# Judicial Merit Selection Commission



Erin B. Crawford, Chief Counsel
Emma Dean, Counsel

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Columbia, South Carolina 29202
(803) 212-6623

## MEDIA RELEASE

June 27, 2017

The Judicial Merit Selection Commission is accepting applications for the judicial offices listed below:

The term of office currently held by the Honorable John W. Kittredge, Justice of the Supreme Court, Seat 3, will expire July 31, 2018.

The term of office currently held by the Honorable Thomas E. Huff, Judge of the Court of Appeals, Seat 8, will expire June 30, 2018.

A vacancy exists in the office formerly held by the Honorable George C. "Buck" James Jr., Judge of the Circuit Court, Third Judicial Circuit, Seat 2, upon his election to the Supreme Court, Seat 1. The successor will serve the remainder of the unexpired term, which expires June 30, 2018, and the subsequent full term which will expire June 30, 2024.

The term of office currently held by the Honorable Roger E. Henderson, Judge of the Circuit Court, Fourth Judicial Circuit, Seat 2, will expire June 30, 2018.

The term of office currently held by the Honorable L. Casey Manning, Judge of the Circuit Court, Fifth Judicial Circuit, Seat 2, will expire June 30, 2018.

The term of office currently held by the Honorable Grace Gilchrist Knie, Judge of the Circuit Court, Seventh Judicial Circuit, Seat 2, will expire June 30, 2018.

The term of office currently held by the Honorable Eugene C. Griffith Jr., Judge of the Circuit Court, Eighth Judicial Circuit, Seat 2, will expire June 30, 2018.

The term of office currently held by the Honorable Kristi Lea Harrington, Judge of the Circuit Court, Ninth Judicial Circuit, Seat 2, will expire June 30, 2018.

The term of office currently held by the Honorable R. Scott Sprouse, Judge of the Circuit Court, Tenth Judicial Circuit, Seat 2, will expire June 30, 2018.

The term of office currently held by the Honorable William Paul Keesley, Judge of the Circuit Court, Eleventh Judicial Circuit, Seat 1, will expire June 30, 2018.

A vacancy will exist in the office currently held by the Honorable R. Knox McMahon, Judge of the Circuit Court, Eleventh Judicial Circuit, Seat 2, upon his retirement on or before June 30, 2018. The successor will serve a new term of that office, which expires June 30, 2024.

The term of office currently held by the Honorable Michael G. Nettles, Judge of the Circuit Court, Twelfth Judicial Circuit, Seat 1, will expire June 30, 2018.

The term of office currently held the Honorable Letitia H. Verdin, Judge of the Circuit Court, Thirteenth Judicial Circuit, Seat 2, will expire June 30, 2018.

A vacancy exists in the office formerly held by the Honorable David Garrison "Gary" Hill, Judge of the Circuit Court, Thirteenth Judicial Circuit, Seat 4, upon his election to the Court of Appeals, Seat 9. The successor will serve the remainder of the unexpired term, which expires June 30, 2022.

The term of office currently held by the Honorable Perry M. Buckner III, Judge of the Circuit Court, Fourteenth Judicial Circuit, Seat 1, will expire June 30, 2018.

A vacancy will exist in the office currently held by the Honorable John C. Hayes III, Judge of the Circuit Court, Sixteenth Judicial Circuit, Seat 1, upon his retirement on or before December 31, 2017. The successor will serve the remainder of the unexpired term, which expires June 30, 2022.

A vacancy exists in the office formerly held by the late Honorable Tanya A. Gee, Judge of the Circuit Court, At-Large, Seat 9. The successor will serve the remainder of the unexpired term, which expires June 30, 2021.

A vacancy will exist in the office currently held by the Honorable Dale Moore Gable, Judge of the Family Court, Second Judicial Circuit, Seat 2, upon her retirement on or before July 1, 2018. The successor will serve the remainder of the unexpired term, which expires June 30, 2019.

A vacancy exists in the office formerly held by the Honorable George Marion McFaddin Jr., Judge of the Family Court, Third Judicial Circuit, Seat 1, upon his election to the Circuit Court, At-Large, Seat 1. The successor will serve the remainder of the unexpired term, which expires June 30, 2022.

