

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Ex Parte: Alecia Havens

Petitioner,

vs.

State Street Holdings, LLC,

Respondent.

In Re:

AltaMonte Homeowners Association, Inc.,

Plaintiff,

vs.

Alecia Havens,

Defendant

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-40-03054

ORDER DENYING
ALICIA HAVENS'
MOTION TO VACATE SALE

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SC Court of Appeals

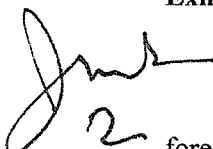
The matter before the court is an action to foreclose the lien of AltaMonte Homeowners Association, Inc. (Plaintiff). The Lis Pendens, Summons and Complaint were filed on June 4, 2019 and Defendant Havens was served at 12300 SW Center St., Apt 10, Beaverton, OR, 97005 on June 8, 2019 as shown by the Affidavit of Service filed on July 1, 2019. Defendant Havens did not file an Answer or other responsive pleading to the Summons and Complaint. Thereafter, on October 22, 2019, Plaintiff sent Defendant Havens Notice of Hearing at the service address as shown by the Certificate of Service by Mail filed October 22, 2019. Defendant Havens did not appear at the merits hearing and the undersigned as Master in Equity for Richland County, issued a Master's Report and Judgment of Foreclosure and Sale on November 19, 2019. Thereafter, Plaintiff mailed a copy of the Master's Order to Defendant Havens. The Notice of Sale was published in a newspaper of general circulation in Richland once a week for three consecutive weeks. The subject property was then sold on December 2, 2019 at public auction to State Street Holdings, LLC (State Street) for \$10,000.00. State Street complied with its bid and a Master in

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Equity Deed was issued on December 20, 2019 and recorded December 30, 2019 in Book 2457 at Page 2227. See Respondent's **Exhibit "1"**. On January 17, 2020, Defendant Havens submitted a claim of entitlement to surplus funds.

On January 30, 2020, Ray Covington Property Management (Covington), by its attorney, Howard Hammer, contacted State Street and informed State Street that Covington would be escrowing future rental. On February 18, 2020, Covington informed State Street that the tenant had ceased paying rent. See Respondent's **Exhibit "2"**.

On February 4, 2020 at approximately 9:00 a.m., State Street and Khan Legacy, LLC (Khan) entered into a Sales Contract for 93 Walking Horse Way. This is an arms-length transaction between two sophisticated investors. The purchase price to be paid by the buyer was \$54,000.00. See Respondent's **Exhibit "3"**.

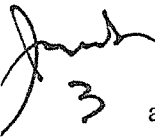
 The title search conducted by State Street revealed two senior liens that were not included in the foreclosure action. A S.C. Department of Revenue Tax Lien in the amount of \$596.65 was recorded on July 3, 2013 in book 1875 at Page 450; and a Order for Default Judgment against Heather E. Allen in favor of Portfolio Recovery Associates, LLC, Assignee of U.S. Bank National Association (Portfolio) in the amount of \$13,634.06 was filed on January 8, 2015. State Street, through its attorney submitted a request to the S.C. Department of Revenue on February 4, 2019 requesting the Tax Lien be released in exchange for payment of \$596.65. In response to State Street's request, the S.C. Department of Revenue expunged the lien on February 14, 2020. See Respondent's **Exhibit "4"**. State Street, by and through its attorney, submitted a payoff request to Portfolio on February 4, 2020. See Respondent's **Exhibit "5"**.

Defendant Havens submitted her Motion to Vacate the Sale on February 4, 2020 at 2:11 p.m. This motion was served on State Street by mailing a copy to its Registered Agent on February 10, 2020.

DISCUSSION

A judicial sale will be set aside "when either: (1) the sale price 'is so gross as to shock the conscience' or (2) the sale 'is accompanied by other circumstances warranting the interference of the court" *Wells Fargo Bank, NA. v. Turner*, 378 S.C. 147,151,662 S.E.2d 424,425 (Ct. App. 2008) (Citing *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 177 S.E. 24 (1934)). South Carolina courts "have consistently held that when foreclosure sales prices amount to less than ten percent of the actual value of the property, the discrepancy shocks the conscience of the court." *Bloody Point Property Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729, 734 (Ct. App. 2014).

South Carolina Courts have used two methods to calculate whether a bid price is so grossly inadequate as to shock the conscience. The first method is known as the Debt Method and it focuses on the amount of debt the foreclosure purchaser must incur before gaining clear title to the foreclosed property. The second method of calculation is known as the Equity Method as it focuses on the amount of equity the foreclosure purchaser stands to gain through the foreclosure sale.

 Fair market value is defined as a property's "true value in money" which is defined to be the agreed sale price between a willing buyer and seller. *South Carolina Tax Com'n v. South Carolina Tax Bd. of Review*, 339 S.E.2d 131, 287 S.C. 415 (S.C. App. 1984). Prior to learning of Defendant Havens' motion, State Street entered an arms-length sales contract with Khan for \$54,000.00. See Respondent's **Exhibit "3"**. Defendant Havens argues the fair market value of the property is \$93,000.00. She bases her argument on an appraisal conducted by Lee L. Jennings on January 27, 2020. Mr. Jennings states in his appraisal on Page 1 that his appraisal is "[b]ased on exterior only inspection from the street." See **Defendant's Exhibit "B"**. It is unlikely an exterior only appraisal conducted from the street could accurately determine the fair market value of a rental property.

Defendant Havens argues that the Court should use the Equity Method to determine if the sale price is adequate. Under the equity method, liabilities that devalue the purchased property are subtracted from the fair market value. Subtracting the Portfolio judgment (\$13,634.06) and tax lien (\$596.65) from the subject property's fair market value of \$54,000.00 provides equity of \$39,769.29. Dividing the

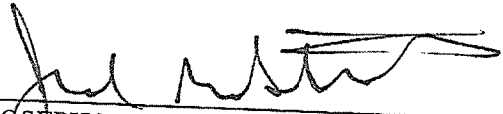
purchase price of \$10,000 by the equity value of \$39,769.29 equals 25.15%. Thus, the Equity Method provides a sales prices that is greater than 25% of property's value.

CONCLUSION

Defendant Havens failed to respond to the summons and complaint, notice of hearing, notice of sale, and notice of entry of judgment. Her first appearance in this case was to claim the surplus funds generated by the foreclosure sale.

South Carolina Courts have consistently held that a sales price that is less than 10% of the property's value shocks the conscience and cannot be sustained. However, in this case, the sales price is over 25% of the property's value and the motion to vacate foreclosure sale is denied.

IT IS SO ORDERED



JOSEPH M. STRICKLAND
MASTER IN EQUITY FOR
RICHLAND COUNTY

June 10, 2020
Columbia, South Carolina