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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
Appellate Case No. 2021-000852

Ex Parte: Alecia Havens Plaintiff/Appellant,
vs.
State Street Holdings, LLC Respondent,

In Re:

AltaMonte Homeowners Association, Inc Respondent,
vs.
Alecia HavensAppellant.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE MASTER ABUSE HIS DISCRETION IN REFUSING TO VACATE THE SALE WHEN STATE STREET HOLDINGS IS A BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE PURSUANT BY S.C. CODE ANN. §15-39-870?

- II. DID THE MASTER ABUSE HIS DISCRETION IN REFUSING TO VACATE THE SALE BASED ON ALLEGED LACK OF NOTICE WHEN THAT ISSUE IS RES JUDICATA AND THERE IS FACTUAL SUPPORT THAT APPELLANT RECEIVED NOTICE OF THE PROCEEDING?

- III. DID THE MASTER ABUSE HIS DISCRETION IN REFUSING TO VACATE THE SALE BASED ON THE SALES PRICE WHEN THERE WAS FACTUAL SUPPORT FOR THE SALES PRICE EXCEEDING 25% OF THE ACTUAL VALUE OF THE PROPERTY UNDER EITHER THE DEBT OR EQUITY METHOD AND THERE WAS EVIDENCE THE PROPERTY NEEDED \$17,000 IN REPAIRS?

- IV. DID THE MASTER ABUSE HIS DISCRETION BY REFUSING TO VACATE THE SALE BASED ON GENERAL EQUITABLE GROUNDS WHEN EQUITY FOLLOWS THE LAW?

STANDARD OF REVIEW

The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court. *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct.App.2008). "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).

STATEMENT OF FACTS

Heather Allen (Appellant's mother) owned a home at 93 Walking Horse Way, Columbia South Carolina. The home is part of a planned unit development in the

Altamonte Phase III subdivision and was subject to a recorded Declaration of Covenants. Pursuant to the Declaration, each unit owner agreed to pay their pro-rata share of the common expenses in the form of monthly assessments. The Declaration further provided that failure to pay these assessments could result in a lien being filed against the unit which could be foreclosed by Respondent Altamonte Homeowners Association, Inc. (HOA). (R. 4-5)

Ms. Allen passed away on December 1, 2017, and her estate was opened and probated in Richland County by her daughter, Alecia Havens, the Appellant (Havens) who was appointed as Personal Representative and was the sole intestate heir. (2017-ES-40-2121). She was represented by attorney Thomas Kilpatrick in that proceeding. She released the property from the estate by deed of distribution recorded in Richland County Book 2352 at Page 2718 on November 27, 2018. (R. 38 (Derivation), R. 99)

On March 7, 2019 the HOA recorded Notice of Lien for Unpaid Assessments in the amount of \$1,164.50. (R. 7) This lien listed Havens as the property owner and listed Haven last known address. In April 2019, Havens retained Ray Covington Property Management to “rent out my property and keep me informed of any notices/bills that needed to be paid...” (R. 25)

The Lis Pendens, Summons and Complaint were filed on June 4, 2019 and 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. (R. 3-9) Havens did not

file an Answer or other responsive pleading to the Summons and Complaint. On July 09, 2019, the HOA filed affidavits of default and non-military service. (R.10-11)

Thereafter, on October 22, 2019, the Plaintiff sent Havens Notice of Hearing at the service address as shown by the Certificate of Service by Mail filed October 22, 2019. (R. 65-67) Havens did not appear at the merits hearing and the Honorable Joseph M. Strickland, as Master in Equity for Richland County issued a Master's Report and Judgment of Foreclosure and Sale on November 19, 2019. (R. 70-78) Thereafter, Plaintiff served a copy of the Master's Order on Havens along with a copy of the Notice of Sale. (R. 69-80)

The Notice of Sale was also 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 Equity Deed was issued on December 20, 2019 and recorded December 30, 2019 in Book 2457 at Page 2227. (R. 38-39)(R. 81-82)

On January 17, 2020, Defendant Havens submitted a claim of entitlement to surplus funds. (R.16-17) On February 4, 2020, State Street and Khan Legacy, LLC (Khan) entered into a Sales Contract for 93 Walking Horse Way. (R.41-43) This is an arms-length transaction between two sophisticated investors. The purchase price to be paid by the buyer was \$54,000.00. ((R. 82)

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 (R. 45); and an 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. (R. 35) 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. (R. 44) In response to State Street's request, the S.C. Department of Revenue expunged the lien on February 14, 2020. (R. 46) State Street, submitted a payoff request to Portfolio on February 4, 2020. (R. 47)

On February 4, 2020, Havens filed a motion to vacate the judicial sale for alleged improper service and inadequacy of price. (R. 18-22) The motion to vacate 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. (R.81-84) Havens filed a timely Motion for Reconsideration. (R. 86-87) That motion was heard on November 12, 2020 and denied on July 13, 2021. (R. 88-91) This Appeal was timely filed on August 9, 2021.

