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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable James O. Spence, Master-in-Equity for Lexington County

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APPELLATE CASE NO. 2020-000872

First Reliance Bank,.....Respondent,

v.

Charles E. Bishop, Brett D. Blanks, BCM of Lexington, LLC
and Branch Banking and Trust Company of South Carolina, ...Defendants,

Of whom Charles E. Bishop is the.....Appellant.

FINAL BRIEF OF APPELLANT

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February 16, 2021

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STATEMENT OF CASE

On January 5, 2012, Honorable James O. Spence issued a Judgment of Foreclosure sale on three parcels in Lexington county known as TMS # 003418-01-008, TMS # 003418-01-009, and TMS # 003418-01-007. (R. at 1-11) Thereafter, Judge Spence, on January 17, 2013, issued an order appointing appraisers "to view and value the subject property . . . ." (R.at 15) On March 5, 2013, the return of the appraisers were filed with the Court. (R. at 16) The appraisers were directed to use the standards codified at S.C. Code 29-3-680 (R. at 15) The report of the appraisers valued TMS# 0031418-01-008 at One Million Forty Thousand Dollars ($1,040,000.00) (R. at 39-40) Mr. George McMaster, the attorney for Charles E. Bishop, filed a timely appeal of the return of the appraisers and asserted the determination of value was incomplete. (R. at 20-33) An appeal hearing was conducted on April 10, 2014 (R. at 82-99). The Court took the matter under advisement. On June 18, 2014, the trial court issued a letter to counsel and advised each side to submit proposed orders. (R. at 49-50) The letter from the trial court was served on June 27, 2014. (R.at 51) On July 2, 2014, George McMaster, counsel for Charles E. Bishop, was placed on interim suspension. (R. at 19) Peyre T. Lumpkin, Esq. was appointed as receiver pursuant to the order of suspension. (R. at 19) On July 16, 2014, receiver Lumpkin sent a letter addressed to Mr. Bishop at 628 Haskell Road, Gilbert, South Carolina 29054 advising him that Mr. McMaster had been placed on interim suspension. (R.at 52-33) On July 15, 2014 George McMaster advised First Reliance Bank counsel, James Bradley, Esq., that Mr. McMaster was placed on interim suspension. (R.at 54) On July 17, 2014, the trial court advised that proposed orders were due no later than July 31, 2014. (R.at 55) On July 28, 2014, Mr. Lumpkin received a notice from the United States Post Office that the July 16, 2014 letter addressed to Mr. Bishop was returned and marked "return to sender, not deliverable at this

address, unable to forward." (R. at 56). On July 31, 2014, at 3:46 p.m. Mr. Bradley's office submitted a proposed order to the Court that ultimately became the final order affirming appraisal in this case (R. at 57) At 4:14 p.m. the same day, Attorney Lumpkin advised the trial court that he did not represent Mr. McMaster's clients, but was merely a receiver of the file. (R. at 57) Further, Mr. Lumpkin advised the trial court that he sent a letter to Mr. Bishop giving notice that McMaster had been suspended on July 16, 2014. (R. at 57) On October 22, 2014, Judge Spence inquired of Attorney Lumpkin whether Mr. Master's client contacted the receiver to obtain a copy of the file. (R. at 58) The receiver advised the court that " We still have the Bishop file in our possession. He has not responded to our notice letter." (R. at 58-59) Mr. Lumpkin did not advise the Court that the notice sent to Mr. Bishop was returned as undeliverable, despite having the return mail in his file. (R. at 58-59) On October 23, 2014, Judge Spence advised, via email to Receiver Lumpkin and Mr. Bradley, that since it has been over 60 days he will sign Mr. Bradley's proposed order. (R.at 58) On October 27, 2014 Judge Spence issued the order affirming the appraisal panel return. (R. at 20-33) Further, Judge Spence directed First Reliance Bank's counsel to submit a new deficiency order and serve the newly issued order on all parties. (R. at 33) On November 26, 2014, the trial court issued an amended order of deficiency judgment on the appraisal in the amount of $508,104.69. (R. at 34-36) On December 5, 2014, the Clerk only served a copy of the amended order of deficiency judgment on appraisal to Mr. Bradley and Mr. McMaster. (R. at36) In February or March of 2015, the Receiver published notice of Mr. Master's suspension in The Columbia Star, a newspaper in Richland County. On April 30, 2020 First Reliance Bank filed a transcript of judgment in Lexington County. (R. at 60-62) On May 5, 2020, First Reliance Bank filed the previously filed transcript in Charleston County (R. at 63-65) On May 15, 2020, the transcript of

judgment was served upon Charles E. Bishop, via united states mail, advising him that there was a judgment in the amount of $508,104.69 against him. (R. at 66-69) On June 10, 2020 this appeal followed. (R. at 70-73).

