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**SC Court of Appeals**

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

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

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

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**Howard W. Charpia.....Appellant**

**vs.**

**Rene McMasters.....Respondent**

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**RECORD ON APPEAL**

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**MOTION TO VACATE SALE**

**Howard W. Charpia**

**Attorney Frank Cisa**

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FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE COURT OF COMMON PLEAS  
RENE' MCMASTERS

JUDGMENT IN A CIVIL CASE  
2002CP1800932

~~CHARPIA RESIDENTIAL, LLC  
AND HOWARD W. CHARPIA, IND.~~

FILED-RECORDED  
2004 AUG -5 AM 9:46  
CLERK OF COURT  
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

- ( ) ~~XXXXX~~ JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND A VERDICT RENDERED.
- ( ) DECISION BY THE COURT. THIS ACTION CAME TO TRIAL OR HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION RENDERED.
- ( ) ACTION DISMISSED (CHECK REASON): ( ) RULE 12b, SCRPC; ( ) RULE 41a SCRPC (VOL NONSUIT); ( ) RULE 43k, SCRPC (SETTLED) ( ) OTHER
- ( ) ACTION STRICKEN (CHECK REASON): ( ) RULE 40(j) SCRPC; ( ) BANKRUPTCY ( ) BINDING ARBITRATION, SUBJECT TO RIGHT TO RESTORE TO CONFIRM VACATE OR MODIFY ARBITRATION AWARD; ( ) OTHER

IT IS ORDERED AND ADJUDGED: ( ) See Attached order; ( ) Statement of Judgment by the court. WE THE JURY FIND FOR THE PLF. AGAINST THE DEFENDANT FOR BREACH OF CONTRACT IN THE AMOUNT OF \$3,400.00 ACTUAL DAMAGES, IMPLIED WARRANTY OF HABITABILITY IN THE AMOUNT OF \$100.00, AND NEGLIGENCE IN THE AMOUNT OF \$188,100.00.

DATED AT ST. GEORGE, S.C. THIS 4TH DAY OF AUGUST, 2004.

  
HON. ROGER M. YOUNG  
PRESIDING JUDGE

THIS JUDGMENT WAS ENTERED ON THE 5TH DAY OF AUGUST, 2004  
AND A COPY WAS MAILED FIRST CLASS THIS 5TH DAY OF AUGUST  
2004 TO ATTORNEY OF RECORD OR TO PARTIES WHEN APPEARING PRO SE  
AS FOLLOWS:  
FRANK CISA

WAYNE CHARPIA, PRO SE

1

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August 4, 2009

Dorchester County Sheriff's Office  
Attn: Lt. Weathers  
100 Sears Street  
St. George, SC 29477

RE: Rene' McMasters vs. Charpia Residential, LLC and Howard W. Charpia  
Case No.: 02-CP-18-932  
Our file: 03-460

Dear Lt. Weathers:

I would appreciate you cancelling the Sheriff's sale relative to H. Wayne Charpia's property located 1450 Jahnz Avenue, Summerville, SC, as I have decided that I am going to foreclose the judgment lien and request the Master-in-Equity to sell the property. Since Mr. Charpia conveyed out half of his interest in the property, I think this is be the best way proceed.

I greatly appreciate all your help and assistance.

With kindest regards, I am

Very truly yours,

  
Frank M. Cisa

FMC/alp

2009 AUG - 6 AM 10:10  
DORCHESTER COUNTY  
SHERIFF'S OFFICE  
ST. GEORGE, SC 29477

2

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**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.**

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

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

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**REVERSED**

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**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.

**FACTS/PROCEDURAL BACKGROUND**

Certain property owned by Fairfield<sup>(1)</sup> was foreclosed on by one of Fairfield's mortgagors, Jerry W. Branham.<sup>(2)</sup> By order filed December 18, 1998, the special referee ordered the subject property<sup>(3)</sup> to be sold at public sale, with no deficiency judgment requested. The referee stated in the fourth paragraph in his judgment order that the sale was:

A. **FOR CASH:** The Special Referee will require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in the case of non-compliance within 30 days, same to be forfeited and applied to the costs and the first mortgage lien.

The Amended Notice of Sale filed January 27, 1999, reiterated the "terms of sale" which were, in part:

A. **FOR CASH.** The Special Referee will require a deposit of five (5%) per cent of the amount bid (in cash or equivalent), the same to be applied on the purchase price upon compliance with the bid, but in case of noncompliance within 30 days after the date of the sale, same to be forfeited and applied to costs and the first mortgage lien.

The referee conducted the foreclosure sale on March 1, 1999. Moore, formerly doing business as Fairfield, Britt Rowe ("Rowe"), and other bidders attended the sale. Moore offered the highest bid of \$96,000 for the subject 33.03 acre tract, which was approximately \$11,000 more than Rowe's second place bid. Upon Moore's being declared the highest bidder, the special referee ordered Moore to produce his 5% deposit of \$4,800 within five minutes.<sup>(4)</sup> When Moore proffered he could not secure his funding immediately, the special referee allowed Moore fifteen minutes to secure the deposit.

Moore was unable to secure financing within this fifteen minute allowance. Moore testified in a subsequent hearing that he was unable to reach his financier, Craig McMaster, a member of the board of trustees for Community Federal Savings & Loan Association ("Community"). Thereafter, the referee reopened the bidding without Moore's participation, whereupon Rowe offered the highest bid of \$84,000. Rowe posted a cashier's check worth 5% of his bid with the court within fifteen minutes of the close of the second bidding. At approximately 4:30-4:45 p.m. on the day of the sale, Moore posted 5% of his bid from the first sale with the Fairfield County Clerk of Court.

On March 11, 1999, Moore filed an objection to the confirmation of the second sale of the property and moved to confirm the initial foreclosure sale. A hearing before the referee was held March 25, 1999, in which Moore's motions were denied by order filed April 22, 1999. Moore moved to alter or amend the special referee's order on May 3, 1999.

At the hearing, the referee waived recitation of the facts, stating they were not in dispute and that he knew all the relevant facts from participating in the prior case proceedings. Also, the referee admitted he treated Moore differently than other bidders on the property because:

[Moore is] the one that's had five years to make his payments. He's the one that has not made his payments. He's the reason we [were] selling the property.

Additional relevant exchanges with the court are repeated below:

Moore's Counsel: Well, again, I don't think that [who the bidder was is] an issue that matters. And again, I have a feeling that the Court is taking the position that because the bidder happen [sic] to be the owner of the property[,] he should be treated more strictly and severely than a bidder who is not.

The Court: Let me tell you what the facts are clearly in this case, Mr. Jordan. Mr. Moore failed to pay three debts of written notes. M Moore sold contracts of sale of real estate for

the subject property that was subject to two mortgages to innocent third parties. In addition to that, Mr. Moore sold those contracts and received money from them without selling the underlying land or obtain [sic] a release from those mortgages. All of that's in the records[,] and in my opinion[,] because of that this court has some judgment and discretion as to what time period it's going to allow that person, as known through these proceedings not outside of anything that took place in this case, as to what I'm going to allow him to come up with the money, what time period to come up with the money. Does that sound unreasonable to you?

Moore's Counsel: Your Honor ... it sounds like to me you're treating him differently because he is the owner and because he is a defaulting borrower.

The Court: No, sir.

The Court: My concern, I'm not going to keep beating a dead horse[,] but ... and this don't need to be on the record. To me[,] the whole issue is and I think throughout this circuit, as a referee, right or wrong, you typically exercise some discretion in, within the requirements of the deed, making that deposit. And I think normally[,] it's everything from when you walk back to the attorney's office or you do like Mr. Moore was, how long is it going to take you to have the money. I can get it here by such and such. If Mr. Moore had had an attorney that would stand as a member of the Bar and indicate to me that he had the money and he would have it in my office at 5:00 o'clock[,] I don't think we would have been here. But what you, Mr. Jordan, are asking me to accept is that here's a man that all along had the full amount, whatever he was going to bid, had that money available. Does it not make sense that he would have gone and made arrangements to catch up those two mortgages if he would have had the money available to him? I mean, why, if he had \$98,000.00 he could have brought things current months ago. And I know I'm getting beyond what we're hearing today[,] but isn't that just common sense.

Moore's Counsel: That's what I'm saying. It appears to be some \$140,000 worth of ....

The Court: That's the principal too. No, sir, he could have brought them current.

Moore's Counsel: Well, what I'm saying is that if he bought the property back at \$96,000.00[,] he has therefore saved what amounts to maybe \$45,000, \$50,000.

The Court: By beating his credit.

Moore's Counsel: Well, okay, here we go again, Your Honor. This the whole point. I think you're treating Mr. Moore differently because he, in fact, seems to be a guy who beats his credit.

The Court: **I'm treating him differently because he had absolutely no credit worthiness based on the debts in this case.**

The Court: The Court's not trying to protect anybody. The only thing I'm trying to ensure is that somebody ... the purpose of a bid is that you're going to come up with the rest of your money. If you don't[,] then it's some detriment to you. And again, in that Hudson case, <sup>(5)</sup> if such a person can resell the property being at a profit or finds that he's made a profitable purchase[,] then he makes his check good and complies with his bid, otherwise he does nothing and there's not [sic] redress to him. And that's talking about a personal check or

certified check, but isn't that really what the issue is? Let's assume Mr. Moore had not come up with the money, he would be out absolutely nothing.

Moore's Counsel: Oh, certainly. In other counties[,] he might be doing jail time, Judge. I suspect the way you feel about him[,] he probably would be.

The Court: Don't tempt me. I'd rather stay silent on that.

(emphasis added).

