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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

REPLY BRIEF

MOTION TO VACATE SALE

Howard W. Charpia
106 Axtell drive
Summerville, SC 29485

TABLE OF CONTENTS

Argument in Reply.....	1
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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)

ARGUMENT IN REPLY

1. Howard W. Charpia is the Appellant and Rene McMasters is the Respondent. (Ronaghan was McMasters fifth husband , now divorced)
2. Pursuant to SC Court of Appeals letter dated December 31 , 2020 ; the Respondent(s) has not filed their Initial Brief , i.e. your brief will not be considered if no motion is made within ten (10) days of the date of this letter. (see attached)
3. Judgment was rendered against Howard W. Charpia and Charpia Residentials LLC , Case 2002-CP-18-932 , in August 2004.
4. This Appellant Case # 2009-CP-18-2200 is a “non-statutory” action that does not fall within under any rule , regulation or statute in South Carolina.
5. The judicial sales of 2009 were cancelled by Attorney Cisa without a Court order or the Court’s intervention. “A judicial sale should not be set aside except for cogent reasons.”
(Moore v. Rowe opinion # 3352) (see attached)
6. Did the sale on August 1 , 2017 “shock the conscience” of the Court ?
Judge Doyet Early’s order forbidding Charpia to bid at sale .
7. Did Judge Early’s order forbidding the Appellant (Charpia) to bid at the sale of August 1, 2017 violate his “due process” ?

1.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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December 31, 2020

Mr. Frank M. Cisa, Esquire
858 Lowcountry Blvd.
Suite 101
Mt. Pleasant SC 29464

Re: Rene McMasters Ronaghan v. H. Wayne Charpia (5)
Appellate Case No. 2019-001516

Dear Mr. Charpia:

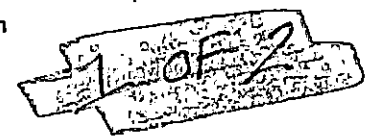
Our records reflect that the time for serving and filing the respondent's initial brief and designation of matter has expired. Within ten (10) days of the date of this letter, you may serve and file the respondent's initial brief and designation of matter, along with a motion requesting permission to serve and file the respondent's initial brief and designation of matter outside of the filing deadlines set by Rules 208 and 209 of the South Carolina Appellate Court Rules. ~~Your brief~~

~~will not be considered if no motion is made within ten (10) days of the date of this letter.~~

Very truly yours,


CLERK

cc: H. Wayne Charpia
Jody E. Charpia



**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**Ex parte: Louie E. Moore, formerly doing business
as Fairfield Real Estate Company, Inc., Appellant,**

and

**Britt Rowe, Purchaser, and Community Federal
Savings & Loan Association, Respondents.**

In re:

Jerry W. Branham, Plaintiff,

v.

**Fairfield Real Estate Company, Inc., Theophilus L.
Davis, Peggy K. Branham, Betty Portee, Abraham
Khalil, The Bank of Ridgeway, and Community
Federal Savings & Loan Association, Defendants.**



**Appeal From Fairfield County
Claude S. Coleman, Special Referee**

**Opinion No. 3352
Heard May 8, 2001 - Filed June 4, 2001**

REVERSED

**Leonard R. Jordan, Jr., of Berry, Quackenbush & Stuart, of
Columbia, for appellant.**

**Robert E. Stepp and Laura W. Robinson, both of Sowell, Gray,
Stepp & Laffitte, of Columbia; and R. Westmoreland Clarkson,
of Winnsboro, for respondent Community Federal Savings &
Loan Association.**

**Walter B. Todd, Jr., and J. Derrick Jackson, both of Todd,
Holloway & Ward, of Columbia, for respondent Britt Rowe.**

ANDERSON, J.: This appeal involves a special referee's conduct at a mortgage foreclosure sale. Louie E. Moore ("Moore") was the highest bidder at the foreclosure sale of certain real estate owned by Fairfield Real Estate Company, Inc. ("Fairfield"), at which time Moore was the president and sole shareholder of Fairfield. The referee then announced Moore was required to tender his earnest money to the court within fifteen minutes of the closing of the first sale. After Moore could not tender his deposit within the allotted time limit, the referee re-auctioned the property. Moore objected to the second sale and moved to confirm the first sale. Moore's objections were denied. Moore appeals. We reverse.

compliance must be made with the bid. Rule 71(b), SCRCP; see also S.C. Code Ann. § 15-39-660 (1977) (reciting substantially similar requirements that must be advertised); Farr v. Sims, 9 S.C. Eq. (Rich. Cas.) 122 (1832) (noting minimum requirements for notice to the public for a judicial sale); 47 Am. Jur. 2d Judicial Sales §74 (1995) ("A notice of sale should give the title of the cause, describe the property to be sold, and state the date, hour, place, and terms of the sale. As a practical matter, a notice is sufficient if it gives the title of the cause and the date of the decree and states that the sale will be made in pursuance of the decree."). — ORDER

