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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable Robert W. Davis
Special Referee

Appellate Case No.: 2020-000952
Case No.: 2019-CP-29-00617

Buffalo Creek Investments, Inc., ... Plaintiff,

v.

Stephen H. Pettus a/k/a Stephen Pettus and Christopher Gravley, Respondents,
and Edwin Young and Barrett Maners, ... Intervenors,

Of whom, Edwin Young and Barrett Maners are the Appellants.

Appellants' Final Brief

May 18, 2021

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II. Whether a referee abused his discretion in setting aside a valid foreclosure sale when the referee applied the incorrect standard of consideration to the defaulting mortgagors' motion, focusing on alleged irregularities in the underlying foreclosure action and the "equities," rather than the absence of any evidence of irregularity in the conduct of the sale.

III. Whether a referee abused his discretion in setting aside a valid foreclosure sale when the referee ignored long-standing precedent and found that the purchasers' bid "shocked the court's conscience" even though the purchasers bid more than three times the amount our courts have typically required as a minimum threshold.

STATEMENT OF THE CASE

Buffalo Creek Investments, Inc. ("Mortgagee") commenced this foreclosure action on May 17, 2019 by filing a lis pendens, summons and complaint in Lancaster County, South Carolina (R. pp. 48-50). Respondents Stephen H. Pettus a/k/a Stephen Pettus and Christopher Gravley ("Mortgagors") were named as defendants. Id. On May 20, 2019, Mortgagee filed affidavits of service, reflecting that Mortgagors had been served with Mortgagee's pleadings. (R. p. 123). Mortgagees did not answer or otherwise plead and, on June 21, 2019, the Lancaster County Clerk of Court entered a default as to both Mortgagors. (R. p. 125). The entire case was referred to the Honorable Robert W. Davis, as special referee (the "Referee"). (R. p. 1).

On September 11, 2019, the Referee held a foreclosure hearing. Mortgagors were served with notice of that hearing (R. p. 126), but the Record of Hearing reflects that they did not appear. (R. p. 60). At the conclusion of that hearing, the Referee entered a Decree of Foreclosure which,

among other provisions, called for the advertisement and sale of Mortgagors' property (the "Property") by public auction. *See* R. p. 10. (hereafter "Decree of Foreclosure"). The Referee included a specific finding in his Decree of Foreclosure that "the real property which is the subject of this foreclosure is not subject to the terms of the Administrative Order of the Supreme Court of South Carolina dated May 2, 2011 (2011-05-02-01) [1] [because] the mortgage was a line of credit granted to allow the Defendants to invest in a business." (R. p. 6).

Mortgagee's attorney then served copies of the Decree of Foreclosure, Notice of Sale, Affidavit of Debt, Waiver of Deficiency Judgment and Record of Sale upon Mortgagors on or about October 8, 2019. (*See* R. p. 128). Mortgagors did not file any motion for reconsideration or other challenge to the Decree of Foreclosure, and they did not appeal.

The Property was advertised for sale in the Lancaster News on October 16, 23 and 30, 2019. (*See* R. p. 130). On November 4, 2019, the Referee held a public auction and sold the Property. (*See* R. p. 13). At that auction, Appellants Edwin Young and Barrett Maners ("Young and Maners") bid $78,750 for the Property. Id. The bid of Young and Maners was the high bid, and Young and Maners satisfied their bid in full on November 15, 2019. (*See* R. p. 140 at ¶ 7 and Ex. A). The Referee issued a deed to Young and Maners on November 15. (R. p. 140, ¶ 8). On November 19, the Referee filed his Order and Report Confirming Sale. (R. p. 13).

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[1] S.C. Supreme Court Administrative Order 2011-05-02-01, *In re* Mortgage Foreclosure Actions, was issued by Chief Justice Toal in response to reports of "failed or delayed loss mitigation efforts between lender-servicers and mortgagor-debtors." That order was intended "to insure that eligible homeowners and lender-servicers have been afforded the benefits of loan modification or other loss mitigation where possible, and to insure that the procedures for handling issues related to these efforts are handled uniformly throughout the state. . . ." For convenience, Young and Maners will sometimes refer to South Carolina Supreme Court Administrative Order 2011-05-02-01 as "the Supreme Court's Administrative Order."