Additionally, Alan W. Pullen, president of Community, who attended the foreclosure sale, testified he was surprised at the referee's time limit requirement applied after Moore's successful bid. He averred he had never witnessed an immediate compliance requirement and that the standard practice in many counties require the deposit paid at the end of the day of the sale. Pullen stated the normal practice in Fairfield County is to allow successful bidders to tender their deposits by 5:00 p.m. the same day of the sale.

On March 31, 1999, Rowe tendered the balance of his bid price on the property to the Clerk of Court for Fairfield County. The special referee confirmed the second sale by order filed April 22, 1999, and orally denied reconsideration of this order on September 29, 1999. On October 6, 1999, Moore filed his notice of appeal. Thereafter, on October 18, 1999, Moore petitioned the South Carolina Court of Appeals for a writ of supersedeas; however, this petition was withdrawn March 6, 2000.

In a letter addressed to all interested parties dated March 8, 2000, the referee stated: "Unless a Motion or other appropriate proceeding is filed objecting to such recording [of the deed to Rowe] and disbursement, I intend to file and disburse on March 17, 2000." The record contains no further correspondence to the referee. Thereafter, the deed to Rowe and the accounting of the special referee were filed March 23, 2000. Community, the first priority lienholder on the property that was sold, moved to dismiss Moore's appeal on the ground it has become moot. Community's motion was denied by this Court on May 17, 2000.<sup>(6)</sup>

### STANDARD OF REVIEW

A real estate foreclosure is an action in equity. MI Co., Ltd. v. McLean, 325 S.C. 616, 482 S.E.2d 597 (Ct. App. 1997); Dockside Ass'n v. Detyens, 294 S.C. 86, 362 S.E.2d 874 (1987); Jean Hoefler Toal et al., Appellate Practice in South Carolina 194 (1999). In an action in equity referred to a master-in-equity or a special referee for final judgment, this Court may take its own view of the preponderance of the evidence although it is not required to disregard the findings of the master or referee. Lewis v. Premium Inv. Corp., 341 S.C. 539, 535 S.E.2d 139 (Ct. App. 2000) cert. granted.

### LAW/ANALYSIS

Moore argues the referee erred by prescribing the theretofore unannounced fifteen minute time limit for depositing the earnest money with the court after the close of the first sale of the Fairfield property. We agree.

The terms and conditions of a judicial sale are controlled by the court order, Rule 71, SCRCP, the ~~practice and custom of the county in which the property is being sold, and by statute. See Federal Nat'l Mortgage Assoc. v. Brooks~~, 304 S.C. 506, 405 S.E.2d 604 (Ct. App. 1991); Charles B. Simmons Jr., A Primer for Mortgage Foreclosures in South Carolina, 6 S.C. Lawyer 29, 31 (May/June 1995).

At a minimum, the trial court's order of judgment shall contain: (1) a sufficient legal description of the property being sold; (2) a provision for the necessary legal advertisement; (3) the time and location of the sale; (4) notice of any senior liens, taxes, or other rights to which the property to be sold is subject; (5) the amount of good faith deposit necessary at the time of the sale; and (6) the date that

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<sup>(7)</sup> 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

rules of the foreclosure sale are set.<sup>(8)</sup> See Ex parte Keller, 185 S.C. 283, 194 S.E. 15 (1937) (recognizing the legal principle that an order of sale is a public document, and all bidders, as well as other persons, are charged with notice of its terms); Hudson v. Inman, 179 S.C. 399, 184 S.E. 102 (1936); see also Federal Nat'l Mortgage Ass'n v. Brooks, 304 S.C. 506, 405 S.E.2d 604 (Ct. App. 1991) (stating the purchaser should principally rely on, and is on notice of, the terms provided in the foreclosure decree).

Generally, "[i]n the conduct of a judicial sale, [t]he selling officer acts in a ministerial capacity as the arm of the court to carry out its orders." Brooks, 304 S.C. at 510, 405 S.E.2d at 606 (citation omitted). "He in no way acts in a judicial capacity." *Id.* Thus, the selling officer has no authority to modify the terms and conditions of the foreclosure decree in any material way. *Id.*; see also 47 Am. Jur. 2d Judicial Sales §114 (1995) ("Since the officer conducting the sale must abide by the terms and conditions of the decree or order of sale, he or she may not alter the terms as set forth in the order of sale.") (footnotes omitted). The officer has very little discretion and must conduct the sale within the confines of the decree.

The amended foreclosure order of the Fairfield property set forth, in relevant part, that the sale was:

FOR CASH. The Special Referee will require a deposit of five (5%) per cent of the amount bid (in cash or equivalent), the same to be applied on the purchase price upon compliance with the bid, but in case of noncompliance within 30 days after the date of the sale, same to be forfeited and applied to costs and the first mortgage lien.

Clearly, by these terms, the purchaser was required to tender his entire bid within a set time after the foreclosure sale. He was also required to tender a deposit at some point to prove his good faith bid on the property. However, we read no requirement that the purchaser was to tender this deposit immediately after the hammer falls closing the sale. This provision says nothing of the timing requirements for a sale. In fact, the exact timing of a judicial sale is not set by statute; rather, under the direction of a master<sup>(9)</sup> or other appropriate court officer, the sale is conducted on the day of sale between "eleven and five o'clock." S.C. Code Ann. § 15-39-690 (1977); Rule 71(b), SCRPC. However, the officer may prevent sales before they start by giving notice that the sales for that day have been closed. S.C. Code Ann. § 15-39-690 (1977); see also Pickett v. Pickett, 11 S.C. Eq. (2 Hill Eq.) 470 (1836) (holding subsequent sale of property after sheriff announced he would sell no more property that day was void).

When, as in the case at hand, the foreclosing creditor waives his right to a deficiency judgment, the sale is deemed closed on the day of sale and the advertisement of sale should state "that no personal or deficiency judgment is demanded and that the bidding will not remain open after the sale **but that compliance with the bid may be made immediately.**" S.C. Code Ann. § 15-39-760 (1977); see also Goethe v. Cleland, 323 S.C. 50, 448 S.E.2d 574 (Ct. App. 1994) (stating where no deficiency judgment is requested, the bidding in the foreclosure sale need not remain open for thirty days to allow for upset bids); Rule 71(b), SCRPC ("Unless the pleadings state that no personal or deficiency judgment is demanded or any right to such judgment is expressly waived in writing, the bidding shall not be closed upon the day of sale but shall remain open until the thirtieth day after such sale exclusive of the day of the sale.").

Here, however, the referee did not require immediate compliance for the bid either in his order or in his amended notice of sale; instead, the referee required compliance within thirty days after the date of the sale. Without further explanation, the referee also stated in his order that he "will require a deposit of 5% on the amount of the bid (in cash or equivalent)." A decree of sale may require a good faith deposit or guaranty of cash "at the conclusion of the bidding." S.C. Code Ann. § 15-39-740 (1977). However, this earnest money is not required prior to the conclusion of the bidding and can be no more than 5% of the bid price. *Id.* "Such a deposit is a proper safeguard against spurious bidding upon the one hand and an aid in carrying into effect the terms of sale upon the other." Ex parte Floyd,

145 S.C. 364, 375, 142 S.E. 805, 808 (1928); see also Hudson v. Inman, 179 S.C. 399, 184 S.E. 102 (1936) (stating the requirement of an earnest money deposit promotes the purchasing party's compliance with the terms of sale). Thus, for example:

To allow a person who is not financially responsible to give a worthless check as a deposit places such person in the advantageous position of complying with his bid at his pleasure. If such person can resell the property bid in at a profit, or finds that he has made a profitable purchase, then he makes his check good and complies with his bid; otherwise, he does nothing and there is no redress.

Hudson, 179 S.C. at 403, 184 S.E. at 104; see also 47 Am. Jur. 2d Judicial Sales §134 (1995) ("The requirement of a deposit of cash or other security by prospective bidders, to insure compliance with the contract of sale on the part of one whose bid is accepted, is customary.") (footnote omitted).

As with the referee's authority to set and advertise the timing for compliance with the bid, the referee may establish a time for the earnest money deposit. Here, the special referee's order was silent as to the time when the earnest money deposit was required to be paid. Lacking such guidance, Moore, as the prevailing bidder, had a reasonable time within which to tender his deposit. The law does not require immediate compliance without warning. The earnest payment merely illustrates the prospective purchaser's bona fide assurance to the court that he fully intends to perform under the purchase contract.

Here, Moore bid on the property expecting he would have a reasonable time within which to tender his earnest payment to the court. Instead, he was "stunned," as were others, by the referee's pronouncement of an immediate tender requirement. Moore testified he attempted to reach his financier within the fifteen minute window to cover his 5% earnest obligation. Although he was unable to deposit his money within the newly prescribed time limit, Moore did, in fact, tender the requisite deposit by 4:30-4:45 p.m. on the same day of the sale. The only evidence contrary to Moore's good faith efforts to comply is the referee's acknowledged different treatment of Moore as a credit risk. We find it was unreasonable for the referee to spring the restrictive time limit on the parties, without notice, and after conducting the sale under different terms.

In Farr v. Sims, 9 S.C. Eq. (Rich. Cas.) 122 (1832), the Court of Appeals found a judicial sale void where the advertisement stated the sale was for cash, but the officer demanded payment in specie upon request of a creditor. The Court noted:

This was a short notice; but if the Sheriff had advertised the sale to be for specie, it might have availed to protect them both [the sheriff and the creditor] from legal censure. As it was, however, the Sheriff gave no such notice until the day of sale, and this failure of duty, on his part, must also attach to the creditor; for, in effecting the sale, the Sheriff is the agent of the creditor, the debtor, and the purchaser, and his acts may, more or less, affect them all.

Id. at 131.

