

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROOSEVELT SIMMONS,

Plaintiff,

v.

MASE AND COMPANY, LLC, J. AL
CANNON, JR., CHARLESTON COUNTY
SHERIFF'S OFFICE, CHARLESTON
COUNTY, CHARLESTON COUNTY
REVENUE COLLECTIONS
DEPARTMENT, and HARRY LONG,

Defendants,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: ~~2012~~-CP-10-1084

2011-

DEFENDANTS J. AL CANNON, JR.
CHARLESTON COUNTY SHERIFF'S
OFFICE, CHARLESTON COUNTY
CHARLESTON COUNTY REVENUE
COLLECTIONS DEPARTMENT, and
HARRY LONG'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION TO AMEND SECOND
AMENDED COMPLAINT

2012 AUG 14 PM 12:50
FILED
BY JULIE J. ARMSTRONG
CLERK OF COURT

Defendants, J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S OFFICE, CHARLESTON COUNTY, CHARLESTON COUNTY REVENUE COLLECTIONS DEPARTMENT, and HARRY LONG ("Defendants") file this Memorandum in Opposition to Plaintiff's Motion to Amend Second Amended Complaint. Plaintiff seeks to add a cause of action regarding "Inadequacy of Sale Price," and Defendants oppose this motion on the basis that Plaintiff lacks standing to bring this cause of action.

RELEVANT STATEMENT OF FACTS¹

Plaintiff owned property on Johns Island that was subject to the County mandated Solid Waste Recycling and Disposal User Fee ("User Fee"). For many years, Plaintiff refused to pay the User Fee based on the mistaken belief that, if he did not get trash pick-up, he did not have to pay the

¹ For a more complete Statement of Facts, Defendants would incorporate their Memorandum in Support of Defendants' Motion for Summary Judgment previously filed with this Court.

User Fee. Deposition Roosevelt Simmons, 55:11 - 56:13 (October 10, 2011). Due to non-payment and pursuant to South Carolina Statute and Charleston County Ordinance, the Charleston County Business License User Fee Department (“User Fee Department”) instituted its first of several actions against Plaintiff in 2000 in the Charleston County Magistrate Court. The Summons and Complaint were served on Plaintiff. (See Exhibit A and B). Plaintiff did not respond to the Complaint, was not present at the hearing, and a judgment was entered against him.

In our current case, the judgment from 2000 was sent to the Sheriff’s Office in 2009 for levy and execution. Deposition Harry Long, 22:12 - 23:23 (September 22, 2011). Plaintiff was sent multiple letters concerning the judgment and was personally served with the Notice of the Sheriff’s Sale; however, Plaintiff did not attend the sale and the property was sold to the highest bidder for \$600. Plaintiff now seeks to assert a cause of action for Inadequacy of Sale Price claiming that the fair market value of the property is \$70,000.

ARGUMENT

I. Plaintiff lacks standing to bring this cause of action as he was not a real party in interest.

In order to assert a claim against a defendant and to have standing, a plaintiff must be a real party in interest. Bardoon Properties, NV v. Eidolon Corp., 326 S.C. 166, 485 S.E.2d 371, (1997).

The South Carolina Supreme Court has explained:

A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a real party in interest. A real party in interest ... is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.

Government Employee's Ins. Co., Ex parte, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007) (citations and internal quotations omitted). With regard to why a plaintiff must be a real party in interest, the

South Carolina Supreme Court held:

The purpose of a real party in interest provision is to assure that a defendant is required only to defend an action brought by a proper party and that such an action need be defended only once. The right of a plaintiff to maintain a suit, while frequently treated as going to the question of jurisdiction, goes, in reality, to the right of the plaintiff to relief rather than to the jurisdiction of the court to afford it.

Bardoon Properties, 326 S.C. at 169. (citations omitted).

In order for Plaintiff to maintain a cause of action for Inadequacy of Sale Price, Plaintiff must be a real party in interest. Several South Carolina cases have dealt with this cause of action and in each case, the person or entity bringing the cause of action had a right to relief and was a real party in interest. A review of those cases indicates that Plaintiff, in our current case, is not a real party in interest.

Eastern Savings Bank, FSB. v. Sanders, 373 S.C. 349, 644 S.E.2d 802 (2007) involved a bank moving to set aside property that was foreclosed upon and sold at a judicial sale. The basis for the motion was that the bank had made a mistake in the bidding process and the property was sold at a much lower price than expected. Id. at 352-353. The bank wanted the sale set aside and the foreclosed property resold, but the court found the price adequate and did not set aside the sale. Id. at 360.

Both Poole v. Jefferson Standard Life Ins. Co., 174 S.C. 150, 177 S.E. 24 (1934) and Investors Savings Bank v. Phelps, 303 S.C. 15, 397 S.E.2d 780 (Ct.App.1990) involved cases where mortgage companies sought to set aside sales of foreclosed properties. Paslay v. Byars, 230 S.C.55, 94 S.E.2d 57 (1956) did not involve a mortgage company attempting to sell foreclosed property, but rather involved a partition of property. The property was sold at a judicial sale, but one interested

buyer was unable to attend the sale due to mechanical problems with his car. Id. at 57-58. The interested buyer, not the owner of the property, sought to set aside the sale.

In all four of these cases, the party seeking to set aside the sale was a real party in interest, and importantly, none of them were the owners of the property being sold. In examining who is a real party in interest, the South Carolina Supreme Court has explained that it is not a question of jurisdiction, but rather whether the Plaintiff has a right to relief. Bardoon Properties, 326 S.C. at 169. The mortgage companies in the above cases sought to set aside the inadequate sales in an effort to have the foreclosed properties resold and recoup more of their investment. In the Palsay case, the party seeking to set aside the sale was a person who intended to bid on the property, but could not do so due to mechanical difficulty with his automobile. He would have benefitted from the resale of the property as he would have been able to bid at the second sale.

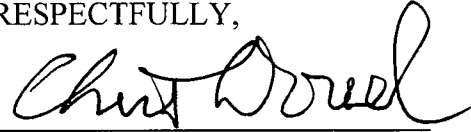
In our current case, Plaintiff, as the owner of the property, is not a real party in interest. The real party in interest to assert a claim for inadequacy of price would be the User Fee Department. Here, Plaintiff has no right to relief. If this court were to set aside the sale, the property would not be returned to Plaintiff, but rather the property will simply be resold to the highest bidder. In essence, Plaintiff does not have the right to force the parties to the previous sale to resell the property.

Further, Plaintiff gives no reason as to why he chose not to attend the first Sheriff's Sale and also gives no reason as to why he did not timely object to the sale of the property. Rather, two years after the sale of the property and after two years of another individual paying all applicable taxes and fees for the property, Plaintiff asks the Court to sit as a court of equity and adjudge the sale price to be inadequate. Defendants submit that Plaintiff has waived this right.

CONCLUSION

Defendants submit that Plaintiff's Motion to Amend should be denied as he is not the real party in interest and therefore lacks standing. In the alternative, Plaintiff has waived his right to claim that the sale was inadequate due to not timely objecting to the sale of the property.

RESPECTFULLY,



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Long

August 14, 2012

Charleston, South Carolina