STATEMENT OF FACTS

This case arises from an appeal of an appraisal concerning a foreclosure of three parcels located at 1605 North Lake Drive in Columbia: TMS # 003418-01-008; TMS # 003418-01-009; and TMS # 003418-01-007. The uncontroverted trial testimony established appraiser Petty and two other appraisers did not fully value the subject property and merely placed a token value on the "excess land" of $25,000 in his original sworn report. The appraisers did not visit the property and had an old plat that did not reveal the total acreage and the true characteristics of independence and access to the property. The total acreage valued by the appraisers was 3.61 but the 3 mortgaged parcels totaled 4.11 acres. The result was a $475,000 variance from the original value of $1,040,00.00.

At the appraisal rights appeal hearing, Judge Spence heard uncontroverted testimony from appraiser Petty in which he clearly stated "he made a mistake" concerning the value of the property that he was ordered to appraise. (R. at 92, Tr Pg. 37 LL. 10-15) In short, the appraisers failed to completely value all three parcels of property as identified in the notice of sale. As a result, the total acreage was incorrect and 2 additional parcels: TMS 003418-01-009 and 003418-01-007 were not fully valued. At the hearing Mr. Petty testified that an error was made and that 3.61 acres was valued rather than 4.11. (R. at 96, Tr. Pg. 53 LL. 14-19) Comparing Trial Exhibit 2 and Exhibit 4 revealed the extent of the error. (R.at 96, Tr. Pg. 53, LL 24 Tr. 54, LL 2; R. at 105 and 107) Moreover, appraiser Petty testified that if they had the correct plat and all information contained in Exhibit 5, the appraisal would have been done correctly. (See R. at 94;

Tr. Pg. 47 LL. 5-10) Moreover, Mr. Petty testified that the value of the excess parcels was classified as "excess land" and all appraisers assumed there was no access. As a result, the appraisers placed a nominal or token value of $25,000 on the excess land. Importantly, it was uncontroverted that the appraisers did not reference the most accurate plat of the property, Exhibit 4 of the trial, at the time of valuation. (R. at 94; Tr. Pg. 47, LL. 1-4; R. at 107) Furthermore a careful review of the return of appraisers to equity court revealed that only one parcel TMS #003418-01-008 was completely valued. (R.at 39) The rear or "excess back land" was given a value but the value was only $25,000, as it was assumed to be non- accessible land that supplemented TMS # 003418-01-008 and had no independent use. Here, it is uncontested that the foreclosed property to be valued was three parcels not just one or two. Appraiser Petty testified that TMS 003418-01-009 and 003418-01-007 had independent access and were independently usable, but the appraisers were unaware of that at the time of the appraisal. Appraiser Petty further provided uncontroverted testimony that the two parcels, considering the independent access and usability, were worth $500,000, rather than $25,000. The testimony established that there was a variance of $475,000 (R. at 92; Tr. Pg. 37, LL. 13-15)

STANDARD OF REVIEW

In an action in equity, tried by a judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of evidence. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *Doe v. Clark,* 318 S.C. 274,457 S.E.2d 336 (1995).

LAW/ANALYSIS

S.C. Code Ann. 29-3-750 controls the Master's authority in the appeal. The master's scope of review is limited to either approval or disapproval of the appraisal. See *Peoples Fed.*

S&L v. Myrtle Beach Group, 302 S.C. 223, 394 S.E. (2d) 849 (Ct. App. 1990). S.C. Code Ann. 29-3-770. Moreover, Section 29-3-720 provides: "[T}he board of appraisers as so constituted shall proceed to view and value the **mortgaged property** and all or a majority thereof shall make a sworn return within thirty days from their appointment of the true value of the property as of the date of sale, taking into consideration sale value, cost and replacement value of improvements, income production and all other proper elements which, in their discretion, enter into the determination of **true value**." S.C. Code Ann. 29-3-720 (emphasis added) The report of the appraisers is quasi-judicial and the only discretion allowed to the court by the statute is to order a reappraisal in which event the court is authorized to impose such terms, such as the method of appraisal, as it might in its discretion deem equitable. *Peoples*, at 230.