When the officer changed the conditions of the sale, "[i]t was, in fact, a sale without being advertised, for one of the most important conditions of the sale was not disclosed in the advertisement. In this respect, the sale was void, for want of authority on the part of the Sheriff to sell." Id.

In Ex parte Keller, 185 S.C. 283, 194 S.E. 15 (1937), the master supplemented the foreclosure decree with a condition not found in the decree. Quoting McMaster v. Arthur, 33 S.C. 512, 515, 12 S.E. 308, 309 (1890), the Keller Court stated:

The master supplemented the order of the court by a condition not found in said order, to-wit, that the land should be sold subject to the claim of the homestead. **This addition to**

**the order was made by the master on the day of sale**, when Crawford & Co., attorneys of the petitioner, gave notice of this claim. But by what authority could the master thus supplement said order? We know of none; and, even admitting for this case, that, had the order been carried out according to its terms, the result might have been different, yet, said order not having been executed, the matter stands as if there had been no sale. **It was a void sale, the master having no authority to sell as he did** (Baily v. Baily, [30 S.C. Eq.] (9 Rich. Eq.) [392], 395 [1857]), and consequently the petitioner was not bound to pay in her bid.

Id. at 294, 194 S.E. at 20 (emphasis added), cited with approval by Federal Nat'l Mortgage Ass'n v. Brooks, 304 S.C. 506, 405 S.E.2d 604 (Ct. App. 1991).

The Keller Court also explained that the open-ended statutory provision for the purchasing party's compliance guarantees the purchasing party a reasonable time to tender his bid, if due the day of sale, or his earnest money, if no specific time is given. The sale order required the successful bidder to tender 3% of his bid with the court "immediately after the sale as evidence of good faith." Id. at 289, 194 S.E. at 18. Among other problems, the appellant failed to accompany his winning bid with a contemporaneous earnest money deposit. The Court thus interpreted the timing requirement and concluded:

It follows that even had the bid of appellant been a legal bid, he could not be declared the highest bidder not having complied with the terms of the order of sale, bottomed upon the statute, by filing with the special referee the necessary deposit either in cash or certified check, **immediately following his bid, or within a reasonable time thereafter on that day.**

Id. at 296, 194 S.E. at 21 (emphasis added).

Stated another way, a purchaser who has demonstrated the prima facie intent to comply with the earnest deposit may deposit this sum with the court no later than by the end of the day of sale at 5:00 p.m. Where the party is on notice of a set time when compliance must be made, on the other hand, he is effectively estopped from denying the efficacy of the mandate. See Hudson v. Inman, 179 S.C. 399, 404, 184 S.E. 102, 104 (1936) ("[A] bidder not complying with the terms of the decree and the advertisement will not be heard to complain that he was lulled into security in not being required publicly to comply with the terms of the decree and advertisement of the sale of the property."); see also Ex parte Floyd, 145 S.C. 364, 379, 142 S.E. 805, 810 (1928) (holding that since the decree required the purchaser to deposit his earnest money before 4 o'clock on the day of sale, "then it was equally necessary that the purchaser at the second sale [at 4 o'clock] make the required deposit immediately. Otherwise it was wholly unnecessary to have a resale, for the manifest purpose of requiring the deposit and providing for the resale was to have in hand the deposit before 4 o'clock, or immediately thereafter.").

Delving further, we note Keller is merely restating the basic tenets of the common law. We find an early expression of this most basic principle in Seymour v. Preston, 17 S.C. Eq. (Speers Eq.) 481 (1844). In Seymour, the sheriff of Charleston conducted a foreclosure sale wherein Seymour made the highest bid equal to the mortgage debt on the property with nothing left for the junior judgment lienholders. However, Seymour did not timely tender his bid. He did not tender his bid until after receiving notice that the purchaser at a second sale of the property had already complied with his bid. Although the court found Seymour had forfeited his right under the contract of sale by not complying with his bid, the court conclusively re-emphasized that Seymour could have secured the property by complying with his bid on the day of sale. The court explains:

[N]o one will be found hardy enough to contend, that if one agree[s] to sell property to another for cash [in an analogous private sale], and the purchaser offer[s] him the money two months after, the seller would be bound to perform his part of the contract; and that is

this case. By the law and usage regulating sheriff's, and other official sales, a purchaser at a sale for cash, must pay the money on the day of sale. I know ... that it frequently happens that the officer making the sales takes upon himself to allow the purchaser a short time to pay the money, and there is no impropriety in it, when it is done with the assent of the creditor and the debtor, ... [but] if the purchaser has neglected to pay the purchase money, he has forfeited his right under the contract of sale, certainly he is not entitled to favor.

Seymour, 17 S.C. Eq. at 485 (emphasis added), cited in 50A C.J.S. Judicial Sales § 38 (1997) ("In the absence of a statute otherwise providing, when the sale is for cash, payment in cash should be made on the day of sale in order to entitle the purchaser to have the sale confirmed.").

Thus, "in the absence of fraud or collusion, we do not think that a failure to comply literally with the terms of sale as to the cash payment, the moment the hammer falls, is such failure in itself as will in every case forfeit the bid." Yates v. Gridley, 16 S.C. 496, 502 (1882) (emphasis added).

Our review of the record reveals Moore tried, in good faith, to comply with the special referee's surprise edict after the fact that he should tender his earnest money fifteen minutes after the close of the bidding. Thereafter, by 4:30-4:45 p.m. the same day of sale, Moore deposited his earnest money with the court as proof of the veracity of his bid. This assurance, however, was too late to appease the referee for the property had already been resold. The referee's support for the resale, however, came not from the efforts of the successful bidder before him or based on any provisions, in fairness, disclosed to the prospective purchasers before the auction; rather, the referee's reaction came from his own knowledge of the proceedings leading up to the foreclosure sale.

The referee admits he "[treated Moore] differently because [Moore] had absolutely no credit worthiness based on the debts in this case." We agree Moore's standing as a debtor is a proper factor for the court to consider. Nevertheless, while it is valid for the selling officer to require guaranteed funds to discourage spurious bids, the officer has no discretion to make surprise announcements that have a chilling effect on the bidding. See Hamrick v. Summey, 282 S.C. 424, 320 S.E.2d 703 (1984).

In Hamrick, all of the persons attending a creditor's auction were recognized by the sellers except for the highest bidder. Under the rules of the auction, a successful bidder was required to make a 20% deposit on the day of sale by cash or check approved by the seller. However, since the highest bidder was unknown, the officer refused to accept his check unless he signed an agreement to bring certified funds two days later. The unknown bidder refused to comply with this requirement. The property was then resold and the Circuit Court confirmed the second sale. On appeal, the Supreme Court found "[t]here was no discrimination against [the unknown bidder] in seeking to have him pledge certificates of deposit on the Monday following the sale, but this was merely an effort to give some strength and credibility to his bid." Id. at 429, 320 S.E.2d at 706. That is, accepting the unknown bidder's uncertified check "would have jeopardized the entire sale." Id.

If the purchaser is ready and willing to secure his deposit in compliance with his bid, the selling officer can not change the terms for the judicial sale. "All that the Court can require, therefore, is, that he should do now, what he ought to have done then; give [security] according to the terms of the sale." Young v. Teague, 8 S.C. Eq. (Bail. Eq.) 13, 20 (1830); see also 50A C.J.S. Judicial Sales § 40 (1997) ("If, however, the purchaser was always ready and willing to furnish the security required by the order of sale, the failure of the commissioner to take it is not ground for setting the sale aside, but the purchaser will be required to comply.") (citing Teague, 8 S.C. Eq. at 20).

In Teague, the purchaser was ready and willing to execute his bond on the property, but the commissioner declined to take it "because he thought it an unnecessary expense." Teague, 8 S.C. Eq. at 15-16. The commissioner delivered titles to the purchaser; thereafter, other attendees at the sale sought to set aside these deeds arguing they had intended to bid more for the property at the auction themselves. However, because the purchaser's minor non-compliance was caused by the selling

officer and "[i]t appears [the purchaser] did not refuse [to comply], but on the contrary was ready and willing to comply," the sale to him was valid. Id. at 20.

Even if the referee's surprise edict was a valid amendment to his order, we find the referee's strict construction of the order's limitations is unwarranted. To defeat the first sale of the Fairfield property, the referee relies on our statutory requirement that a purchaser must comply with every requirement dictated in the judgment order to honor the sales contract. That is:

If the purchaser shall fail to comply with the terms aforesaid[,] the [officer] shall proceed to resell at the risk of the defaulting purchaser either on the same or some subsequent sale day, as the plaintiff may direct, and, in the absence of any direction by the plaintiff, the [officer] shall resell on the same day, if practicable, and if not on the next succeeding sale day, making in every such case proclamation that he is reselling at the risk of such defaulting former purchaser.

S.C. Code Ann. § 15-39-710 (1977); see also Metropolitan Life Ins. Co. v. Sansbury, 164 S.C. 452, 162 S.E. 579 (1932).

This statutory limitation has been in effect in South Carolina for more than a century. However,

[this statute] was not intended to prevent a bona fide purchaser from receiving title because he was not prepared to comply with his bid at the moment the hammer fell to 'shell out the cash.' In this day of banks, drafts, and checks, it is not to be expected that a bidder at sheriffs' sales should be laden down with rolls of currency with which to comply with his bid. It is not progressive and in keeping with the spirit of the age. It is not equitable.

Brown v. Barnwell Mfg. Co., 46 S.C. 415, 420, 24 S.E. 191, 193 (1896).

