 29485

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Arguments.....

1. Did the Court err in accepting an order action that does not fall within under any statutory rule , regulation or law for/in the State of South Carolina ? (i.e. to “foreclosure of a judgment lien “)
2. Did the Court err in allowing the Respondent to cancel the ”original” sale in May 2009 held by the Sheriff’s department without a Court order or intervention ?
3. Did the Court violate Charpia’s “due process” by modifying the terms of Judge Dickson’s Order at the sale of August 1 , 2017 ?
(Moore v. Fairfield Real Estate opinion # 3352)
4. Did the Court err in the sale of Charpia’s home in a case that has no “judgment” rendered against Howard W. Charpia and Jody E. Charpia. (i.e. judgment was rendered against Charpia Residentials LLC and Howard W. Charpia , case # 2002-CP-18-932)
5. Did the sale on August 1 , 2017 “shock the conscience” of the Court ?
6. Did the Court err in accepting a “fraudulent” affidavit from the respondent stating the fair market value was \$ 59,100.00 ?

7. Did the Court err in conducting a sale when no new “notice of sale” had been issued for the sale of August 1, 2017 ?
(Westbury V. Watts)

Conclusion.....8

TABLE OF AUTHORITIES

Westbury v. Watts (Court of Appeals opinion # 2004-UP-100)

Moore v. Fairfield Real Estate (Court of Appeals opinion # 3352)

South Carolina Code 12-24-70 (c)

STATEMENT OF THE ISSUES

A judgment was rendered against Charpia Residential LLC and Howard W. Charpia , case # 2002-CP-18-932 in August 2004. This appeal falls within under case # 2009-CP-18-2200.

There is no judgment lien within under case # 2009-CP-18-2200 , as Defendants are Howard W. Charpia and Jody E. Charpia .

There is no statutory rule , regulation or law to "foreclose on a judgment lien" in the State of South Carolina , i.e. to enforce a judgment lien in South Carolina , one has to issue an "execution" to satisfy said judgment. SC Code 15-39-30 et al.

Judgment on August 5 , 2014 (10 year judgment statute) was approx. \$ 505,484. 08 per Dorchester County Sheriff's Department . With an added 1,821 days past the judgment active energy date , sale was August 1, 2017 . And at \$ 62.99 interest per day , would bring the total judgment to approx. \$ 574,448.13.

Sale price on August 1 , 2017 was \$ 59,100.00 submitted by the respondent's Attorney , Frank M. Cisa ; as this amount and "affidavit" submitted by Cisa to the Court shall "shock the conscience" of the Court.

The Court and attorney Cisa fabricated this action , case # 2009-CP-18-2200 in August 2009 after the Sheriff's Department held a sale of said property in May 2009 and an upset bid sale in June 2009.

Cisa cancelled this sale(s) without a Court order or the Court's intervention.

The Clerk of Court for Dorchester County conducted the sale on August 1, 2017 and modified the terms of the sale and Judge Dickson's order.

Any conduct on the part of those actively engaged in the selling or bidding (at a judicial sale) that tends to prevent a fair , free open sale or stifle or suppress free competition among bidders , is contrary to public policy, vitiates the sale, and constitutes ground for setting it aside upon complaint of the injured party.

(Moore v. Fairfield Real Estate , opinion # 3352)

Judge Doyet Early signed an Order forbidding Charpia or anyone on his behalf to bid at this sale, violating Charpia's "due process" and denying him access to the Court.

STATEMENT OF THE CASE

Judgment was rendered in case # 2002-CP-18-932 , not case # 2009-CP-18-2200 ; appeal falls under case # 2200.

The Court , Judge Dickson and attorney Frank Cisa fabricated this case which does not fall within under any statutory rule , regulation or law in the state of South Carolina.

Attorney Cisa's volition as he cancelled the first two (2) sales in 2009 is that Howard W. Charpia transferred part ownership to his wife Jody E. Charpia before any "lis pendens" was filed.

Attorney Cisa and the Sheriff's department cancelled these sales held by the Sheriff without any Court order or Court intervention violating the Appellant's "due process" and the laws of South Carolina in setting aside a judicial sale.

The " terms and conditions of a judicial sale are controlled by the Court , Rule 71, SCRCF , the practice and custom of the County in which the property is being sold, and by statute. (Moore v. Fairfield Real Estate opinion # 3352)

The Clerk modified changed the terms of Judge Dickson's order.

When the Clerk changed the conditions of the sale , in fact ; no new “notice of sale” was issued (a sale without being advertised) , the sale was void , for want of authority on the part of the Clerk of Court to sell.

(Moore v. Fairfield Real Estate opinion # 3352)

Judge Early’s order to “forbid” Charpia or anyone on his behalf to bid at this sale on August 1, 2017 prevented a fair , free , open sale and suppressed free competition among bidders shall vitiate the sale.

(Moore v. Fairfield Real Estate)

FACTS

There is no statutory rule , regulation or law to “foreclose on a judgment lien” in South Carolina. One has to follow the statutes of South Carolina to enforce a judgment, i.e. SC Code 15-39-20 , 15-39-30 , et al.