ARGUMENT

I. THE MASTER ABUSED HIS DISCRETION BY NOT RECOGNIZING THAT THE BOARD OF APPRAISER'S REPORT FAILED TO COMPLY WITH S.C CODE ANN. 29-3-720.

In this case, S.C. Code Ann. 29-3-720 controlled the task assigned to the appraisers to value the mortgaged property to determine the true value. The mortgaged property, as established by the Order of Sale, contained three parcels: TMS # 003418-01-008; TMS # 003418-01-009; and TMS # 003418-01-007; however, the filed report only contained the value of TMS# 003418-01-008 and a portion of excess land. In any event, the appraisal is clearly flawed in that the mortgaged premises totaled 4.11 acres and the appraisers report merely valued 3.61. Moreover, the appraisal report was further flawed in that the appraisers failed to recognize that the two non-appraised parcels were independent of TMS # 003418-01-007 and had their own legal access notwithstanding TMS # 003418-01-007. The testimony of Mr. Petty was unequivocal on that point and not challenged with any contradictory testimony. (R. at 84, Tr. Pg. 67, LL. 21-23)

The trial testimony was that trial exhibit 2 was the plat that the panel of appraisers used to determine the value of the subject parcels. (R. at 94; Tr. Pg. 45, LL 10-17; R. at 105) Trial exhibit 2 did not contain the entirety of the 3 mortgaged parcels: TMS # 003418-01-008; TMS # 003418-01-009; and TMS # 003418-01-007. Importantly, appraiser Petty further testified that the board of appraisers did not know that there was an additional.5 acres missing at the time of the appraisal. Trial Exhibit 4 reveals the total acreage to be 4.11 acres and this is the plat that should have been used to assist the appraisers in determining the value. (R. at 84; Tr. Pg. 8, LL. 3-14; R. at 107)

Further, the trial testimony established that S.C Code 29-3-730 was not followed by the appraisers as they failed to view the property to determine its value. S.C Code 29-3-730 requires the appraisers "to view and value the property . . ." The trial testimony established that the trial exhibit 2 was used to value the property and the access via Beekeeper Court was unknown to the appraisers. Mr. Petty testified that he only realized that Beekeeper Court provided access after reviewing the plat which was trial exhibit 5 and the aerial photo that was trial exhibit 6. (R at 87; Tr. Pg. 20, LL. 21-Pg. 23, LL. 23). This realization by the appraisers was after the report of appraisers was filed. Clearly had the appraisers visited the property, they would have realized that there were 3 separate parcels and each had independent access to North Lake Drive via Beekeeper Court. The arial photos presented clear evidence that the excess land had access via Beekeeper Court. However, the testimony of Mr. Petty, and all reasonable inferences therefrom, established that the appraisers never visited the property prior to making a sworn statement of valuation. Additionally, the Master-in-Equity had a duty to ensure that S.C Code 29-3-730 was complied with and to ensure that the appraisers followed their directives per the statute. The Master further had a duty to make appropriate findings of fact and conclusions of law, and any

inference therefrom, in the final order. *See S.C.R.C.P. 52* Otherwise, any dereliction of this duty results in an abuse of discretion. Thus, as it is clear from the trial testimony and exhibits presented, the appraisers did not visit or view the property. As such, the Master should have held that the appraisal statute was not complied with.

In conclusion the board of appraisers failed to comply with their directive, as codified at S.C. Code 29-3-730, "to view and value the property" and as such, a new appraisal must be ordered per *Peoples Federal Savings and Loan Ass'n*. The above mistake by the Master-in-equity was an abuse of discretion and the trial court's order must be reversed and remanded for a new appraisal.

II. THE RECEIVER VIOLATED MR. BISHOP'S DUE PROCESS RIGHTS AND DUE PROCESS REQUIRES THIS MATTER MUST BE REVIEWED BY THIS COURT.