On November 27, 2019, Mortgagors filed a motion to vacate the Referee's sale. (*See* R. p. 30). In their motion, Mortgagors alleged that they "were never served with the Summons and Complaint."[2] (R. p. 31). In addition, Mortgagors alleged that "Plaintiff [Mortgagee] incorrectly informed the Court that [the Property] is not owner occupied." Id. Finally, Mortgagors alleged that "by misleading the court into a finding that the real property is not owner-occupied, Plaintiff [Mortgagee] attempted to avoid the applicability of Chief Justice Toal's May 2011 Order *In re* Mortgage Foreclosure Actions." (R. p. 32). Significantly, Mortgagors did not assert any challenge to the manner in which the Referee's foreclosure sale was conducted, or with respect to Young and Maners' participation in that sale. Mortgagors also did not make any assertion that the bid of Young and Maners was inadequate in any respect. Both Mortgagors filed affidavits in support of Mortgagors' motion, but neither of those affidavits asserted any alleged irregularity in the sale of the Property. (R. pp. 132-134; R. pp. 135-136). Neither affidavit mentioned the value of the Property or raised any issue concerning the amount of money that Young and Maners had paid for the Property. Id.

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[2] Mortgagors' assertion that they were not properly served with Mortgagee's summons and complaint is a moot point. Both Mortgagors gave affidavits in which they acknowledged that they appeared at a foreclosure hearing on July 3, 2019, only to have that hearing continued by the Referee because Mortgagee "had not provided supporting documentation to his attorney." (R. p. 133, at ¶¶ 12-13; R. p. 136, at ¶¶ 11-12). Both Mortgagors also acknowledged that they attempted to attend the rescheduled foreclosure hearing on September 11, 2019, but were delayed by traffic. (R. p. 133, at ¶¶ 15-16; R. p. 136, at ¶¶ 13-15). To the extent either of the Mortgagors was not properly served with Mortgagee's summons and complaint, Mortgagors waived service by voluntarily appearing to defend the underlying foreclosure case. *See* Rule 4(d) S.C.R. Civ. P. ("Voluntary appearance by a defendant is equivalent to personal service."); *see also* Ex parte Cannon, 385 S.C. 643, 658, 685 S.E.2d 814, 822 (Ct. App. 2009)("A defendant may waive any complaint he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case.").

On December 17, 2019, Young and Maners moved to intervene, in order to oppose Mortgagors' motion. (R. p. 38). On January 16, 2020, Young and Maners filed affidavits in opposition to Mortgagors' motion. (R. p. 138) (hereafter "Maners Aff."); (R. p. 146 (hereafter "Young Aff."). Among other things, those affidavits established that Young and Maners had conducted due diligence before bidding on the Property, and that they were not aware of any alleged irregularity in the underlying foreclosure proceeding until Mortgagors' attorney called Mr. Maners on November 27, 2019. (R. p. 139, ¶ 5; p. 140 ¶ 10). By the time Mr. Maners received that call, Young and Maners had held title to the Property for approximately twelve days. (R. p. 140, ¶ 8).

Following a hearing on Mortgagors' motion, the Referee issued an order vacating his sale. (R. p. 18). Young and Maners timely moved for reconsideration of that order (R. p. 41), but their motion was denied. (R. p. 26). On July 10, 2020, the Referee issued another order, voiding his November 15, 2019 deed to Young and Maners. (R. p. 28). Young and Maners appeal those orders.