In Brown, a certain lot was knocked down to the attorney for Simon Brown. After compiling the documents of the sale, the sheriff asked the attorney to comply with his bid immediately, extended to approximately two hours after the sale. The attorney tried to reach Brown to no avail, during which time the property was resold. The Brown Court found this strict construction of the statute was unwarranted. The tribunal explained:

Under all the circumstances, it seems to this court that the sheriff should have, at least, allowed the attorney all the time possible **before the expiration of the legal hours of sale, on the day when the property was sold**, for complying with his bid; especially when the attorney was taken by surprise by the requirement of strict compliance with the terms of sale.

Id. at 425-26, 24 S.E. at 195 (emphasis added).

### **CONCLUSION**

~~We rule that a purchaser at a foreclosure sale has until 5 o'clock p.m. on the sales date **unless** the order of the court and the notice of sale **specifically** provide for a different payment time for the deposit.~~

We find the special referee's surprise amendment to his order of sale after the close of the bidding was invalid. The referee's action does not comport with our understanding of the fairness inherently necessary in a foreclosure sale or with the common law that, unless modified by the decree, does not require an immediate tender of the purchaser's deposit the moment the hammer falls. Without pre-announced limits, the highest bidder at a foreclosure sale who has the manifest intent to comply with his bid has until the end of the day of sale to tender his earnest deposit with the court.

The referee erred in setting aside the first sale of the property prematurely. Thus, the second sale is invalid and should be set aside. Although an innocent third party who bids and wins at the second foreclosure sale "should not be punished for the fraud of another [that voids this sale], he shall not avail himself of it." Farr v. Sims, 9 S.C. Eq. (Rich. Cas.) 122, 133 (1832) (quoting Robson v. Calze, 1 Doug. 228). For the foregoing reasons, we find the decision of the special referee is

**REVERSED.**

**HUFF, J., concurs.**

**SHULER, J., concurring in result only.**

**SHULER, J., concurring in result only:** Although I concur in the ultimate judgment of the Court, I write separately to express my concern over the wisdom of adopting a bright-line rule of 5:00 p.m. on the day of the foreclosure sale for deposits to be made, in the absence of any specific provisions in the order or notice of sale. In my view, this Court has neither the authority nor legal support to establish such a rule.

Initially, because the requirements for a judicial sale are governed primarily by statute and Rule 71, SCRPC, and no provision sets forth a precise time for the payment of bid deposits, I believe the establishment of a five o'clock deadline is wholly within the province of our Legislature. See Henderson v. Evans, 268 S.C. 127, 130, 232 S.E.2d 331, 333 (1977) ("[I]t is not the province of [a court] to perform legislative functions.").

Moreover, our case law is clear that the rules regarding such matters are discretionary with the selling authority, subject only to a requirement of reasonableness. See Ex Parte Keller v. Hutto, 185 S.C. 283, 289, 296, 194 S.E. 15, 21 (1937) (interpreting the phrase "immediately after the sale" in a judicial sale order referencing a required 3% good faith deposit to mean either "immediately following [the] bid, or *within a reasonable time thereafter* on that day") (emphasis added); Harrington v. Blackston, 311 S.C. 459, 464-65, 429 S.E.2d 826, 830 (Ct. App. 1993) ("Except to the extent controlled by statute, the terms of a judicial sale are within the discretion of the court ordering the sale.").

Reasonableness, in turn, depends on the circumstances of each sale. See Ex Parte Floyd v. Carmon, 145 S.C. 364, 367, 142 S.E. 805, 807 (1928) (holding that even where the terms of a judicial sale order specified \$500 be deposited on the bid "before 4 o'clock p.m. on the day of [the] sale," the time for paying the deposit could be extended in the master's discretion where warranted by the facts and circumstances, including the parties' waiver of any time requirement); Brown v. Barnwell Mfg. Co., 46 S.C. 415, 422, 424-26, 24 S.E. 191, 193-95 (1896) (in holding that "[u]nder all the circumstances . . . the sheriff should have, at least, allowed the purchaser all the time possible before the expiration of the legal hours of sale, on the day when the property was sold, for complying with his bid . . .," the supreme court, regarding appellant's exception (7), wherein it was claimed the trial court erred in "holding and concluding as a *matter of law* that the [purchaser] had until the expiration of the legal hours of sale within which time to comply with the bid," stated: "A careful consideration of the decree of the circuit judge satisfies us that the seventh [and other] exceptions were taken under a misapprehension of said decree. *The language of the circuit court was intended merely to illustrate the spirit of our statute* relating to resales by sheriffs.") (emphasis added); Yates v. Gridley, 16 S.C. 496, 497, 504 (1882) (affirming sale to purchaser who failed to comply with exact terms of judicial sale, i.e., "cash sufficient to pay costs and disbursements of suit," by paying such not on the day of sale in December but sometime in January; supreme court held the fact that the terms of the sale were not immediately complied with when they were met "within so short a time afterwards" was insufficient to annul purchaser's deed).

In addition, I think the decision to craft such a rule would conflict with S.C. Code Ann. § 15-39-690 (1977), which states: "The hours of [a judicial] sale shall be between eleven and five o'clock." If, under

the terms of the statute a judicial sale can occur as late as 5:00 p.m. on the date of sale, then, under the proposed rule, a purchaser would have no time to make the required deposit.

Finally, I believe an absolute five o'clock deadline would not comport with standard principles of equity governing judicial sales. Accordingly, because the statutory scheme governing foreclosure sales is silent and our cases in the past have imposed a reasonableness requirement but not an absolute deadline, I would decline to do so now.

1. Fairfield Real Estate Company, Inc. was formerly Fairfield Oil Company. The company changed its name by filing its Articles of Amendment to its Articles of Incorporation on October 12, 1988.
2. Branham was a former shareholder in Fairfield. He sold his stake to the company in 1986. Fairfield gave Branham a series of notes and mortgages in exchange for his interest. Fairfield eventually defaulted on its obligation to Branham. Branham consequently pursued foreclosure. This foreclosure action and the priorities of several mortgage liens on the subject property is the subject of a separate appeal filed by Jerry Branham on January 19, 1999. By unpublished opinion, we affirmed the referee's findings and order of sale under his Order of Foreclosure filed December 18, 1998. Branham v. Fairfield Real Estate Co., Op. No. 2001-UP-303 (S.C. Ct. App. filed May 31, 2001).

3. The property is described as:

All those piece, parcel or lots of land containing collectively 33.03 acres, more or less, lying, being and situate at, and near, the intersection of S.C. Hwy No. 34 and Secondary Rd S-20-159, approximately two (2) miles Southeast of the Town of Ridgeway in the County of Fairfield, State of South Carolina. Said parcels being more particularly shown and designated as Parcel No. 8 containing 9.99 acres, parcel No. 26 containing 9.00 acres, and parcel No. 27 containing 14.04 acres, and that portion of parcel No. 21 containing approximately 1.75 acres representing the fifty foot wide driveway running from S-20-159 to the southwestern corner of Parcel No. 22, all as more particularly shown on a plat made by Carl A. Holland, Jr. dated March 24, 1987 recorded in Plat Cabinet "B" at Page 350 in the office of the Clerk of Court for Fairfield County.

Being a portion of the property conveyed to Fairfield Real Estate Company, Inc. formerly Fairfield Oil Company by deed of David Dubose Gaillard, II recorded September 23, 1986 in Deed Book "IW" at Page 289.

4. Since the referee had no recollection of first requiring Moore to tender his deposit within five minutes of the close of bidding, this requirement was presented by testimony from Alan W. Pullen, president of Community.
5. Hudson v. Inman, 179 S.C. 399, 184 S.E.2d 102 (1935).
6. Community argues again on appeal that this issue is moot. A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 195 S.E.2d 713 (1973), cited in Arnold v. Association of Citadel Men, 337 S.C. 265, 523 S.E.2d 757 (1999). This is true when some event occurs making it impossible for the reviewing court to grant effectual relief. *Id.* However, a foreclosure sale that was improperly conducted so as to prejudice interested parties is void and, therefore, the sale may be set aside by the reviewing court. Howell v. Gibson, 208 S.C. 19, 37 S.E.2d 271 (1946) (holding a mistake or surprise in connection with the sale is grounds for setting it aside provided the mistake is harmful and not a mistake of law or one due to the negligence of the party complaining) (citation omitted); Farr v. Sims, 9 S.C. Eq. (Rich. Cas.) 122, 134 (1832) ("If the Sheriff fraudulently sells a debtor's property, his sale, it is conceded, is void. If the sale is void, must not his deed to the purchaser be void also? \* \* \* I apprehend the sale and deed are both nullities."); Federal Nat'l Mort. Ass'n v. Brooks, 304 S.C. 506, 405 S.E.2d 604 (Ct. App. 1991) (ruling judicial sale was set aside because, in part, the clerk of court,

not the designated foreclosure referee, advertised and conducted the sale). Moore's action is not moot.

7. When consideration is so inadequate that it shocks the conscience of the court, the sale is void and will be set aside. See Hamilton v. Patterson, 236 S.C. 487, 494, 115 S.E.2d 68, 71 (1960) ("It is well settled in this State that inadequacy of price, unless so gross as to shock the conscience of the court or accompanied by circumstances from which fraud may be clearly inferred, will not justify the overthrow of a judicial sale.") (citation omitted); Hughes v. Wilburn, 156 S.C. 443, 153 S.E. 487 (1930) (ruling a bid one-eightieth of the inventoried value of the property was so grossly inadequate as to be shocking to the court); Peoples Fed. Sav. & Loan Ass'n v. Graham, 291 S.C. 178, 352 S.E.2d 511 (Ct. App. 1987) (holding sale price of \$48,100, received for mortgaged property subsequently appraised at \$73,000, was not so inadequate as to shock the conscience or to give rise to inference of fraud so as to require that judicial sale be set aside).