Appellant is aware that Respondent, First Reliance Bank, will assert that this case must not be allowed to be reviewed, on appeal, based upon lack of jurisdiction considering the appeal was filed years after the judgment was issued. However, procedural due process demands that the Master-in-Equity's decision be reviewed based on lack of notice.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). "It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002) (quoting *Tryon Fed. Sav. & Loan Ass'n v. Phelps*, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992)). "The requirements of due process not only

include notice, but also include an opportunity to be heard in a meaningful way, and judicial review." *Id.*

Appellant Bishop did not have notice of the judgment and orders affecting his rights, an opportunity to be meaningfully heard related to these orders and judgment, or the necessary judicial review at the time the amended deficiency order was issued. Appellant Bishop was not afforded proper due process after July 2, 2014, when Mr. McMaster was suspended from the practice of law. Although the South Carolina Supreme Court appointed a Receiver to take possession of Mr. McMaster's files, the Receiver did not represent Appellants and did not appropriately inform Appellants of Mr. McMaster's suspension or the need for them to obtain new counsel. Pursuant to Rule 31 of the Rules for Lawyer Disciplinary Enforcement, Receiver shall:

> **(1)** Take custody of the lawyer's active and closed files and trust, escrow, operating and any other law office accounts. The lawyer shall cooperate with the receiver and any attorney appointed to assist the receiver and shall comply with requests to take specific action regarding the client files and accounts. The chair or vice chair may issue such orders as may be necessary to assist the receiver in obtaining custody over such files and accounts, to include orders compelling the lawyer or a third party to take specific action regarding the files and accounts. The willful failure to comply with such an order may be punished as a contempt of the Supreme Court. A party who wishes to challenge such an order must immediately seek review of the order by petition to the Supreme Court;
>
> **(2)** Notify each client in a pending matter, and in the discretion of the receiver, in any other matter, at the client's address shown in the file, by first class mail, of the client's right to obtain any papers, money or other property to which the client is entitled and the time and place at which the papers, money or other property may be obtained, calling attention to any urgency in obtaining the papers, money or other property;
>
> **(3)** Publish, in a newspaper of general circulation in the county or counties in which the lawyer resided or engaged in any substantial practice of law, once a week for three consecutive weeks, notice of the discontinuance or interruption of the lawyer's law practice. The notice shall include the name and address of the lawyer whose practice has been discontinued or interrupted; the time, date and

> location where clients may pick up their files; and the name, address and telephone number of the receiver. The notice shall also be mailed, by first class mail, to any errors and omissions insurer or other entity having reason to be informed of the discontinuance or interruption of the law practice;
>
> **(4)** Release to each client the papers, money or other property to which the client is entitled. Before releasing the property, the receiver shall obtain a receipt from the client for the property;
>
> **(5)** With the consent of the client, file notices, motions or pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained; and
>
> **(6)** Perform any other acts directed in the order of receivership.

In this case, the Receiver failed to appropriately notify Appellant Bishop by letter of Mr. McMaster's suspension and failed to appropriately publish notice of the suspension pursuant to Rule 31. This directly impacted Appellant's due process rights and resulted in Mr. Bishop not knowing of the final order and judgment entered against him and not being able to obtain the appropriate judicial review of the orders and judgement. *See Ins. Co. of N. Am. v. Hyatt, 290 S.C. 159, 162, 348 S.E.2d 532, 535 (Ct. App. 1986)* ("A person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property.").

A. <u>The Receiver's inaction violated the Appellant's due process rights.</u>

While it is true that the Receiver mailed a general notice letter to Mr. Bishop at 101 Old Orangeburg Road, Lexington, SC 29072 on July 16, 2014, advising that Mr. McMaster was suspended; it is also undisputed that Mr. Bishop did not receive the notice. The Receiver received the returned letter of July 16, 2014 on July 28, 2014 and it was marked by the United States Postal Service "return to sender – not deliverable as addressed – unable to forward" with a postmark of July 23, 2014. (R. at 56) Appellant Bishop was never notified of Mr. McMaster's suspension. Importantly, the Receiver failed to notify Judge Spence of the returned mail in the emails between

he and the Court on July 31, 2014 at 4:14 pm (R.at 57) nor in the October 22, 2014 3:46 p.m. email (R.at 57), nor the email from Judge Spence on October 23, 2014 at 8:12 a.m. (R.at 57).