STANDARD OF REVIEW

The decision to set aside a judicial sale rests within the sound discretion of the trial court. Wells Fargo Bank, N.A. v. Turner, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008)(citing Investors Sav. Bank v. Phelps, 303 S.C. 15, 17, 397 S.E.2d 780, 781 (Ct. App. 1990)). The trial court abuses its discretion, and commits reversible error, when its decision is unsupported by the evidence or is controlled by an error of law. FOC Lawshe Ltd. Partnership v. International Paper Co., 352 S.C. 408, 413, 574 S.E.2d 228, 231 (Ct. App. 2002)(citing Zabinski v. Bright Acres Assoc., 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001)). On appeal, the appellate court is not bound by the trial court's factual findings but is entitled to "determine facts in accordance with

[the appellate court's] own view of the preponderance of the evidence." Eastern Sav. Bank, FSB v. Sanders, 373 S.C. 349, 354, 644 S.E.2d 802, 805 (Ct. App. 2007).

ARGUMENT

Young and Maners are entitled to reversal of the Referee's orders in this case because the Referee's discretionary decision to set aside his sale was not supported by the evidence and was controlled by several errors of law. The Referee erroneously concluded that Young and Maners were not "bona fide purchasers for value," who were entitled to the statutory protections of § 15-39-870, even though Young and Maners submitted evidence showing that they easily satisfied that criteria. In addition, the Referee improperly focused on alleged irregularities in the underlying foreclosure action and "the equities" as justifications to set aside his sale, while ignoring the fact that the sale was properly conducted and regular in all respects. Finally, the Referee disregarded a long line of reported South Carolina cases to declare – in perfunctory fashion, and without any explanation or support – that Young and Maners' successful bid "shocked the conscience of the court," despite the fact that Young and Maners paid more than three times the amount our courts have typically required as a minimum acceptable bid.

Each of these errors led the Referee to reach a decision that is out-of-step with the law and the public policy of this state, as expressed by both our courts and our state's legislature. The Referee abused his discretion, and his orders vacating sale and voiding his deed to Young and Maners must be reversed.

I. The Referee failed to recognize that Young and Maners were "bona fide purchasers for value without notice" and, as a result of that failure, the Referee deprived Young and Maners of important statutory protections to which they were entitled.

Somehow, Mortgagors convinced the Referee to set aside his sale of their property without even *alleging* any irregularity in the conduct of that sale. Mortgagors' entire motion was

predicated upon alleged irregularities in Mortgagee's prosecution of its foreclosure suit and, in particular, Mortgagee's alleged attempts "to avoid the applicability of Chief Justice Toal's May 2011 Order *In re* Mortgage Foreclosure Actions" to that case. (R. p. 32). The Referee should not even have entertained Mortgagors' motion, much less granted it.

Nearly, a century ago,[3] South Carolina's legislature enacted a law to protect bona fide purchasers for value - people like Young and Maners - from the very kind of after-the-fact foreclosure challenges that Mortgagors presented in this case. That law is currently codified as South Carolina Code § 15-39-870, and provides:

> Upon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a court of competent jurisdiction the proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court.

As our courts have recognized, "the rationale for [§ 15-39-870] is the well-established public policy of protecting good faith purchasers and upholding the finality of a judicial sale." Bloody Point Property Owners Ass'n. v. Ashton, 410 S.C. 62, 66, 762 S.E.2d 729, 732 (Ct. App. 2014); *see also* Cumbie v. Newberry, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968)("[A] sound public policy requires the validity of judicial sales to be upheld, if in reason and justice it can be done.").

In order to take advantage of the statutory protections of § 15-39-870, a purchaser need only demonstrate that he or she is a "bona fide purchaser for value without notice" of an alleged defect in title. To meet this showing, the purchaser must demonstrate each of the following: (1) actual payment of the purchase price of the property; (2) acquisition of legal title to the property, or the best right to it, and (3) a bona fide purchase, "i.e. – in good faith and with integrity of dealing,

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[3] The South Carolina Code reflects that S.C. Code Ann. § 15-39-870 was first enacted in 1923, as S.C. Code (33) 126.

without notice of a lien or defect." Robinson v. Estate of Harris, 378 S.C. 140, 146, 662 S.E.2d 420, 423 (2008)(*quoting* Spence v. Spence, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006)). "In addition, 'the bona fide purchaser must show all three conditions – actual payment, acquiring of legal title, and bona fide purchase – occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property.'" Id.