8. In limited circumstances, however, a court ordering the foreclosure sale may amend its own order. Thus, for example, in In re Receivership of Great Western Beet Sugar Co., 125 P. 799 (Idaho 1912), the receiver auctioning property was given leave to extend the time period for the successful bidder to tender his twenty five percent deposit. The decree originally required the receiver to "promptly collect any cash payment required" at the time of sale. Id. at 801. However, the appellate court found the trial court could reasonably extend the time to comply "where no injury is done to any one by failure of the purchaser to pay at once the sum due on his bid." Id. That is, "a trial judge in equity ... has discretionary power to modify all orders affecting such sale by subsequent orders." Id.; cf. Goethe v. Cleland, 323 S.C. 50, 448 S.E.2d 574 (Ct. App. 1994) (stating a special referee retains jurisdiction over foreclosure proceedings after the sale of the property to correct clerical errors in its judgment order of sale).

9. Referees abide by the same provisions for masters. S.C. Code Ann. § 15-39-635 (Supp. 2000).

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2004-UP-100 - Westbury v. Dorchester County

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

Michael Westbury, Appellant,

v.

Dorchester County and Patrick Watts, Respondents.

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Appeal From Dorchester County  
Diane Schafer Goodstein, Circuit Court Judge

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Unpublished Opinion No. 2004-UP-100  
Submitted November 19, 2003 – Filed February 17, 2004

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**AFFIRMED**

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Michael Westbury, of St. George, for Appellant.

Marvin C. Jones and R. Clenten Campbell, of Walterboro, for Respondents.

**PER CURIAM:** Appellant sued Dorchester County and the master in equity after the master vacated Appellant's purchase of a property at an auction conducted by the master. The trial judge granted summary judgment to both defendants. We affirm.

**FACTS**

Dorchester County sold a property at an auction on March 1, 1999. That auction was a mistake because Money First Financial Services, one of the interested parties, had not been properly noticed about the auction. [1] Michael Westbury attended the auction and placed the highest bid. Following the sale, the master in equity realized that the auction had been an error, not only because Money First did not attend, but also because a new Notice of Sale had not been issued. The master vacated the sale and refunded Westbury his earnest money. When the property was properly auctioned in July 1999, Westbury was present but did not place the highest bid; therefore he did not obtain the property.

In February 2001, Westbury brought a "violation of legal sale action" against Dorchester County and Patrick Watts, the master who conducted the sale. Following a hearing where Westbury acted as his own counsel, the trial court issued an order granting summary judgment to the county and to the master. Westbury appeals.

### **ISSUES [2]**

- 1) Did the trial court err in finding that the master was entitled to judicial immunity?
- (2) Did the trial court err in granting summary judgment to the master?

### **ANALYSIS [3]**

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." Osborne ex rel. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001). An appellate court reviews the grant of summary judgment under the same standard applied by the trial court. George v. Fabri, 345 S.C. 440, 451, 548 S.E.2d 868, 873 (2001).

The trial court ruled that the master was acting within his official capacity and was therefore entitled to judicial immunity. We agree. Judicial immunity is a longstanding legal principle. See McEachern v. Black, 329 S.C. 642, 647, 496 S.E.2d 659, 661 (Ct. App. 1998) ("Judicial immunity is one of the fundamental pillars upon which the modern system of justice was built."). That principle is statutory and is also recognized at common law. Williams v. Condon, 347 S.C. 227, 246, 553 S.E.2d 496, 506 (Ct. App. 2001). "Judicial immunity affords absolute immunity from suit. Therefore, a finding of judicial immunity renders a complaint alleging judicial misconduct meritless." McEachern, 329 S.C. at 647; 496-S.E.2d at 661 (citation omitted). However, judicial immunity will not protect judicial officers if they act without any jurisdiction, or if their act is not a judicial one, or if the suit is seeking exclusively prospective, injunctive relief. Id. at 648, 496 S.E.2d at 662.

Here, the master was acting within his official capacity when he mistakenly allowed the auction to proceed on the wrong date and without proper notice. And he was acting within his official capacity when he vacated the sale. Therefore, his actions were well within the limits of his jurisdiction. Westbury seems to argue that the master should be liable because the master made a mistake. But a master would be "absolutely immune from liability for his judicial acts even if his exercise of authority [was] flawed by the commission of grave procedural errors." Id. at 649, 496 S.E.2d at 663. The trial court was correct in granting summary judgment to the master.

**AFFIRMED.**

**HUFF, STILWELL, and BEATTY, JJ., concur.**

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[1] The original date was March 1, but the master had changed it to April 5.

[2] Westbury raises the following issues: "(1) Did the trial judge err in finding [the master was] employed by Dorchester County? (2) Did the trial judge err in finding that [the master was] paid by Dorchester County tax dollars of \$52,593? (3) Exhibits 1, 2, 3, 4 and 5." Since Westbury seeks a reversal of the summary judgment as "to the charge of appellant as listed in [the] complaint," we adopt Dorchester's articulation of the issues.

[3] The trial court granted summary judgment to both the master and the county. In his brief, Westbury mentions that "Dorchester County has an employee named Judge Patrick Watts," (the master). But that declaration is a mere statement of fact, not an argument. Since Westbury presented no substantive argument against the judge's ruling concerning Dorchester County, he is considered to have waived that issue on appeal. See Gold Kist, Inc. v. Citizens and S. Nat'l Bank of South Carolina, 286 S.C. 272, 275, 333 S.E.2d 67, 70 (Ct. App. 1985) (ruling that issues not argued in the appellant's brief are deemed abandoned on appeal). Therefore, we limit our analysis to the summary judgment concerning the master.

FILED/RECORDED  
August 1, 2017  
DORCHESTER COUNTY  
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER ) DEED BY CLERK OF COURT  
 ) UNDER COURT ORDER

I, Cheryl Graham, as Clerk of Court for Dorchester County, in the said State, send greetings:

WHEREAS, in an action in the Court of Common Pleas in Dorchester County between Rene McMasters now known as Rene McMasters Ronaghan, as Plaintiff and H. Wayne Charpia a/k/a Howard W. Charpia and Jody E. Charpia, as Defendant(s), by an Order filed on November 27, 2012, it was decreed that the property hereinafter described should be sold by the Clerk of Court for Dorchester County on the terms and for the purposes mentioned in the Order(s) granted in the case (see Case No. 2009-CP-18-02200),

NOW THEREFORE KNOW ALL MEN, that I, the undersigned, as Clerk of Court for Dorchester County, pursuant to the foregoing and in consideration of the sum of FIFTY-NINE THOUSAND AND ONE HUNDRED (\$ 59,100.<sup>00</sup>/<sub>100</sub>) Dollars as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant and release the following described property unto the grantee: Green Wave Alum, LLC:

ALL that piece, parcel or lot of land, together with the buildings and improvements on it, situated, lying, and being in Dorchester County, South Carolina, shown and designated as Lot 22-B, on a plat by Charleston Engineering Co., dated April 21, 1958, entitled "Plat of Lot 22-B, Property of William A. Pouncey and Opal B. Pouncey, Dorchester County, S.C., Mario Louise Salisbury Subdivision," which is recorded in the office of the RMC for Dorchester County in Plat Cabinet A, Slide 173. The Property has the location, dimensions, and butts and bounds shown on the Plat. Lot 22-B being the southern half of Lot 22, which said Lot 22 is found on a Plat made by Woodrow W. Leland, R.L.S. dated May 24, 1956, and recorded in the RMC Office for Dorchester County in Plat Book 11 at page 200.

SUBJECT to any covenants, conditions, restrictions, and easements now of record and to the lien of current year real property taxes.

BEING the same property conveyed to H. Wayne Charpia by deed of Jody E. Charpia dated November 12, 2008, and recorded November 14, 2008, in the ROD Office for Dorchester County in Book 6859 at Page 226; an undivided one-half interest in such property having been conveyed to Jody E. Charpia by deed of H. Wayne Charpia dated December 29, 2008, and recorded December 29, 2008, in the ROD Office for Dorchester County in Book 6899 at Page 283; the remaining undivided one-half interest therein having been conveyed to Roger Dale Charpia by deed of H. Wayne Charpia dated April 23, 2012, and recorded May 1, 2012, in the ROD Office for Dorchester County in Book 8278 at Page 225; the interest of Jody E. Charpia having been

FRANK M. CISA  
858 LOWCOUNTRY BLVD., SUITE 101

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conveyed to Howard W. Charpia by deed dated March 7, 2017, and recorded March 9, 2017, in the ROD Office for Dorchester County in Book 10694 at Page 139.

TMS No. 145-13-02-011-000

Property address: 1450 Jahnz Avenue, Summerville, SC 29485

Grantee's address: 1591 Savannah Highway, Suite 201, Charleston, SC 29407

This property was sold subject to any past due or accruing property taxes, assessments, existing easements and restrictions of record and any other senior encumbrances.


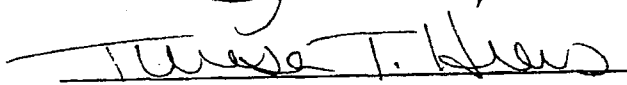
TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;


TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, its successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Clerk of Court for Dorchester County under and by virtue of the said Order(s), have hereunto set my Hand and Seal the 1 day of August 2017.