A vacancy will exist in the office currently held by the Honorable W. Thomas Sprott Jr., Judge of the Family Court, Sixth Judicial Circuit, Seat 2, upon his retirement on or before

December 31, 2017. The successor will serve the remainder of the unexpired term, which expires June 30, 2020.

A vacancy will exist in the office currently held by the Honorable Joseph W. McGowan III, Judge of the Family Court, Eighth Judicial Circuit, Seat 1 upon his retirement on or before October 1, 2017. The successor will serve the remainder of the unexpired term, which expires June 30, 2019.

A vacancy will exist in the office currently held by the Honorable Deborah Neese, Judge of the Family Court, Eleventh Judicial Circuit, Seat 2, upon her retirement on or before July 8, 2017. The successor will serve the remainder of the unexpired term, which expires June 30, 2019.

A vacancy will exist in the office currently held by the Honorable A. Eugene Morehead III, Judge of the Family Court, Twelfth Judicial Circuit, Seat 2, upon his retirement on or before December 31, 2018. The successor will serve the remainder of the unexpired term, which expires June 30, 2019.

The term of office currently held by the Honorable Shirley C. Robinson, Judge of the Administrative Law Court, Seat 5, will expire June 30, 2018.

A vacancy will exist in the office currently held by the Honorable S. Jackson Kimball, Master-in-Equity, York County, Sixteenth Circuit, upon his retirement on or before June 30, 2018. The successor will serve the remainder of the unexpired term, which expires June 30, 2021.

A vacancy will exist in the newly created seat for Master-in-Equity of Florence County, Twelfth Circuit. The term will be from July 1, 2017 until June 30, 2023.

In order to receive application materials, a prospective candidate must notify the Commission in writing of his or her intent to apply. Correspondence and questions should be directed to the Judicial Merit Selection Commission as follows:

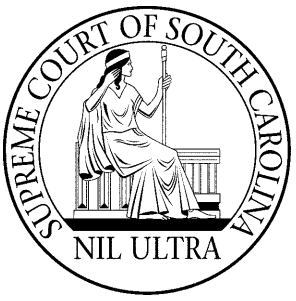
Erin B. Crawford, Chief Counsel
Post Office Box 142
Columbia, South Carolina 29202
ErinCrawford@scsenate.gov
(803) 212-6689

or

Lindi Legare, JMSC Administrative Assistant at (803) 212-6623 or LindiLegare@scsenate.gov.

**The Commission will not accept applications after 12:00 noon on Monday, July 31, 2017.**

For further information about the Judicial Merit Selection Commission and the judicial screening process, you may access the Commission website at http://www.scstatehouse.gov/JudicialMeritPage/JMSCMainPage.php.




# OPINIONS

## OF

# THE SUPREME COURT

## AND

# COURT OF APPEALS

## OF

# SOUTH CAROLINA

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**ADVANCE SHEET NO. 25**
**June 28, 2017**
**Daniel E. Shearouse, Clerk**
**Columbia, South Carolina**
**www.sccourts.org**

## CONTENTS

## THE SUPREME COURT OF SOUTH CAROLINA

## PUBLISHED OPINIONS AND ORDERS



## UNPUBLISHED OPINIONS

None

## PETITIONS - UNITED STATES SUPREME COURT



## EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI



## PETITIONS FOR REHEARING

27720 - Paula Fulbright, et al. v. Spinnaker Resorts, Inc.
and
Paul Chenard v. Hilton Head Island Development — Pending

## The South Carolina Court of Appeals

### PUBLISHED OPINIONS



### UNPUBLISHED OPINIONS

2017-UP-264-Jerry Hogan v. Corder and Sons, Inc.

2017-UP-265-Genesie Fulton v. L. William Goldstein, M.D.