The Receiver further failed to comport with due process protections pursuant to Rule 31 (2) and Rule 31 (5) requiring the Receiver to notify Appellant and the Court. On July 31, 2014, when Receiver emailed the Court and Plaintiff's counsel to say he could neither object nor consent to the proposed order affecting Defendants' rights, he did not inform the Court that the notice letters to Defendant Blanks or Bishop were returned to him as undeliverable three days before, or that he did not attempt to mail notice letters to any other address of Mr. Bishop. Instead, the receiver merely informed the Court that he mailed the notice letters and "he has not contacted us or arranged for his file to be sent to him." (R.at 57) Again, on October 22, 2014, when the Court contacted Receiver to check on the status of the file, Receiver did not inform the Court the notice letters were returned as undeliverable. Instead, Receiver stated "[w]e still have the Bishop file in our possession. He has not responded to our notice letter." The Court relied on the Receiver to appropriately perform his duties under Rule 31 and perfect notice on Defendants, and the Court did not realize Receiver did not fulfill his duties until Defendants filed the instant motion.

This Court should hold that the Receiver further failed to appropriately publish notice as required by Rule 31. Pursuant to Rule 31(3), Receiver was required to "[p]ublish, in a newspaper of general circulation *in the county or counties in which the lawyer resided or engaged in any substantial practice of law*, once a week for three consecutive weeks, notice of the discontinuance or interruption of the lawyer's law practice." Rule 31(d)(3) (emphasis added). Although Receiver did publish notice, he did not do so until February and March 2015—almost four months *after* the orders in the instant case and seven months after Mr. McMaster's suspension. Furthermore, Receiver only published notice in The Columbia Star, a newspaper in Richland County.

Appellants resided in Lexington County at the time and this case was viewed in Lexington County. As such, the Receiver was required to publish notice in all counties where Mr. McMaster substantially practiced, which would have included Lexington County and numerous other counties. Appellant did not reside in Lexington and received no notice via the newspaper.

Appellants' due process rights were further infringed upon by the Receiver's inaction as demonstrated below. Rule 31 also requires a court-appointed receiver to take affirmative action to notify all clients of their attorney's suspension from the practice of law in order to meet fundamental due process requirements. The notice required by Rule 31 requires a receiver to take more action than is required by standard notice by publication pursuant to section 15-9-740 of the South Carolina Code. Further, Rule 31 also gives a receiver the ability to file notices, motions and pleadings on behalf of an attorney's clients when jurisdiction time limits are involved, as here. Receiver knew of the impending deficiency judgment being entered against Defendants, knew they did not receive notice of Mr. McMaster's suspension, and did not attempt to contact them further to obtain their consent to file a motion to protect their rights. Instead, he simply said he would "place a copy of this correspondence in his file for his future reference." (R. at 57) Receiver did not meet his duty under Rule 31, and this Court should find that Appellant Bishop was deprived of fundamental due process rights. Appellant was deprived of his due process right to timely file a rule 59(e) motion to Judge Spence reconsider his ruling on the missing acreage and missing parcels. Moreover, this appeal if dismissed, will be further evidence of a violation of Appellant's due process rights.

B. **Notice of the final amended order of deficiency in this case was never properly served by the Plaintiff's counsel thereby violating Appellant's due process rights.**

The final order of Judge Spence issued on October 23, 2014 and filed on October 27, 2014 directed "Plaintiff to submit new deficiency order and serve on court & all parties pursuant to rule" (R. at 33) On November 26, 2014, Judge Spence issued an amended order of deficiency judgment on appraisal and the clerk mailed a copy to George Hunter McMaster at P.O. Box 7337, Columbia, SC 29202. (R. at 34-36).

While Judge Spence was attempting to protect Appellant's due process rights, Mr. Bradley failed to follow the Court's directive. The result was a violation of Appellant's due process rights. While it is anticipated that respondent will assert that Mr. Bradley's office mailed the order affirming the appraisal panel return to Mr. Bishop on November 6, 2014 to a Gilbert address and Receiver Lumpkin, it is clear that the **final amended order of deficiency** was never served on anyone other than Mr. Bradley and Mr. McMaster. (R. at 34-36) Unfortunately for the Appellant, McMaster was no longer allowed to practice law at that time and failed to forward the final order to the Appellant. Moreover, Mr. Bradley failed to serve the final amended order of deficiency as required by Judge Spence's filed Order of October 27, 2014 and appears to have relied upon the clerk to serve the amended deficiency order. No one notified Appellant Bishop of the final order of deficiency judgment until May of 2020.