ARGUMENT

I. THE MASTER DID NOT ABUSE HIS DISCRETION IN REFUSING TO VACATE THE SALE BECAUSE STATE STREET HOLDINGS IS A BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE PURSUANT TO S.C. CODE ANN. §15-39-870.

Pursuant to S.C. Ann. §15-39-870,

[u]pon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of 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.

“The rationale for the statute is the well-established public policy of protecting good faith purchasers and upholding the finality of a judicial sale.” *Robinson v. Estate of Harris*, 378 S.C. 140, 144-45, 662 S.E.2d 420, 422 (Ct.App.2008) aff'd, 390 S.C. 272, 701 S.E.2d 740 (2010), (citing *Cumbie v. Newberry*, 251 S.C. 33, 37, 159 S.E.2d 915, 917(1968) (stating “a sound public policy requires the validity of judicial sales be upheld, if in reason and justice it can be done”).

In *Robinson* (like *Havens* in this case), the defaulting owner of the subject property sought to vacate the foreclosure sale due to ineffective service. 378 S.C. at 143, 662 S.E.2d at 421. The Court of Appeals noted the bona fide purchaser submitted documents from the court file demonstrating (1) service was made upon defendants; (2) both defendants were in default; (3) the attorneys of record were notified of the hearing; and (4) neither defendants were in the United States military service. *Id.* at 145, 662 S.E.2d at 423. The court further noted the purchaser had satisfied all of the elements to

be considered a bona fide purchaser for value: (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, without notice of a lien or defect.” Id. at 146, 662 S.E.2d at 423.

All of these same elements are present in this case and this court should likewise affirm the decision of the master to deny the motion to vacate the sale for the same reasons. Upon examining the file in this case, the master prior to issuing his judgment of foreclosure and sale and State Street as purchaser prior to making its bid would note the following on file with the court: An affidavit of service on the Defendant. (R. 9) While Havens contests service, what matters for bona fide purchaser status is that there is evidence of service on file from which the court and State Street could conclude service occurred. Havens did not file her affidavit or motion to vacate contesting service¹ (February 4, 2020) until over a month after State Street’s deed had been recorded. (December 30, 2019). (R. 18-22 vs. R. 38-39)) The court and State Street would also note affidavits of default and non-military service (R. 10-11); a letter and notice of hearing mailed to the Defendant’s last known address (R. 65-68); and a letter serving the Master’s Judgment of Foreclosure and Sale and Notice of Sale to the Defendant’s

¹ Havens did file a claim for surplus funds on January 17, 2020, but there was no reference to ineffective service in that claim. In any event, it was still after State Street’s deed was recorded.

address shown by the affidavit of service. (R. 69-80) Finally, the property was duly advertised as required by law. (R. 79, 81).

As to State Street, they actually paid the purchase price and complied with its successful bid; the Master issued the deed to State Street which was duly recorded; and all this took place before the Appellant Alecia Havens ever made an appearance in the case, therefore, State Street had no notice of any possible claims of ineffective service. (R. 38-39, 81-82)

The case of *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (S.C. App. 2014) is similar to this case and *Robinson*. In that case, the court quoted from the South Carolina Supreme Court opinion in *Gladden v. Chapman*, 106 S.C. 486, 91 S.E. 796, 797 (1917),

It must be presumed from the judgment rendered that the Court considered and adjudicated the regularity and sufficiency of each and every step in the proceedings leading up to it, including the sufficiency of the complaint, the issuance and service of process upon the defendants, and the rights and interests of the parties to the action under the allegations and evidence; and although the conclusions with respect to those matters, or any of them, might have been erroneous, so that they would have been reversed on appeal, they do not make the judgment void collaterally...

This court should follow the precedent in *Robinson* and *Bloody Point Prop. Assoc., Inc.* and find that the Master did not abuse his discretion in refusing to vacate the sale because State Street holdings is a bona fide purchaser for value without notice pursuant to S.C. Code Ann. §15-39-870.

