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**Jan 24 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity

Case No. 2019-CP-40-03054

Ex Parte: Alecia Havens..... Appellant,

vs.

State Street Holdings, LLC.....Respondent,

In Re:

AltaMonte Homeowners Association, Inc.....Respondent,

vs.

Alecia Havens.....Appellant.

FINAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

- I. Whether the Trial Court erred in denying The Motion To Vacate Sale because the Appellant did not receive proper notice of the proceedings.
- II. Whether the Trial Court erred in denying the Motion to Vacate sale because the sale price shocks the conscience of the court.
- III. Whether the Trial Court abused its discretion by failing to vacate the sale on equitable grounds.

## STATEMENT OF THE CASE

This case arises out of a motion to set aside the judicial sale of Appellant Alecia Havens' property after the foreclosure of a \$3,700.07 homeowners association lien. If the lower court ruling stands, Ms. Havens will lose her home (her mother paid it off only eight months before her death) and \$90,000 in equity.

Ms. Havens was only twenty-one years old when her mother, Heather Allen, died on December 1, 2017. Heather Allen's estate was filed in Richland County Probate Court as 2017-ES-40-2121. The Appellant was the only child and heir of Heather Allen. Havens' mother had been a sergeant in the Air Force (R. p. 99; lines 11-15). Ms. Havens graduated from Spring Valley High School in 2015 and moved to Oregon in 2016 and has made that state her permanent residence.

As the only heir, she inherited the home, put \$8,000.00 of her money into the house for repairs. Unbeknownst to her, there was an HOA that required payment. She hired a management company in early 2019 to handle collecting the rent for the home, but again, was unaware of the HOA requirements.

On June 4, 2019, Respondent AltaMonte Homeowners Association, Inc. (AltaMonte) filed a complaint for foreclosure of the HOA lien for \$3,700.07, (R. pp. 3-8). The lawsuit was allegedly served on June 8, 2019, at 12300 SW Center St. Apt. 10, Beaverton, Oregon. The affidavit of service indicates it was served on a person known as Victor Soto Navaro. (R. p. 9) The Affidavit also states that Mr. Soto-Navaro was Havens' "fiancé. He was not her fiancé, or even her boyfriend. (R. pp. 23-26). Havens did not learn about the suit until after the home was sold.

The property was purchased by Respondent State Street Holdings, LLC at public sale on December 2, 2019, for Ten Thousand (\$10,000.00) Dollars. Havens had an appraisal performed on January 27, 2020 that showed a value of Ninety-Three Thousand (\$93,000.00) Dollars. (R. pp. 27-33).

As stated above, Havens paid Eight Thousand (\$8,000.00) in improvements before she began leasing the property. She believes that the property was worth One Hundred Thousand (\$100,000.00) Dollars at the time the property was sold at auction. (R. pp. 26).

A Motion to Vacate the Sale was filed by Havens on the grounds of failure of proper service and for the inadequacy of the successful bid. (R. pp. 18-22). The Motion was heard on February 28, 2020, by the Honorable Joseph M. Strickland, Master in Equity for Richland County. On June 10, 2020, Judge Strickland filed an Order Denying the Motion to Vacate Sale. Havens filed a timely Motion for Reconsideration. That motion was heard on November 12, 2020 and denied on July 13, 2021. This Appeal was timely filed on August 9, 2021.

## STANDARD OF REVIEW

“A mortgage foreclosure is an action in equity.” *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 248, 715 S.E.2d 348, 352 (Ct. App. 2011). The South Carolina Court of Appeals “review[s] factual findings and legal conclusions in an equitable action de novo.” *Id.* In addition, the interpretation of an order is a question of law subject to de novo review. *See Ex parte TLC Laser Eye Ctrs. (Piedmont/Atlanta), LLC*, 404 S.C. 385, 392, 745 S.E.2d 105, 109 (2013). “An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions.” *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012).

## ARGUMENT

### **I. Whether the Trial Court erred in denying the Motion to Vacate Sale because the Appellant did not receive proper notice of the proceedings.**

Havens filed this appeal on three issues. The first is the service of the lawsuit itself. Notice of a lawsuit is a fundamental right of any litigant. Rule 4, SCRCP (d) (1) states that a summons and complaint must be served “to him (the defendant) personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein...”

Havens lives in Oregon. The affidavit of service shows that a person other than Havens was served notice of the suit. Mr. Soto-Navaro did not live in the abode. (R. p. 25 and R. p. 131; Lines 1-9). Havens did not receive the service of the suit.

Further, after the suit was filed and allegedly served, the record shows that the Appellant was only sent mail two times. The public index does not show that the

appellant was served the Notice of Sale. The Notice of Sale was only sent to the Plaintiff's attorney, the very party who brought the lawsuit.

The other service of mail (not process) was a letter from the Plaintiff's attorney who sent a "Notice of Hearing" via regular mail to Havens' old address on October 22, 2019 for a hearing scheduled to be heard on October 29, 2019, only seven days later. (R. p. 65).