In opposition to Mortgagors' motion, Young and Maners submitted evidence demonstrating that they met each prong of § 15-39-870's "bona fide purchaser" test. The affidavits of Young and Maners establish that they conducted due diligence prior to bidding at the Referee's sale, and that their due diligence revealed no defect in title or irregularity in the underlying foreclosure proceeding. (R. p. 139 ¶ 5). Young and Maners paid their bid deposit on the date of the Referee's sale and the balance of their purchase price a few days later. (R. p. 140 ¶ 7). They acquired title on November 15, 2019 and had no notice of any alleged irregularity until Mortgagors' attorney called Mr. Maners twelve days later. (R. p. 140, ¶ 10). Notwithstanding this undisputed evidence, the Referee found that Young and Maners were not entitled to the protections of § 15-39-870. Not only is the Referee's determination unsupported by the factual record, but it is also based upon two critical errors of law.

First, the Referee erred when he concluded that alleged irregularities in the underlying foreclosure action could deprive Young and Maners of their status as "bona fide purchasers." *See* R. p. 21.[4] *Compare* Robinson v. Estate of Harris, 378 S.C. 140, 146, 662 S.E.2d 420, 423 (Ct. App. 2008)(a purchaser's title is "not affected by [mortgagor's] claim of defective service of process in the foreclosure action."); Tederall v. Bouknight, 25 S.C. 275, 280 (1886)("purchaser at

[4] The Referee found that "Mr. Young and Mr. Maners are not bona fide purchasers for value without notice because they were on notice that the property was owner-occupied and that Defendants had not been afforded the required foreclosure intervention protections."

[judicial] sale is in no way responsible for mere irregularities in the proceedings, or even error in the judgment, under which the sale is made."). The Referee erroneously concluded that Young and Maners could not claim the status of "bona fide purchasers" because they *should* have recognized that Mortgagor's foreclosed property was "owner-occupied" and, consequently, they should have *also* realized that Mortgagors "had not been afforded the required foreclosure intervention protections" of the Supreme Court's Administrative Order in the underlying foreclosure proceeding. (*See* R. p. 21).

As an initial matter, the Referee's rationale ignores the fact that the Referee had already determined that "the real property which is the subject of this foreclosure is not subject to the terms of [the Supreme Court's Administrative Order . . . because] the mortgage was a line of credit granted to allow the Defendants to invest in a business." *See* R. p. 6. The Referee also failed to consider that Mortgagors never appealed his Decree of Foreclosure and, therefore, the Referee's determination that Mortgagors' property was "not subject to" the Supreme Court's Administrative Order was the law of their case. Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013)("An unappealed ruling is the law of the case. . . ."). Even if the Referee had wrongly decided that issue, as Mortgagors contend, Mortgagors lost their opportunity to challenge that ruling when they failed to appeal. Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 571, 776 S.E.2d 397, 403 (Ct. App. 2015)("Under the law-of-the case doctrine, a party is precluded from relitigating . . . matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court."). The Supreme Court's Administrative Order did *not* apply in Mortgagors' case because the Referee had previously determined that Mortgagor's property "[was] not subject to" that order. (R. p. 6).

More to the point, and contrary to the Referee's reasoning, Young and Maners were under no obligation to scrutinize the Decree of Foreclosure to evaluate whether the Referee had properly decided legal and factual issues in that proceeding. Young and Maners were entitled to bid at the foreclosure sale based upon a presumption that "the [Referee] considered and adjudicated the regularity and sufficiency of each and every step in the [underlying] proceedings." Gladden v. Chapman, 106 S.C. 486, 91 S.E. 796, 797 (1917). They were under no duty to investigate whether Mortgagors had been "denied necessary foreclosure intervention procedures."[5] They were entitled to rely upon the Referee's prior determination that Mortgagor's property was "not subject to the terms of the Administrative Order of the Supreme Court." (R. p. 6).