II. THE MASTER DID NOT ABUSE HIS DISCRETION IN REFUSING TO VACATE THE SALE BASED ON ALLEGED LACK OF NOTICE BECAUSE THAT ISSUE IS RES JUDICATA AND THERE IS FACTUAL SUPPORT THE APPELLANT RECEIVED NOTICE OF THE PROCEEDING.

As set forth in the previous argument, State Street is a bona fide purchaser for value without any prior notice of any claimed defective service; therefore, the proceedings and service on Haven are considered res judicata. As noted by the court in *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (S.C. App. 2014), "In light of our finding the Fingerhuts were bona fide purchasers without notice, we need not address Appellants' argument regarding improper service. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding appellate court need not address remaining issues when disposition of prior issue is dispositive)."

However, in an abundance of caution, Respondents ask the court to note that there is factual support for service on Havens. Rule 4(d)(1) SCRCF provides for service, "Upon an individual ... by delivering a copy of the summons and complaint to him 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, or by delivering a copy to an agent authorized by appointment or by law to receive service of process." In his affidavit, Doug Issak, the process server testifies, "Substitute Served by leaving a true copy of a Summons and Complaint with Exhibits A and B at the within named person's usual place of abode with Victor Soto-Navarro (Fiance) who is a person residing

therein..." (R. 9) Havens admits that at the time of service she resided there (R. 25) , but denies Mr. Soto-Navaro was her fiancé or that he actually lived there. She does describe him as a "very close friend." (R. 136) It seems doubtful that the process server would insert the word "fiancé" on a whim. Further, Mr. Todd noted in his presentation to the master and in his supporting affidavit, "When we looked him up on the skip trace program we have, one of his addresses was her address." (R. 117)

Furthermore, in addition to service, as part of the record, there are letters and certificates of service of notice to Havens of the foreclosure hearing (R. 65-67), the foreclosure sale and the foreclosure judgment. (R. 69-80) Mr. Todd noted that none of these letters were returned undeliverable. (R. 61) Further, it was incumbent upon Havens to ensure everyone had her current address including the taxing authorities and the HOA. Havens states that she did not know about the delinquent regime payments; however, she was appointed as the personal representative of her mother's estate and would have listed the property in the inventory and she also transferred the property to herself. (R. 99) Havens also hired a property management company to manage this as rental property for her prior to the foreclosure and sale. (R. 25)

The court does not have to decide these issues related to service. They have already been decided and are res judicata. Under an abuse of discretion standard, all the court needs to find is any factual support for the master's conclusions. Here as

previously discussed, there is ample factual support for service on and notice to Havens.

This court should find that the master did not abuse his discretion in refusing to vacate the sale based on alleged lack of notice because that issue is res judicata and there is factual support that Havens received notice of the proceeding.

III. THE MASTER DID NOT ABUSE HIS DISCRETION IN REFUSING TO VACATE THE SALE BASED ON THE SALES PRICE WHEN THERE IS FACTUAL SUPPORT FOR THE SALES PRICE EXCEEDING 25% OF THE ACTUAL VALUE OF THE PROPERTY UNDER EITHER THE DEBT OR EQUITY METHOD AND THERE IS EVIDENCE THE PROPERTY NEEDED \$17,000 IN REPAIRS.

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 Havens motion, State Street entered an arms-length sales contract with a third party for \$54,000.00. (R. 41-43, 82)

Defendant Havens argues the fair market value of the property is \$93,000.00. She bases her argument on an "drive by" appraisal conducted by Lee L. Jennings on January 27, 2020. (R. 27-33) Mr. Jennings states in his appraisal on Page 1 that his appraisal is "based on exterior only inspection from the street." (R. 28) It is unlikely an exterior only appraisal conducted from the street could accurately determine the fair market value of a rental property. However as shown by what follows, using either value and either method, the \$10,000 bid price exceeds the 10% threshold that court's consistently require to "shock the conscience" of the court.

First, under the Debt Method, State Street would need to add to the \$10,000 bid price, the \$13,634.06 Portfolio judgment lien and the \$596.65 state tax lien for a Debt incurred basis of \$24,230.71. (R. 44-47) Compared to a \$54,000 fair market value, this yields a percentage of approximately 45% in debt incurred to value ratio. If you use

Havens value (\$93,000), then it would be approximately 26% in debt incurred to value ratio. Either one of these values is well in excess of the 10% threshold.