This judgment was rendered against Charpia Residential LLC and Howard W. Charpia in August 2004 , case # 2002-CP-18-932 .

There is no judgment to satisfy in this appeal , case # 2009-CP-18-2200 ; against Howard W. Charpia and Jody E. Charpia.

Attorney Frank Cisa fabricated this case when Howard Charpia transferred said property to Jody E. Charpia before a “lis pendens” was filed.

The Sheriff had a sale in May 2009 pursuant to the judicial sale statutes of South Carolina and an “upset bid” sale in June 2009 .

Attorney Cisa cancelled this (these) sale without a Court order or the Court’s intervention. (letter dated August 4 , 2009)

The terms and conditions of a judicial sale are controlled by the Court order, Rule 71 SCRPC, the practice and custom of the County in which the property is being sold, and by statute. (Moore v. Fairfield Real Estate opinion # 3352)

Any conduct on the part of those actively engaged in the selling or bidding (at a judicial sale) that tends to prevent a fair , free open sale or stifle or suppress free competition among bidders , is contrary to public policy, vitiates the sale, and constitutes ground for setting it aside upon complaint of the injured party.

(Moore v. Fairfield Real Estate , opinion # 3352)

The Clerk of Court modified the terms and conditions of Judge Dickson's non-statutory order to "foreclose on a judgment lien" at the sale on August 1, 2017.

Judge Doyet Early signed an Order that forbid Howard W. Charpia and or anyone acting on his behalf to bid at this sale , thus preventing a fair , free , open sale which is contrary to public policy and violated Charpia's "due process" that denied Charpia access to the Court.

No "upset bid" sale was held after the sale on August 1, 2017 pursuant to Rule 71(b) SCRCF .

No new "notice of sale" was issued by the Court , the Clerk or attorney Cisa for the sale on August 1, 2017.

(Westbury v. Watts opinion 2004-UP-100 Court of Appeals)

There is no statutory rule or law that allows a judgment to be satisfied under a completely different case than one rendered in another , i.e. judgment was rendered in case # 2002-CP-18-932 against Charpia Residentials LLC and Howard W. Charpia.

Sale of said property was under case # 2009-CP-18-2200 , against Howard W. Charpia and Jody E. Charpia.

Respondent and Attorney Cisa did not adhere to the laws and the SCRCF in "executing" on the judgment in case # 2002-CP-18-932 within the 10 year active energy guideline pursuant to SC Code 15-39-20 , 15-39-30 , et al.

Conclusion

There is no statutory rule , regulation or law to “foreclose on a judgment lien” in South Carolina.

Dorchester County did not follow to custom and practice of a judicial sale on at the sale of August 1, 2017 pursuant to precedence set by the SCRCPP and the South Carolina Court of Appeals. (Moore V. Fairfield Real Estate opinion # 3352)

Dorchester County and the Court prevented a fair , free , open sale and did suppress free competition among bidders by denying Charpia or anyone on his behalf to bid at the sale of August 1, 2017. (Moore v. Fairfield Real Estate)

By forbidding Charpia or anyone to bid on his behalf violated Charpia’s “due process” denying them access to the Court.

No “notice of sale” was issued for the sale on August 1, 2017 .

(Westbury v. Watts Court of Appeals 2004)

The selling officer has no authority to modify the terms and conditions of the decree in any material way. (Moore v. Fairfield Real Estate)

Rule 71 (b) SCRCPP, unless the pleadings (complaint) state that no personal or deficiency judgment is demanded ; the bidding shall not be closed upon the day of the sale , but shall remain open until the 30th day after such sale.

No "upset bid" was held pursuant to the laws and SCRPC violating Charpia's "due process".

Judgment was rendered in case # 2002-CP-18-932 in August 2004 against Charpia Residential LLC and Howard W. Charpia , not this case; 2009-CP-18_2200.

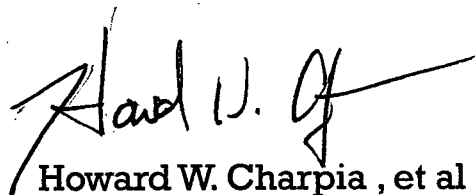
The Court erred in satisfying a judgment in a case that had lost it's active energy pursuant to SC Code 15-39-30 , et al.

The Court erred in satisfying a judgment that "shocked the conscience" of the Court.

The Court erred in satisfying a judgment in a case that no judgment was rendered , case # 2009-CP-18-2200.

WHEREFORE , Howard W. Charpia , et al prays that this Court look into this matter , give notice to be heard and allow a Pro Se litigant , Howard W. Charpia his day in Court with the South Carolina Court of Appeals and/or reverse and vacate the sale on Howard W. Charpia's property .

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PROOF OF SERVICE

I, Howard W. Charpia , hereby certify that I mailed the "Initial Brief" to:

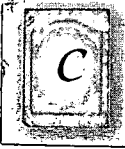
Attorney Frank Cisa
858 Lowcountry Blvd.
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South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Date mailed August 5, 2020

"Motion to Vacate Sale"
2019-001516


Howard W. Charpia

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