Purchasers at a foreclosure sale are under no obligation to scrutinize the court's handling of an underlying foreclosure action to determine if the case was properly litigated and adjudicated. The Referee misconstrued the applicable legal standard when he concluded that Young and Maners were not bona fide purchasers because they "should" have recognized that the underlying foreclosure action had proceeded to final judgment in contravention of the Supreme Court's Administrative Order.

The Referee also erred when he concluded that Young and Maners could not claim the status of bona fide purchasers because they were somehow "charged with knowledge" of the Supreme Court's Administrative Order. *See* R. p. 23. Administrative orders issued by a supreme court justice do not have the force and effect of law, and lay persons like Young and Maners are not "charged with knowledge" of those orders. *See* Weber v. Bank of America, N.A., 2013 WL 4820446, n. 5 (D.S.C. 2013)(Anderson, J.)("Even if [The Supreme Court's Administrative Order] did include . . . a mandate [for foreclosure intervention], the court is not aware of any authority

[5] R. p. 24.

providing that the Chief Justice, sitting alone, possesses the law-making authority of the entire South Carolina Supreme Court."); *see also* S.C. CONST. ART. V § 4 ("The Supreme Court shall make rules governing the administration of all the courts of the State."). Administrative orders "govern the administration" of courts, but they are not laws of general application. The Referee erred when he concluded that Young and Maners were "charged with knowledge" of the Supreme Court's Administrative Order, because that order was not "the law." (*See* R. p. 23).

The Referee's failure to recognize that Young and Maners were bona fide purchasers, who were entitled to the statutory protections of § 15-39-870, was a critical error in his analysis. Young and Maners were entitled to the statutory protections of S.C. Code Ann. §15-39-870 and, had they been granted those protections, Mortgagors' challenge to the sale would have been barred by *res judicata*. The Referee's refusal to grant Young and Maners their status as "bona fide purchasers for value without notice" resulted in an abuse of discretion.

II. The Referee applied the incorrect legal standard to Mortgagors' motion, focusing on alleged irregularities in the underlying foreclosure action and the parties' "relative equities," rather than the fact that the sale was fairly and properly conducted.

The Referee also erred when he concluded that he was obliged to consider alleged irregularities in the underlying foreclosure action and to balance "the equities" of the parties in order to decide Mortgagors' motion. *See* R. pp. 21-22. In focusing on these issues, rather than the *absence* of any evidence "from which the court may infer that fraud [had] been committed" in connection with the sale, the Referee employed the wrong standard of review.

As our Supreme Court has recently made clear:

> a judicial sale will not be set aside due to an inadequate sale price unless: (1) the price was so grossly inadequate as to shock the conscience of the court; or (2) an inadequate – but not grossly inadequate – price at the sale is accompanied by other circumstances from which the court may infer fraud has been committed."

Winrose Homeowners' Association, Inc. v. Hale, 428 S.C. 563, 569, 837 S.E.2d 47, 50 (2019) (citing Singleton v. Mullins Lumber Co, 234 S.C. 330, 351, 108 S.E.2d 414, 424 (1959)). The Referee did not find any evidence "from which the court may infer that fraud [had] been committed" and, in fact, no such evidence was ever presented in support of Mortgagors' motion. Instead, the Referee set aside his sale, in large part, because Mortgagors convinced him that they had 'more to lose' than Young and Maners. *See* R. pp. 21-22[6]; *see also* R. p. 68-69[7].