FILED/RECORDED  
August 1, 2017  
DORCHESTER COUNTY  
REGISTER OF DEEDS

SIGNED, SEALED AND DELIVERED  
In the Presence of:

  
Cheryl Graham  
As Clerk of Court  
for Dorchester County

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STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER )

PERSONALLY appeared before me the undersigned, who being duly sworn disposes and says:

1. I have read the information concerning the new exemption numbers (Senate Bill 564 - June 10, 1997), and I understand this information.
2. The property being transferred is located at 1950 JAYNE AVE, SUMMERVILLE, SC 29925, bearing DORCHESTER COUNTY TAX MAP NUMBER 145-13-02-01-00, was transferred by STEARL GRAHAM, CLERK OF COURT to GREEN WAVE ALCOA, LLC on AUGUST 1, 2017.
3. The deed is NOT EXEMPT from the deed recording fees, and the FAIR MARKET VALUE IS \$59,100.00. ✓
4. The deed is exempt from the deed recording fee because (use new exemption number and explain reason for exemption):  
EXEMPTION # \_\_\_\_\_ (See new exemption number on enclosed sheet) AND EXPLANATION FOR EXEMPTION \_\_\_\_\_
5. As required by code section 12-24-70, I state I am a responsible person who was Connected with the transaction as: ( ) grantor, ( ) grantee, () attorney, ( ) other (state connection) \_\_\_\_\_
6. I understand that a person required to furnish this affidavit who willfully furnishes a false for fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more that one thousand (\$1,000.00) or imprisoned for more that one year, or both.

Stall.G.  
Responsible Person Connected with Transaction (see #5)

SWORN to before me this 1  
Day of AUGUST 2017  
Thomas E. Blackwood  
Notary Public for SC  
My Commission Expires: 9-15-18  
THOMAS E. BLACKWOOD

**Subject:** Rule 71  
**From:** howard charpia (quarterback@att.net)  
**To:** quarterback@att.net;  
**Date:** Tuesday, March 20, 2018 11:27 AM

**RULE 71**  
**FORECLOSURE AND PARTITION**

**(a) Proceedings, Reference.** Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53. In foreclosure actions the judge or master shall compute the amounts due the plaintiff and any other claimants, which amounts when determined shall be the total debt due to each. The total debt shall as a minimum set forth clearly the principal due upon default, the rate of interest and interest from date of default to hearing date, any other relevant interest charged, any amounts due or to be credited on escrow items, the taxable costs of collection prior to hearing, and the amount of allowable attorneys fees due and anticipated through conclusion of the action. Also included shall be the rate of interest to accrue until the date of the judgment and the post judgment interest rate. The judge or master may also establish the priority and compute the amounts due of any other liens when a determination of lien priorities appears necessary or desirable prior to a foreclosure sale. Any party who has appeared in the action may present proof that the debt may be satisfied by selling the property in parcels, rather than selling the whole to satisfy the claims. Only parties who have appeared and filed pleadings in the action shall be entitled to the usual notice of hearings and other proceedings unless the pleadings state an unliquidated claim. In all cases proof shall be made of the facts and circumstances alleged in the pleadings and evidence given as to any payments which have been made or credits due. Prior to the filing of the master's report or final order of judgment, the judge or master shall assure that the plaintiff and all other claimants have complied with the statutes pertaining to the filing of notices of lis pendens. In all actions a record of hearings shall be made and preserved in the case file in the office of the clerk of court.

**(b) Judgment and Sale on Foreclosure.** The judgment shall direct that the mortgaged premises (or part thereof as required to satisfy the claims established) be sold by or under direction of the master or, in counties where there is no master, other appropriate court officer. The judgment shall also contain a good and sufficient legal description of the property being sold, a provision for the necessary legal advertisement, the time and location of the sale, and notice of any senior liens, taxes, or other rights to which the property to be sold is subject. The judgment shall also specify the amount of good faith deposit necessary at the time of the sale, and the date that compliance must be made with the bid. The plaintiff or any other party may be a purchaser on such sale. Unless the pleadings state that no personal or deficiency judgment is demanded or any right to such judgment is expressly waived in writing, the bidding shall not be closed upon the day of sale but shall remain open until the thirtieth day after such sale exclusive of the day of the sale. The manner and conduct of the bidding when a deficiency has been demanded shall be as required by law.

The master or other court officer making the sale shall execute a deed to the purchaser. Out of the proceeds of the sale he shall pay the costs of the sale, any amounts ordered to be paid by the judgment, then to the parties or their attorneys of record the amounts of their total claims and interest or so much of the purchase money as will pay the same. Notwithstanding the fact that the foreclosure action may have been referred to the master for final judgment, the master or other officer conducting the sale shall file a report with the court as to the sale and the receipts and disbursements made. Any surplus moneys arising from the sale shall be held by the officer making the sale and shall be paid pursuant to Rule 71(c).

**(c) Disposition of Surplus.** In the event of a surplus fund resulting from the sale, the master or other officer conducting the sale shall at the time he makes his report to the court on the sale and disbursements, cause to be furnished to all parties appearing in the action a notice advising of the

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**SECTION 15-39-20. Executions of course within ten years.**

Writs of execution for the enforcement of judgments shall conform to this Title. The party in whose favor judgment has been given and, in case of his death, his personal representatives duly appointed may at any time within ten years after the entry of judgment proceed to enforce such judgment as prescribed by this Title.

HISTORY: 1962 Code Section 10-1702; 1952 Code Section 10-1702; 1942 Code Section 737; 1932 Code Section 737; Civ. P. '22 Section 604; Civ. P. '12 Section 342; Civ. P. '02 Section 303; 1870 (14) 490 Section 306; 1873 (15) 498 Section 15; 1885 (19) 229.

**SECTION 15-39-30. Issuance of executions; effective period.**

Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions.

**SECTION 15-39-80. Contents of executions.**

The execution must be directed to the sheriff or to the coroner when the sheriff is a party or interested, must be attested by the clerk, subscribed by the party issuing it or his attorney and must intelligibly refer to the judgment, stating the court, the county in which the judgment roll or transcript is filed, the names of the parties, the amount of the judgment if it be for money, the amount actually due thereon and the time of docketing in the county to which the execution is issued. It shall require the officer, substantially, as follows:

- (1) If it be against the property of the judgment debtor, to satisfy the judgment out of the personal property of such debtor and, if sufficient personal property cannot be found, out of the real property belonging to him;
- (2) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, to satisfy the judgment out of such property;
- (3) If it be against the person of the judgment debtor, to arrest such debtor and commit him to the jail of the county until he shall pay the judgment or be discharged according to law; or
- (4) If it be for the delivery of the possession of real or personal property, to deliver the possession of such property, particularly describing it, to the party entitled thereto, and in such case it may, at the same time, require the officer to satisfy any costs, damages or rents or profits recovered by the judgment out of the personal property of the party against whom it was rendered and the value of the property for which the judgment was recovered, to be specified therein, or, if a delivery thereof cannot be had and if sufficient personal property cannot be found, then out of the real property belonging to him and it shall, in that respect, be deemed an execution against property.

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

2017 JUL 31 PM 2:43

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT  
CASE NO.: 2009-CP-18-2200

RENE MCMASTERS now known as RENE MCMASTERS  
RONAGHAN )

Plaintiff, )

ORDER ON PLAINTIFF'S MOTION  
TO PROHIBIT DEFENDANT H. WAYNE  
CHARPIA FROM BIDDING

H. WAYNE CHARPIA a/k/a  
HOWARD W. CHARPIA  
and JODY E. CHARPIA )

Defendants. )

The above case came before me on July 31, 2017 at 1:30 p.m.. pursuant to the Plaintiff's motion to prohibit the Defendant, H. Wayne Charpia, ("the Defendant") and anyone acting on his behalf, from bidding at the sale of the real estate that is the subject of this foreclosure action.

Present at the hearing was Frank M. Cisa, attorney for the Plaintiff, Rene McMasters. Also

~~present~~ was the Defendant, Howard W. Charpia, representing himself.

*was not present even though he had been notified of the hearing.*

The above action was filed by the Plaintiff on August 10, 2009 seeking the foreclosure of a Judgment that the Plaintiff obtained against the Defendant, H. Wayne Charpia, in the amount of \$191,600.00. The South Carolina Court of Appeals, by Opinion filed October 5, 2016, affirmed the Order granting foreclosure of the judgment lien. The Defendant, H. Wayne Charpia's, Petition for a Writ of Certiorari was denied by the South Carolina Supreme Court by Order dated February 8, 2017.

The Plaintiff seeks an order prohibiting the Defendant, H. Wayne Charpia, and anyone acting on his behalf, from bidding on the sale of the real estate that is subject to this action. The sale is now scheduled for August 1, 2017 at 11:00 a.m.

1  
24

*WAE #1*

After careful consideration of the arguments of Plaintiff's counsel and the Defendant, I find that the Plaintiff's motion should be granted.

5th TIME

This is the third time the property has been advertised for sale. At the last sale on July 5, 2017 the Defendant was the high bidder with a bid of \$375,000.00. The Defendant failed, however, to comply with his bid as he did not deposit 5% of his bid with the clerk of court even though he was given from July 5, 2017 until July 7, 2017 to pay the deposit.

The property was also sold by the clerk of court on April 4, 2017. Claude L. Soles was the high bidder with a bid of \$130,000.00. Although the 5% deposit was paid in the amount of \$6,500.00, Mr. Soles withdrew his bid on May 5, 2017. It now appears from the Defendant's email to the clerk of court dated July 5, 2017 that the deposit paid by Mr. Soles was the Defendant's money.

The Defendant's conduct has frustrated the bidding process. If it is allowed to continue the property may never be sold to a bidder who will comply with the sale. The defendant has not acted in good faith relative to the sale process and did not bid in good faith.

Based upon the foregoing, it is hereby

ORDERED, that the Defendant, H. Wayne Charpia, and anyone acting on his behalf, is prohibited from bidding at the sale of the real property that is the subject of this action;

and it is further ORDERED that the Clerk of Court conducting the sale shall announce to the potential bidders, prior to the sale, that no one can bid on the Defendant, H. Wayne Charpia's behalf and that this order is subject to the contempt powers of the court;

25

TRC  
#2

AND IT IS SO ORDERED!