Rule 6 (d) SCRCP, requires that ten days notice be given on a hearing or motion. The Respondent HOA only allowed seven days, and again, the notice was sent regular mail to Oregon, three thousand miles away.

Havens credibly denies any service whatsoever until she did not receive a rent check in December of 2019. (R. p. 25 and R. p. 130 lines 3-19).

Similarly, a Notice of Sale was not received by Havens. It is understood that Rule 71(a), SCRCP provides that the only parties who have appeared and filed pleadings in the [foreclosure] action shall be entitled to the usual notice of hearings and other proceedings to those not in default. (Rule 77 (d) SCRCP.) However, Chief Justice Beatty, in *Winrose Homeowners' Ass'n v. Hale*, 428 S.C. 563, 837 S.E.2d 47 (2019) stated in his concurring opinion, these words concerning service of process on a homeowner:

**"Additionally, I would require that a homeowner, who is in default, receive notice of the date and time of the foreclosure sale.** Homeownership is the quintessential American dream. Purchasing a home is the largest investment that most South Carolinians will make. To allow the hard-earned equity to be confiscated by a bidder's minimal investment is unconscionable. This is especially troubling when the foreclosure sale is the result of an HOA lien." (Bold emphasis added)

It is curious in this case whether the "Notice of Sale" was sent to Havens by the Plaintiff. In the hearing transcript of November 12, 2020, counsel for the Plaintiff states

that he sent her a notice of sale and also at the same time, he sent her (Havens) a master's report." (R. p. 118, lines 3-5). Counsel has supplied copy of a letter of transmittal to Havens, but there is no Notice of Sale in the Public Index (R. pp. 92-94). The only Notice of Sale that is filed in this matter was filed on February 28, 2020 at 10:14 a.m., the same date as the first Motion to Vacate hearing (R. p. 79).

It is not the purpose of this argument to ascertain whether an oversight by counsel or the lower Court occurred. The crux of the matter is that Havens was unaware of the proceedings. She was ready, willing and able to pay the HOA dues. In fact, she paid the 2019 taxes and the insurance on the property (R. p. 26).

When the motion to vacate was filed, Havens contested the service at the hearing held on February 28, 2020. She did that by affidavit (she was in Oregon) where she emphatically states:

"I was not served the papers on this matter. I have read the "affidavit of service" document that is filed in this case. While I lived at 12300 SW Center St. Apt. 10 in Beaverton Oregon during June of 2019, I am not engaged in any way, shape or form to Victor Soto-Navaro. He was a visitor at my apartment that day. He did not live there. Once I found out about this lawsuit, I asked him about receiving the suit papers. He barely remembers it; he didn't tell me about it.

In any case, I didn't get the suit papers. I also didn't know I owed anything to a homeowner's association. If I had known, I would have paid it. I pay for insurance and taxes. In fact, I just paid the 2019 taxes on the house.

I also believe my house is worth more than One Hundred Thousand (\$100,000.00) Dollars. This house is the only thing I have from my mother. I would never give it up. She worked very hard for many years to pay off this house. This house was one of her biggest

accomplishments in her lifetime. She wanted to make sure that if anything ever happened to her that I would be left with something. I would never let my property be sold for a few thousand dollars. I didn't know about the homeowner's dues. I can pay them." (R. pp. 25-26).

There was no mortgage. In fact, the income that the property produced allowed Havens to go to college and afford an apartment. (R. p. 134 lines 6-22). With that income gone, she has dropped out of college and moved to another, cheaper place to live. It makes no sense that Havens would know about a lawsuit, ignore it and lose her mother's legacy that she had worked so hard to accomplish.

Service of process in this case was inadequate at best and non-existent at worst. A serious miscarriage of justice has occurred in this equitable action, and equity demands that the sale be vacated.

**II. Whether the Trial Court erred in denying the Motion to Vacate sale because the sale price shocks the conscience of the court.**

The successful bid in the instant case both "shocks the conscience" of the court and may also be set aside by the power of this court. There are other accompanying circumstances warranting the vacating of this sale.

According to the *Poole* test, "[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, N.A. 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 (1943)); see also *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 542, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994) ("[A] foreclosure sale might also be set aside under

State foreclosure law if the price is so low as to ‘shock the conscience or raise a presumption of fraud or unfairness.’”

Courts in South Carolina have been setting aside judicial sales based on “grossly inadequate” sales prices. *Turner*, 378 S.C. at 151, 662 S.E.2d at 425. South Carolina courts “have consistently held that when foreclosure sale prices amount to less than ten percent of the actual value of the property, the discrepancy shocks the conscience of the court.” *Bloody Point Prop. Owners Ass’n, Inc. v. Ashton*, 410 S.C. 62, 71, 762 S.E.2d 729, 734 (Ct. App. 2014).

Since the above-cited cases were decided, the case of *Winrose Homeowners’ Ass’n v. Hale*, 428 S.C. 563, 837 S.E.2d 47 (2019) has further defined the law on HOA foreclosures.