Contrary to the Referee's analysis, our courts have never focused upon the parties' relative equities or considerations of 'who has more to lose' to decide whether a foreclosure sale should be vacated. *See, e.g.,* Winrose, 428 S.C. at 569, 837 S.E.2d at 50 (setting forth the grounds a court is to consider). If "the equities" were a significant consideration - as the Referee seemed to believe - virtually every foreclosed mortgagor could make a fairly compelling case that the sale of *his* foreclosed property should be set aside so that he is not forced to "forfeit" something of value. So too, in almost every case, the successful purchaser could easily be portrayed as an opportunist who would 'lose nothing' if the sale is vacated. *See, e.g.,* R. p. 22 ("Mr. Young and Mr. Maners will simply be put back in the same place they were prior to the judicial sale."); (R. p. 68)

Our courts do not focus on the relative equities of the mortgagor and purchaser in these proceedings because those considerations have the potential to undermine this state's "well-established public policy of protecting good faith purchasers and upholding the finality of a judicial

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[6] "If the foreclosure is not vacated, Defendants will lose all of the money that was paid to purchase their home as well as their home. . . . [I]f the foreclosure is vacated and the sale set aside, Mr. Young and Mr. Maners will simply be put back in the same place they were prior to the judicial sale."

[7] Argument of Mortgagors' Counsel: "[I]f we lose [my clients] not only lose the house . . . the house that they live in . . . they also lose [their equity]. On the other hand, Mr. Maners and Mr. Young, if we prevail, they get their money back."

sale." Bloody Point Property Owners Ass'n. v. Ashton, 410 S.C. 62, 66, 762 S.E.2d 729, 732 (Ct. App. 2014). If our courts were to focus as heavily on the parties' "relative equities" as the Referee did in this case, it "would make the rights of purchasers at such sales so uncertain that it would tend to discourage bidding – a result so much more injurious in its consequences that it overbalances the possible injury resulting in a few isolated cases by a firm adherence to settled principles." Farrow v. Farrow, 88 S.C. 333, 70 S.E.459 (1911). The Referee was wrong to focus on those issues.

The Referee also erred when he focused upon alleged irregularities in the underlying foreclosure proceeding, and used those alleged irregularities as justification to set aside his sale. South Carolina's courts have uniformly required evidence of some irregularity in the conduct of the *sale* itself before a sale will be set aside, such as where an inadequate sale price is "the result of action by the officer selling the property or successful bidder, and that action could not have been reasonably anticipated by the party for whose benefit the property was being sold." Eastern Savings Bank, FSB v. Sanders, 373 S.C. 349, 356, 644 S.E.2d 803, 806 (Ct. App. 2007); *see also* Appeal of Paslay, 230 S.C. 55, 61, 94 S.E.2d 57, 59-60 (1956)("The circumstances impeaching the fairness of the transaction should relate to the conduct of the officer making the sale . . . or to the conduct of the purchaser participating in the attempt to stifle competition or with notice thereof. . . ."). Young and Maners are not aware of any case where alleged irregularities in an underlying foreclosure proceeding have been cited as justification to set aside a judicial sale. In fact, our courts have repeatedly rejected such attacks. *E.g.* Robinson v. Estate of Harris, 378 S.C. 140, 146, 662 S.E.2d 420, 423 (Ct. App. 2008)(purchaser's title was "not affected by [mortgagor's] claims of defective service of process in the foreclosure action."); Tederall v. Bouknight, 25 S.C. 275,

280 (1886)("[A] purchaser at such sale is in no way responsible for mere irregularities in the proceedings, or even error in the judgment, under which the sale is made.").

Simply put, the Referee focused upon the wrong considerations. He focused on alleged irregularities in the underlying foreclosure action and upon considerations of which party had 'more riding' on his decision, rather than the absence of evidence from which the Referee could "infer that fraud had been committed" in connection with the sale. His mistake as to these issues was error which caused the Referee to abuse his discretion.

III. The Referee abused his discretion when he failed to follow long-standing precedent and determined that Purchasers' successful bid was "so low that it shocked the conscience of the court," even though purchasers paid more than thirty-three percent of the property's most-recent appraised value.

The Referee also abused his discretion when he ignored long-standing judicial precedent and determined that Young and Maners' purchase price, which exceeded 33.5% of the foreclosed property's appraised value, was so low that it "shock[ed] the conscience of the court." *See* R. p. 24. In reaching this conclusion, the Referee committed two critical mistakes.