  
\_\_\_\_\_  
Doyet A. Early, Presiding Circuit  
Court Judge

This 31 day of July, 2017  
Beaufort, S.C.

26

# DORCHESTER COUNTY SHERIFF'S OFFICE

SUMMERVILLE  
212 Deming Way, Box #9  
Summerville, SC 29483  
Office (843) 832-0300  
Fax (843) 832-0308



ST. GEORGE  
100 Sears Street  
St. George, SC 29477  
Office (843) 563-0259  
Fax (843) 563-0263

SHERIFF L.C. KNIGHT

On June 03, 2009 the upset bidding sale was started at 11:00 am at the Dorchester County Court House in St. George SC where the opening bid was \$99,781.00

Howard W Charpia legal guardian for Roger Dale Charpia placed a bid of \$99,782.00

Jody E Charpia placed a bid of \$102,900.00

No one else placed a bid in the usual manor of auction so bidding was closed with the acceptance of Jody E Charpia bid of \$102,900.00 and she was instructed to have the money in full to the Sheriff's Office by 2 o'clock PM on this day of June 03, 2009.

No money has been received.

Respectfully submitted by;  
Lt. Joseph Blake Weathers  
Dorchester County Sheriff's Office  
Civil Process

A large, handwritten signature in cursive script that reads "Joseph Blake Weathers". The signature is written in black ink and is positioned below the typed name.

# SHERIFF'S SALE

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Rene McMasters  
PLAINTIFF

VS.

NOTICE OF SHERIFF'S SALE

Charpia Residential, LLC & Howard W Charpia  
DEFENDANT

AN EXECUTION AGAINST PROPERTY ISSUED BY THE CLERK OF COURT OF COMMON PLEAS FOR THE COUNTY AND STATE AFORESAID FOR SATISFACTION OF JUDGMENT DOCKETED IN SAID COUNTY ON THE 05 DAY OF August 2004, IN FAVOR OF THE PLAINTIFF(S) AND AGAINST THE DEFENDANT(S) IN THE ABOVE ENTITLED CASE.

THIS HAS DIRECTED AND CAUSED THE SHERIFF OF DORCHESTER COUNTY TO LEVY UPON THE FOLLOWING DESCRIBED PROPERTY OF THE DEFENDANT.

BK6859 PG 230

EXHIBIT A, LEGAL DESCRIPTION

All that piece, parcel, or lot of land, together with the buildings and improvements thereon, situate, lying, and being in Dorchester County, South Carolina, and being known and designated as Lot 22-B on a plat by Charleston Engineering Company, dated April 21, 1958, named, "PLAT OF LOT 22-B, PROPERTY OF WILLIAM A. POUNCEY AND OPAL B. POUNCEY, DORCHESTER COUNTY, SC, MARIO LOUISE SALISBURY SUBDIVISION" which is recorded in the RMC Office for Dorchester County, Plat Cabinet A, Slide 173. The property has locations, dimensions, and butts and bounds as shown on the plat. Lot 22-B being the Southern half of Lot 22, which said Lot 22 is found on a plat made by Woodrow W. LeLand, RLS, dated May 24, 1956, and recorded in the RMC Office for Dorchester County, in Plat Book 11, Page 200.

Subject to all covenants, restrictions, easements, and restrictions, of record at the RMC Office for Dorchester County.

BEING the same property conveyed from H. Wanye Charpia to Jody E. Sharpia by deed dated November 5, 2003, and recorded in the RMC Office for Dorchester County at Book 3948, Page 125, December 30, 2003.

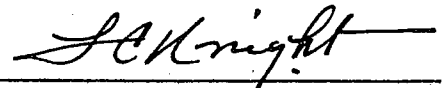
TMS No. 145-13-02-011

SAID PROPERTY WILL BE SOLD AT PUBLIC AUCTION TO THE HIGHEST BIDDER AT THE DORCHESTER COUNTY COURT HOUSE, ST. GEORGE, S.C. ON THE 04 DAY OF May 2009 AT 11:00 am, WITHIN THE LEGAL HOURS OF SALE.

TERMS OF THIS SALE WILL BE FOR CASH AND THE PROPERTY WILL BE SOLD SUBJECT TO ALL TAXES, LIENS, AND/OR ENCUMBRANCES. A DEPOSIT OF (5%) OF THIS BID PRICE MUST BE POSTED AT THE TIME OF THIS SALE.

SALE WILL BE SUBJECT TO UPSET BIDDING, WHICH SHALL CONCLUDE AT THE DORCHESTER COUNTY COURT HOUSE, ST. GEORGE S.C., ON 03 DAY OF June 2009, AT 11:00 am THIS SALE WILL BE FOR

CASH IN THE FULL AMOUNT OF PURCHASED PRICE.

  
L.C. Knight, Sheriff

REC 6-5-10

20

Clerk's Notice of Sale  
Case No. 2009-CP-18-2200

3RD  
SALE

STATE OF SOUTH CAROLINA, COUNTY OF DORCHESTER: IN THE COURT OF  
COMMON PLEAS

RENE MCMASTERS, PLAINTIFF, VERSUS H. WAYNE CHARPIA a/k/a HOWARD W. CHARPIA  
AND JODY E. CHARPIA, DEFENDANTS.

Upon authority of an Order of Foreclosure and Sale dated the 29<sup>th</sup> day of October, 2012, I will offer for sale to the highest bidder for cash, at public auction, the real property of H. Wayne Charpia a/k/a Howard W. Charpia and Jody E. Charpia, fully described below, at the DORCHESTER COUNTY, COURTHOUSE, located at 5200 E. Jim Bilton Blvd., Courtroom C. St. George, SC 29477, on the 4<sup>th</sup> day of , April 2017, at 11:00 a.m. or shortly thereafter.

ALL that piece, parcel or lot of land, together with the buildings and improvements on it, situated, lying and being in Dorchester County, South Carolina, Shown and designated as Lot 22-B, on a plat by Charleston Engineering, Co. dated April 21, 1958, entitled "Plat of Lot 22-B, Property of William A. Pouncey and Opal Pouncey, Dorchester County, S.C., Mario Louise Salisbury Subdivision," which is recorded in the office of the RMC for Dorchester County in Plat Cabinet A, slide 173. The Property has the location, dimensions, and butts and bounds shown on the plat. Lot 22-B being the southern half of Lot 22, which said Lot 22 is found on a plat made by Woodrow W. Leland, R.L.S. dated May 24, 1956, and recorded in the RMC Office for Dorchester County in Plat Book 11 at page 200.

SUBJECT to any covenants, conditions, restrictions, and easements now of record and to the lien of current year real property taxes.

TMS# 145-13-02-011  
1450 Jahnz Avenue  
Summeville, SC 29485

No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

The property shall be sold to the highest bidder. The highest bidder, other than the Plaintiff, will be required to deposit with the Clerk, at the conclusion of the bidding, cash or certified check in the amount of five (5%) per cent of the bid: the said deposit to be applied to the purchase price.

Should the highest bidder fail to comply with the bid within thirty days from the date of sale, the Clerk will resell the property at the risk and expense of the defaulting bidder upon the same terms as above set out.

PLAINTIFF'S ATTORNEY  
Frank M. Cisa, Esquire  
Telephone: (843) 881-6530

FOR INSERTION

Cheryl Graham, Dorchester County Clerk of Court  
This 17<sup>th</sup> day of February, 2017

FILED-RECORDED

2-17-2017

Cheryl Graham  
Clerk of Court  
Dorchester County

29

Clerk's Notice of Sale  
Case No. 2009-CP-18-2200

4th SALE

STATE OF SOUTH CAROLINA, COUNTY OF DORCHESTER: IN THE COURT OF COMMON PLEAS

RENE MCMASTERS, PLAINTIFF, VERSUS H. WAYNE CHARPIA a/k/a HOWARD W. CHARPIA AND JODY E. CHARPIA, DEFENDANTS.

Upon authority of an Order of Foreclosure and Sale dated the 29<sup>th</sup> day of October, 2012, I will offer for sale to the highest bidder for cash, at public auction, the real property of H. Wayne Charpia a/k/a Howard W. Charpia and Jody E. Charpia, fully described below, at the DORCHESTER COUNTY, COURTHOUSE, located at 5200 E. Jim Bilton Blvd., Courtroom C. St. George, SC 29477, on the 5<sup>th</sup> day of July, 2017, at 11:00 a.m. or shortly thereafter.

ALL that piece, parcel or lot of land, together with the buildings and improvements on it, situated, lying and being in Dorchester County, South Carolina, Shown and designated as Lot 22-B, on a plat by Charleston Engineering, Co. dated April 21, 1958, entitled "Plat of Lot 22-B, Property of William A. Pouncey and Opal Pouncey, Dorchester County, S.C., Mario Louise Salisbury Subdivision," which is recorded in the office of the RMC for Dorchester County in Plat Cabinet A, slide 173. The Property has the location, dimensions, and butts and bounds shown on the plat. Lot 22-B being the southern half of Lot 22, which said Lot 22 is found on a plat made by Woodrow W. Leland, R.L.S. dated May 24, 1956, and recorded in the RMC Office for Dorchester County in Plat Book 11 at page 200.

SUBJECT to any covenants, conditions, restrictions, and easements now of record and to the lien of current year real property taxes.

TMS# 145-13-02-011  
1450 Jahnz Avenue  
Summeville, SC 29485

No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. The minimum bid for the subject property must be in the amount the debtor's exemption of \$59,100.00 and no bid less than \$59,100.00 may be accepted.

The property shall be sold to the highest bidder. The highest bidder, other than the Plaintiff, will be required to deposit with the Clerk, at the conclusion of the bidding, cash or certified check in the amount of five (5%) per cent of the bid: the said deposit to be applied to the purchase price.