First, value of the property is an element that was brought to the lower court’s attention in this case. Havens had an appraisal performed showing a value of Ninety-Three Thousand (\$93,000.00) Dollars (R. pp. 28-33). The appellant also put Eight Thousand (\$8,000.00) Dollars into the property,(R. p. 129 lines 5-6). Her belief was that the home was worth One Hundred (\$100,000.00) Dollars. (R. p. 133; lines 11-14).

Havens considered the accomplishment of her mother (paying off the house) to be significant. It was rented for Eight Hundred (\$800.00) Dollars per month. Only two months before the suit was filed, she hired Ray Covington Property Management to handle the property. (R. p. 127-132).

After the motion to vacate hearing of February 28, 2020, was denied in June of 2020, the Motion for Reconsideration was timely filed and then heard on November 12, 2020. Havens flew from Oregon to South Carolina for that hearing and testified about service of process and her investment (R. pp. 127-132). Her testimony, again, was credible and outlines her reasons for the value of the property and buttressed by an appraisal.

As to the percentage of bid that “shocks the conscience” of the court, South Carolina courts have not established a bright-line rule for that percentage of the sale price must be met with respect to the actual value of the property but in *Winrose* the Court pointed out: “Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b (“Generally, a court is warranted in invalidating a sale where the sale price is less than 20% of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount.”); *id.* at Reporter’s Note cmt. b (collecting cases from other jurisdictions that use different thresholds, ranging from 10% to 40% of the value of the foreclosed property” (Quoting *Winrose*, page 570).

Here, the amount of the bid was 9.3% of the value/equity of the home if the appraisal supplied by the appellant is used. It was the only written appraisal offered to the court other than the bidder’s opinions which were not backed up with any written document. If the above law quoted in *Winrose* by the Supreme Court is followed, the “bright line” for value may go as high as forty percent to shock the conscience of the court. A 9.3% bid is sufficient to shock the conscience of the court.

It should also be noted that since *Winrose*, a new process is being adopted by some counties. In the *South Carolina Foreclosure Law Manual Fourth Edition*, Chapter One, (page 48) states that “the Master-in-Equity notifies and requests that senior lien holders be invited to appear before the Equity Court in a HOA foreclosure case...to evaluate the possibility of the **homeowner/borrower** either (1) drawing funds to satisfy the delinquent HOA lien.” (bold emphasis added).

The new procedure includes (as shown above) that the homeowner/borrower is being

invited to satisfy the delinquent HOA lien. Clearly, the trial courts in South Carolina are aware of homeowner's loss of equity to HOA foreclosures which is the case here.

**III. Whether the Trial Court abused its discretion by failing to vacate the sale on equitable grounds.**

There are also equitable maxims that dictate that this sale should be vacated. "A mortgage foreclosure is an action in equity." *Regions Bank*, 394 S.C. 241, 248, 715 S.E.2d 348, 352. "Equitable principles are not binding legal precedent but represent notions and concepts of equity in various situations." *Id.* "The judicial process is the continuous effort on the part of the courts to state accurately these general rules, with their proper and necessary limitations and exceptions." *Id.* That said, in actions for equity, the courts have "the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983).

This case involves the consideration and balancing of several equitable maxims: equity will not suffer a wrong to be without a remedy; equity disfavors forfeitures; equity regards substance rather than form; equity looks to the intent rather than the form; and one who seeks equity must do equity. Case law in South Carolina also states that "there is no inconsistency in . . . pursuing two remedies. If one produces satisfaction that is a bar to the other." *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 36, 647 S.E.2d 214, 217-18 (2007). The lower court did not properly consider and weigh these principles in equity, and therefore its decision should be reversed.

If the sale is vacated, the Respondents have not been prejudiced. They have at a minimum collected rent on the property at \$800.00 per month for almost two years as this brief is written. (The rent being based on what the record shows the appellant was charging.) At twenty-four months, the rent would be Nineteen Thousand Two Hundred Dollars, a certain

profit for the investor, and by the time this matter is decided, a substantial return on the investment. Equity would dictate that the Havens have a property that her mother left her as a legacy.

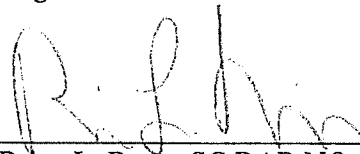
The HOA suffers no loss if the sale is vacated, and no harm if the sale is upheld. If the sale is allowed, the Respondent State Street Holdings will have a windfall and Haven's forfeiture will frustrate the principles of equity, which disfavors forfeiture.

### CONCLUSION

The lower court erred when it denied the Appellant's Motion to Vacate the Sale because the appellant was unaware of the lawsuit until after the sale; the sale price shocks the conscience of the court, and because equity demands that the decision be overturned. Therefore, the Master's decision should be overturned and the sale should be vacated.

Respectfully submitted,

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CERTIFICATE OF COUNSEL  
PURSUANT TO RULE 211(b) SCACR

The undersigned certifies that the Appellant’s Final Brief is in compliance with  
Rule 211(b) SCACR.

January 21, 2022

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