First, the Referee erred when he did not actually evaluate the sufficiency of Young and Maners' bid in relation to the property's *value*. Instead, the Referee determined that the bid was inadequate after comparing it to the "price [Mortgagors] paid" for the property. *See* R. p. 24. However, real property, like any other commodity, can fluctuate in value. Thus, the "price [Mortgagors] paid" was not a proper measure of the property's value at the time of sale. The Referee should have compared Young and Maners' bid to the most-current appraised value of the property, rather than the price Mortgagors paid to acquire the property. The Referee actually noted elsewhere in his order that "property tax bills for 2018 and 2019 show the total appraised *value* of the land and buildings as $234,800," but for some reason he failed to use that figure in his calculus. (R. p. 22). By comparing Young and Maners' bid to Mortgagor's original purchase price

($242,500), rather than the property's most-recent appraised value ($234,800), the "bid to value" ratio was pushed lower and crept ever-so-slightly closer to a price that might help explain the Referee's "shock." The Referee's conflation of Mortgagors' "purchase price" with the property's "value" appears to have been little more than a manipulative attempt to drive down the "bid-to-value" ratio to further support a pre-ordained result (i.e. – the Referee's determination that he was "doing equity" by setting aside the sale.).[8]

In addition, the Referee apparently ignored long-standing judicial precedent of this state. Historically, South Carolina's appellate courts have set aside foreclosure sales based upon a "shockingly low" purchase price only where the property sold for no more than approximately 10% of the property's then-current value. *See* Eastern Sav. Bank, FSB v. Sanders, 373 S.C. 349, 359, 644 S.E.2d 802, 807 (Ct. App. 2007); Investors Sav. Bank v. Phelps, 303 S.C. 15, 19, 397 S.E.2d 780, 782 (Ct. App. 1990). *See also* Winrose Homeowners' Association, Inc. v. Hale, 428 S.C. 563, 570, 837 S.E.2d 47, 51 ("[A] search of South Carolina jurisprudence reveals only when judicial sales are for less than [10%] of a property's actual value[] have our courts consistently held the discrepancy to shock the conscience of the court."). In this case, the Referee announced that he was "shocked" by a bid that was more than three times that amount.[9] The Referee made no attempt to explain his "shock" or his reluctance to follow this court's long-standing guidance as to that issue. The only fair way to characterize the Referee's finding is as an abuse of discretion.

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[8] R. p. 21.

[9] Young and Maners' successful bid was slightly more than 33.5% of the property's most-recent appraised value. *See* R. p. 22, 24.

CONCLUSION

Young and Maners are entitled to reversal of the Referee's orders and to have their title to the Property restored. The evidence plainly established that they were bona fide purchasers for value, who bid in good faith and with no knowledge of any irregularity in the underlying foreclosure sale. They fully satisfied their bid and they received title to Property before Mortgagors raised any claim of irregularity. The Referee erred when he concluded that Young and Maners were not bona fide purchasers for value, and that error caused the Referee to abuse his discretion and vacate his sale.

The Referee also abused his discretion when he allowed Mortgagors to challenge Young and Maners' purchase of the property by raising alleged irregularities in the underlying foreclosure action and by arguing that Mortgagors had 'more at stake' in the case than Young and Maners. Our courts have repeatedly held that purchasers at a foreclosure sale are, in no way, responsible for alleged defects in the underlying foreclosure proceedings, and our courts have never focused on the parties' "equities" as a basis to set aside a valid foreclosure sale.

Finally, the Referee abused his discretion when he declared, without any explanation or support, that Young and Maners' bid should be set aside because it "shocked the conscience of the court." Young and Maners bid more than three times the minimum threshold historically required by our courts, and they are entitled to the benefit of their purchase. There is nothing in the record to support the Referee's finding that Young and Maners' bid was "shockingly low."

The Referee abused his discretion when he vacated his sale of the Property, and his orders should be reversed.

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