Essentially, through this order, the trial court is fulfilling its duty to properly inform the public of every material element of the judicial sale. That is, "[t]o enable persons to buy, they ought to be apprised of the terms on which the property is to be sold." Farr, 9 S.C. Eq. at 131. Thus, the courts reviewing a judicial sale should guard against any undue surprise or partiality affecting the sale. "[A]ny 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 the complaint of the injured party." Ex parte Keller, 185 S.C. 283, 291, 194 S.E. 15, 19 (1937) (citation omitted).

This being said, we reiterate the well-established rule for South Carolina foreclosure sales that:

~~A judicial sale should not be set aside except for cogent reasons.~~ The purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final. As was said in Farrow v. Farrow, 88 S.C. 333, 70 S.E. 459 [1911], the successful bidder makes himself a party to the cause, and, except where title to the property is defective, or where he can show fraud, misrepresentation, mistake, or other circumstances of unfairness in the sale, he may be compelled by the court to perform his contract of purchase. In the absence of such circumstances, therefore, his contract should be upheld. These principles are well established. Henry v. Blakely, 216 S.C. 13, 56 S.E.2d 581 [1949]; Appeal of Paslay, 230 S.C. 55, 94 S.E.2d 57 [1956].

Spillers v. Clay, 233 S.C. 99, 104, 103 S.E.2d 759, 761-62 (1958) (citations omitted); see also Federal Nat'l Mortgage Ass'n v. Brooks, 304 S.C. 506, 510, 405 S.E.2d 604, 606 (Ct. App. 1991) ("[W]here there are other circumstances tending to show the sale should, in good conscience, be set aside, disparity between the accepted bid and the fair value of the property⁽⁷⁾ as disclosed by the evidence is a proper factor to be considered by the court in arriving at its decision.") (citation omitted); Brownlee v. Miller, 208 S.C. 252, 265, 37 S.E.2d 658, 664 (1946) ("It is the established rule of this jurisdiction to uphold judicial sales, when regularly made, 'when it can be done without violating principle or doing injustice.'") (citation omitted).

"But the circumstances impeaching the fairness of the transaction should relate to the **conduct of the officer making the sale**, as in Farr v. Sims, [citation omitted], or to the conduct of the purchaser participating in the attempt to stifle competition or affected with notice thereof [citations omitted]." In re Wallace, 179 S.C. 480, 484, 184 S.E. 849, 851 (1936) (emphasis added) (citation omitted); Metropolitan Life Ins. Co. v. Sansbury, 164 S.C. 452, 162 S.E. 579 (1932); Hughes v. Wilburn, 156 S.C. 443, 153 S.E. 487 (1930); Ex parte Cooley, 69 S.C. 143, 48 S.E. 92 (1904). That is, "where a party in interest has been misled to his detriment by the officer making the sale, **through no fault of his own**, relief may be had." Hudson v. Inman, 179 S.C. 399, 406, 184 S.E. 102, 105 (1936) (emphasis in original) (quoting Bonham v. Cave, 102 S.C. 308, 311-12, 86 S.E. 681, 682 (1915)); see also 50A C.J.S. Judicial Sales § 79 (1997) ("A mistake or some surprise or accident in connection with a judicial sale is ground for setting it aside, either before or after confirmation, provided the mistake was an injurious one, and would result in no substantial hardship other than rescinding the bargain.").

In this appeal, we must analyze the special referee's actions in conjunction with his order of sale. Although the referee acted as his own selling officer, he was still bound by the limits of his written decree of sale. When the public has been informed through the order and the advertisements, the

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PROOF OF SERVICE

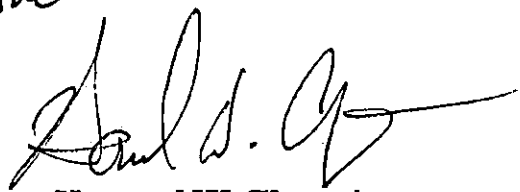
I, Howard W. Charpia , hereby certify that I mailed the "REPLY BRIEF" to:

Attorney Frank Cisa
858 Lowcountry Blvd.
Mt. Pleasant, SC 29464

South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Date mailed

~~1-29~~ 2-2 2021
2020 HWC



Howard W. Charpia

"Motion to Vacate Sale"
2019-001516

Buzzy Charpia
106 Astell Dr.
Summerville, SC 29485

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