III. RESPONDENT SHOULD BE ESTOPPED FROM ASSERTING THIS COURT IS WITHOUT JURISDICTION TO HEAR THIS APPEAL.

Given that the appeal in this matter was years after the final entry of order of judgment, it is anticipated Respondent will assert a motion to dismiss Appellant's appeal. However judicial estoppel and equitable estoppel should be applied to present Respondent form asserting the aforementioned.

Judicial estoppel should prevent First Reliance Bank from asserting a motion to dismiss this appeal as untimely based upon it's counsels inaction in serving the final amended order of deficiency. Judicial estoppel precludes a party from adopting a position in conflict with one previously taken in the same or related litigation. *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). The purpose of the doctrine is not to protect litigants from allegedly improper or deceitful conduct by their adversaries, but to protect the integrity of the judicial process and the courts. *Id.* The supreme court has explained that in order for the judicial process to function properly, litigants must approach it in a truthful manner. Although parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain advantage in the process. The doctrine thus punishes those who take the truth-seeking function of the system lightly. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him. Id.

Here, judicial estoppel should be applied inversely to prevent Reliance Bank from asserting that Appellant failed to timely file a notice of appeal. In this case, Reliance Bank was not deceitful but their counsel's conduct, non-service of the final amended order of deficiency, was improper. As such, judicial estoppel should be used in a prospective and defensive manner against Respondent. .

By contrast equitable estoppel can apply if an essential element judicial estoppel is lacking or this Court holds that judicial estoppel is inapplicable. In South Carolina, the essential elements of equitable estoppel are divided between the estopped party and the party claiming estoppel. *Kelley v. Kelley*, 368 S.C. 602, 606 (Ct.App.2006). Assuming arguendo that Respondent asserts a motion to dismiss this appeal, equitable estoppel applies to this matter. The elements of equitable

estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. *Boyd v. Bellsouth Tel. Tel. Co.*, Inc., 369 S.C. 410, 422 (2006). The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change of position in reliance on the conduct of the party being estopped.

In this case equitable estoppel should prevent Respondent from asserting this appeal was filed untimely. All three elements are met if Reliance Bank assets that this Court is without jurisdiction to hear this matter. The first element was established as Reliance Bank's counsel failed to take the required act of serving the final order on Appellant Bishop despite being ordered to do so. (R. at 33) Secondly, it is clear such non action by Reliance Bank's counsel could result in inaction of Appellant to file a rule 59(e) motion or an appeal in this case. Thirdly, Reliance Bank had the knowledge that Mr. Bishop, the Appellant, was unrepresented and unaware of the amended final judgment of deficiency. The email string, letter of Receiver Lumpkin, and ordered directive from Judge Spence to personally serve the final order empowered Reliance Bank with the full knowledge concerning the due process right of Appellant to seek timely review by this Court. The Appellant likewise satisfies all three elements to establish his claim to the defense of equitable estoppel: Appellant was unaware of the amended order of deficiency judgment; Appellant was to be served with the final amended order of deficiency by Reliance Banks' counsel and thus relied upon Respondent's conduct in failing to take action until now. Lastly, Appellant prejudicially did

not take any further action in this matter as Reliance Bank never served Appellant with the amended final order of Deficiency until May 2020.

All of the above demonstrate that Appellant's procedural due process rights have been violated if this matter is unable to be reviewed by this Court. Moreover, justice requires review of the Master's order affirming the appraisal panel and resulting amended order of deficiency in compliance with the appraisal statute.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court to review this case; reverse the Master-in Equity's order affirming appraisal panel, dated October 23, 2014; reverse the amended order of deficiency, dated November 26, 2014; and remand the entire matter to the Master-in-Equity to order a new appraisal of all three foreclosed parcels in the above case.

February 16, 2021

/s/ Paul B. Ferrara, III

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CERTIFICATE OF COUNSEL

The undersigned certified that this final brief complies with Rule 211(b), SCACR.

February 16, 2021

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