Should the highest bidder fail to comply with the bid within thirty days from the date of sale, the Clerk will resell the property at the risk and expense of the defaulting bidder upon the same terms as above set out.

PLAINTIFF'S ATTORNEY  
Frank M. Cisa, Esquire  
Telephone: (843) 881-6530

Cheryl Graham, Dorchester County Clerk of Court  
This 28<sup>th</sup> day of May, 2017

FILED-RECORDED  
2017 JUN -5 PM 1:53  
CLERK OF COURT  
DORCHESTER COUNTY

30

Attn: Ashley Pardee  
CISA & DODDS LLP  
858 LOWCOUNTRY BLVD STE 101  
MOUNT PLEASANT SC 29464

FILED - RECORDED  
2017 APR -4 AM 10:25

CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

# AFFIDAVIT OF PUBLICATION

the summerville

# JOURNAL SCENE

State of South Carolina

County of Dorchester

Personally appeared before me the undersigned advertising clerk of the above indicated newspaper published in the city of Summerville, county and state aforesaid, who, being duly sworn, says that the advertisement of

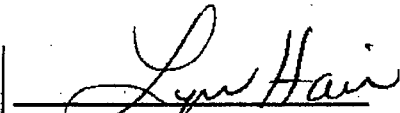
(copy attached)

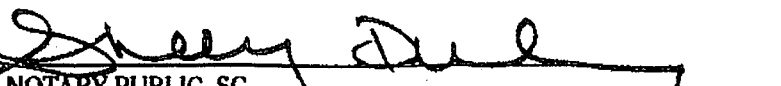
appeared in the issues of said newspaper on the following day(s):

03/15/17 Wed SJW                      03/29/17 Wed SJT  
03/22/17 Wed SJW  
03/29/17 Wed SJW  
03/15/17 Wed SJT  
03/22/17 Wed SJT

at a cost of                      \$148.15  
Account#                        114404  
Order#                            1549993  
P.O. Number:

Subscribed and sworn to before me this 30th day of March A.D. 2017

  
advertising clerk

  
NOTARY PUBLIC, SC  
My commission expires 31

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE COURT OF COMMON PLEAS  
RENE MCMAS -  
PLAINTIFF, VERSUS  
H. WAYNE CHARPIA, s/k/a  
HOWARD W. CHARPIA, s/k/a  
AND JODY E. CHARPIA,  
DEFENDANTS.  
Upon authority of an Order of Foreclosure and Sale dated the 29th day of October, 2012, I will offer for sale to the highest bidder for cash, at public auction, the real property of H. Wayne Charpia s/k/a Howard W. Charpia and Jody E. Charpia, as described below, at the DORCHESTER COUNTY COURTHOUSE, located at 5200 E. Jim Bilton Blvd, Courtroom C, St. George, SC 29477, on the 4th day of April 2017, at 11:00 a.m. or shortly thereafter.

ALL that piece, parcel or lot of land, together with the buildings and improvements on it, situated, lying and being in Dorchester County, South Carolina, shown and designated as Lot 22-B, on a plat by Charleston Engineering, Co. dated April 21, 1958, entitled "Plat of Lot 22-B, Property of William A. Pruncoy and Opal Pruncoy, Dorchester County, S.C., Marie Louise Salisbury Subdivision," which is recorded in the office of the RAC for Dorchester County in Plat Cabinet A, slide 172. The Property has the location, dimensions, and built and boards shown on the plat. Lot 22-B being the southern half of Lot 22, which said Lot 22 is found on a plat made by Woodrow W. Leland, R.L.S. dated May 24, 1964, and recorded in the RAC Office for Dorchester County, in Plat Book 11 of page 200.  
SUBJECT to any covenants, conditions, restrictions, and easements now of record and to the lien of current year real property taxes.  
74708 (45-13-02-01)  
1450 26th Avenue  
Summerville, SC 29445  
No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.  
The property shall be sold to the highest bidder. The highest bidder, other than the Plaintiff, will be required to deposit with the Clerk, at the conclusion of the bidding, cash or certified check in the amount of Five (5%) per cent of the bid; the said deposit to be applied to the purchase price.  
Should the highest bidder fail to comply with the bid within the time specified and the date of sale, the Clerk will reconvey the property at the risk and expense of the defaulting bidder upon the same terms as above set out.

PLAINTIFF'S ATTORNEY  
Frank A. Coo, Esquire  
Telephone: (803) 891-6900  
Cheryl Graham,  
Dorchester County Clerk of Court  
This 4th day of February, 2017  
AD156793

FILED-RECORDED

2017 JUL -5 AM 10: 33

CREATED BY: [unclear]  
CLERK OF COURT  
DORCHESTER COUNTY

CISA & DODDS LLP  
858 LOWCOUNTRY BLVD STE 101  
MOUNT PLEASANT SC 29464

Clerk's Notice of Sale  
Case No. 2009-CP-18-2200

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE COURT OF COMMON PLEAS

RENE MCMASTERS  
PLAINTIFF VERSUS H.  
WAYNE CHARPIA a/k/a  
HOWARD W. CHARPIA  
AND JODY E. CHARPIA  
DEFENDANTS

Upon authority of an Order of Foreclosure and Sale dated the 27th day of October, 2012, I will offer for sale to the highest bidder for cash, at public auction, the real property of H. Wayne Charpia a/k/a Howard W. Charpia and Jody E. Charpia, here described below, at the DORCHESTER COUNTY COURTHOUSE, located at 5200 E. Jim Blish Blvd., Courtroom C, S.E. George St. 29477, on the 5th day of July, 2017, at 10:00 a.m. or shortly thereafter.

ALL that piece, parcel or lot of land together with the buildings and improvements on it situated, lying and being in Dorchester County, South Carolina, shown and designated as Lot 22-B on a plat by Charleston Engineering Co. dated April 21, 1956, entitled "Plan of Lot 22-B, Property of William A. Fountain and Oak County & C. M. Lewis Sales, Inc., subdivision" which is recorded in the office of the RMC for Dorchester County in Plat Cabinet A, sheet 173. The Property has the location, dimensions and boundaries shown on the plat, Lot 22-B being the southern half of Lot 22, which said Lot 22 is found on a plat made by Woodrow W. Leland, R.L.S. dated May 28, 1950, and recorded in the RMC Office for Dorchester County in Plat Cabinet K, sheet 206.

SUBJECT TO THE EASES and covenants, restrictions, conditions, and other provisions contained in the plat of said lot, the location of which is as provided for on the plat.

TAX MAP 15-12-011  
1450 Jared Avenue  
Summerville, SC 29486

No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. The minimum bid for the subject property must be in the amount the debtor's exemption of \$59,100.00 and no bid less than \$59,100.00 may be accepted.

The property shall be sold to the highest bidder. The highest bidder, other than the Plaintiff, will be required to deposit with the Clerk at the conclusion of the bidding, cash or certified check in the amount of five (5%) per cent of the bid; the said deposit to be applied to the purchase price.

Should the highest bidder fail to comply with the bid within thirty days from the date of sale, the Clerk will resell the property at the risk and expense of the defaulting bidder upon the same terms as above set out.

PLAINTIFF'S  
ATTORNEY  
Frank A. Ciss, Esquire  
Telephone: (843) 881-6530

Cheryl Graham, Dorchester County Clerk of Court  
This 28th day of May, 2017  
AD # 152275

# AFFIDAVIT OF PUBLICATION

the summerville

# JOURNAL SCENE

State of South Carolina

County of Dorchester

Personally appeared before me the undersigned advertising clerk of the above indicated newspaper published in the city of Summerville, county and state aforesaid, who, being duly sworn, says that the advertisement of

(copy attached)

appeared in the issues of said newspaper on the following day(s):

06/14/17 Wed SJW                      06/28/17 Wed SJT  
06/21/17 Wed SJW  
06/28/17 Wed SJW  
06/14/17 Wed SJT  
06/21/17 Wed SJT

at a cost of                      \$167.05  
Account#                        114404  
Order#                          1583375  
P.O. Number:

Subscribed and sworn to before me this 30 day of June A.D. 2017

*Stephanie Kruger*  
advertising clerk

*[Signature]*  
NOTARY PUBLIC, SC  
My commission expires  
  
32

ORDERED, ADJUDGED AND DECREED as follows:

1. That there is due on the Judgment held by the Plaintiff the total sum of \$375,156.00 through July 30, 2012, together with interest thereafter at the per diem rate of 62.99.

2. That on default of payment at or before the time herein indicated, the subject property described in the Complaint shall be sold by the Clerk of Court for Dorchester County, at public auction, at the front entrance of the Dorchester County Courthouse, 5200 East Jim Bilton Blvd., St. George, SC on the following terms, that is to say:

The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent of the bid as earnest money and as evidence of good faith, provided, however, the Plaintiff shall be entitled to apply the debt or any portion of the debt due her against her bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of its bid by depositing the said five (5%) percent cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the Clerk of Court may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of its bid within thirty (30) days of the final acceptance of this bid, then the Clerk of Court shall readvertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of the bids in cash as prescribed above. The Clerk of Court shall return all deposits except the deposit securing the highest bid.

3. That the Clerk of Court, by advertisement according to law, shall give notice of the time and place of such sale, and the terms thereof; that the Clerk of Court shall convey to the purchaser, or purchasers, a deed to the property sold; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers, should fail to comply with the terms thereof, the Clerk of Court may advertise the said property for

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FEB 25 2021

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's Case # 2019-001516


Howard W. Charpia.....Appellant

vs.

Rene McMasters.....Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material. Appellant Charpia is a Pro Se litigant not an Attorney.

  
Howard W. Charpia

843-879-3180

2-19-21  
HWC