Second, under the Equity Method, you would subtract the lien amounts from property value resulting in \$39,769.29 in equity for the \$54,000 value and \$78,769.09 in equity for the \$93,000 value. This would yield a bid equal to 25% of the equity for the \$54,000 value and 13% of the equity of the property were worth \$93,000. Indeed, even if you were to ignore the outstanding liens entirely, the bid price would still be more than 10% of the value of the property.

Thus, no matter which method or which value the court chooses, the resulting purchase price exceeds the threshold whereby the court's consistently holds the price shocks the conscience.

Furthermore, there was testimony that the property was in bad shape and in need of substantial repair. Patrick Sumerell, a principal of State Street has been in the business of buying and selling distressed real estate, rehabilitating the property, and reselling to the public for over fifteen years. He testifies in his affidavit, "I did note that there is a leak in the in the attic which appears to be coming from the roof. Water is flowing down an interior wall. This is causing the sheetrock to separate from the wall studs and there appears to be mold growing behind the wall in the master bedroom. The seal on the exterior window in the master bedroom is broken which has caused the window panes to fog, and the window frame is not attached securely to the building.

The rear door unit is rotted and needs to be replaced along with all the trim. The entire interior needs to be painted and new floor coverings are needed. Neither the dishwasher nor the disposal is working and both need to be replaced. The countertops are in poor condition and need to be replaced. Based on my experience, it will cost seventeen thousand dollars (\$17,000) to repair his house and make it habitable.” (R. 56) None of these conditions could be observed or noted by the Appellant’s appraiser who performed an exterior only appraisal from the street.

Again, under the abuse of discretion standard, there is ample factual support for master’s conclusion that the sales price does not shock the conscience.

IV. THE MASTER DID NOT ABUSE HIS DISCRETION BY FOLLOWING THE LAW AND REFUSING TO VACATE THE SALE ON GENERAL EQUITABLE GROUNDS.

Finally, Appellant’s claim must also fail on equitable grounds. Equity follows the law, and as previously argued, both the statutory and common law confirm that the sale should not be vacated. Havens potentially has a remedy in that she hired a property management firm to rent her property and in her words, “keep me informed of any notices/bills that needed to be paid...” (R. 25) Presumably it was the duty of her management company to notify her the property is part of a homeowners association and to advise her to pay regime fees or to deduct that from the rental payments from the property. Finally, Havens argues that Respondents would not be prejudiced; however, this claim is based on speculative calculations based on the rental income

Appellant previously received from her management company. The record reflects that after the foreclosure sale, the tenant ceased paying rent. (R. 40) Furthermore, at the time the Appellant filed her motion, Respondent State Street had already contracted to sell the property to another party². (R. 41-43, 137) As to the HOA, they have already incurred expense in the foreclosure and defending this appeal, if the sale is set aside, and Havens fails to pay these expenses, the HOA will be forced to repeat the foreclosure process and incur these expenses all over again. Thus, Respondents would be prejudiced if the sale was set aside.

This court should affirm the master's refusal to set aside the sale on general equitable grounds.

CONCLUSION

State Street is a bona fide purchaser for value at the judicial sale without notice of Appellant's claims filed after the Master-in-Equity deed was issued and recorded. The proceedings are res judicata and there is factual support in the record that Appellant was served with the Summons and Complaint, received notice of the hearing, notice of the sale and a copy of the Master's Judgment of Foreclosure and Sale. Appellant did not make an appearance until she filed a claim for surplus funds. There is factual support in the record that the purchase price exceeds the 10% threshold under which the courts

² As was noted by State Street's counsel and the hearing on the motion for reconsideration, this contract for sale was closed at a reduced price, \$52,000 because of the delay caused by the motion. (R.137)

consistently set aside judicial sales as shocking the conscience. Equity follows the law, and the master did not abuse his discretion in denying Appellant's motion on general equitable grounds.

For all these reasons under the applicable standard of review, this court should protect good faith purchasers and uphold the finality of a judicial sales and affirm that the master did not abuse his discretion in refusing to vacate the judicial sale.

Respectfully submitted,

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State Street Holdings, LLC Respondent,

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AltaMonte Homeowners Association, Inc Respondent,

vs.

Alecia HavensAppellant.

**CERTIFICATE OF COUNSEL
PURSUANT TO RULE 211(b) SCACR**

The undersigned certifies that the Respondents' Final Brief is in compliance with Rule 211(b) SCACR.

January 24, 2022

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