2017-UP-266-TD Bank, N.A. v. Sunil V. Lalla

## PETITIONS FOR REHEARING

| | |
|---|---|
| 5475-Sara Y. Wilson v. Charleston Cty. School Dt. | Denied 06/23/17 |
| 5476-State v. Clyde B. Davis | Denied 06/20/17 |
| 5477-Otis Nero v. SCDOT | Pending |
| 5479-Mark M. Sweeney v. Irene M. Sweeney | Denied 06/23/17 |
| 5482-William Henry Chapman v. SCDSS | Pending |
| 5483-State v. Shannon Scott | Pending |
| 5485-State v. Courtney S. Thompson and Robert A. Guinyard | Pending |
| 5486-S.C. Public Interest v. John Courson | Denied 06/23/17 |
| 5487-State v. Toaby Alexander Trapp | Denied 06/23/17 |
| 5488-Linda Gibson v. Ameris Bank | Pending |
| 5489-State v. Eric T. Spears | Pending |
| 5490-Anderson Cty. v. Joey Preston | Pending |
| 2017-UP-133-Dealer Services Corp. v. Total, Inc. | Denied 06/23/17 |
| 2017-UP-144-Wanda Mack v. Carmen Gates | Denied 06/23/17 |
| 2017-UP-158-State v. Rion M. Rutledge | Pending |
| 2017-UP-169-State v. David Lee Walker | Denied 06/23/17 |
| 2017-UP-192-David Johnson v. Mark Keel | Pending |
| 2017-UP-193-John Gregory v. Mark Keel | Pending |

| | |
|---|---|
| 2017-UP-194-Mansy McNeil v. Mark Keel | Pending |
| 2017-UP-195-Edward Green v. Mark Keel | Pending |
| 2017-UP-196-SCDSS v. Carol Barzilay | Pending |
| 2017-UP-201-State v. Jarret Graddick | Pending |
| 2017-UP-208-Estate of Willie Weekley v. L. C. Weekley | Pending |
| 2017-UP-209-Jose Maldonado v. SCDC (2) | Denied 06/23/17 |
| 2017-UP-215-Sandy Chamblee v. Anderson Cty. Fire Dep't | Pending |
| 2017-UP-217-Clarence B. Jenkins, Jr. v. SCDEW | Pending |
| 2017-UP-225-State v. Joseph T. Rowland | Pending |
| 2017-UP-227-Arrowpoint Capital Corp. v. SC Second Injury Fund (3) | Pending |
| 2017-UP-228-Arrowpoint Capital Corp. v. SC Second Injury Fund (2) | Pending |
| 2017-UP-229-Arrowpoint Capital Corp. v. SC Second Injury Fund | Pending |
| 2017-UP-234-Suntrust v. Mark Ostendorff | Pending |
| 2017-UP-233-Martha Perez v. Alice Manufacturing | Pending |

**PETITIONS-SOUTH CAROLINA SUPREME COURT**

| | |
|---|---|
| 5253-Sierra Club v. Chem-Nuclear | Pending |
| 5326-Denise Wright v. PRG | Pending |
| 5328-Matthew McAlhaney v. Richard McElveen | Pending |
| 5355-State v. Lamar Sequan Brown | Pending |
| 5368-SCDOT v. David Powell | Pending |
| 5374-David M. Repko v. County of Georgetown | Pending |

| | |
|---|---|
| 5375-Mark Kelley v. David Wren | Denied 06/16/17 |
| 5381-State v, Justin McBride | Denied 06/16/17 |
| 5382-State v. Marc A. Palmer | Pending |
| 5387-Richard Wilson v. Laura B. Willis | Pending |
| 5388-Vivian Atkins v. James R. Wilson, Jr. | Pending |
| 5391-Paggy D. Conits v. Spiro E. Conits | Pending |
| 5393-SC Ins. Reserve Fund v. East Richland | Pending |
| 5398-Claude W. Graham v. Town of Latta | Pending |
| 5403-Virginia Marshall v. Kenneth Dodds | Pending |
| 5406-Charles Gary v. Hattie M. Askew | Pending |
| 5411-John Doe v. City of Duncan | Pending |
| 5414-In the matter of the estate of Marion M. Kay | Pending |
| 5415-Timothy McMahan v. SC Department of Education | Pending |
| 5416-Allen Patterson v. Herb Witter | Pending |
| 5417-Meredith Huffman v. Sunshine Recycling | Pending |
| 5418-Gary G. Harris v. Tietex International, Ltd. | Pending |
| 5419-Arkay, LLC v. City of Charleston | Pending |
| 5420-Darryl Frierson v. State | Pending |
| 5421-Coastal Federal Credit v. Angel Latoria Brown | Pending |
| 5424-Janette Buchanan v. S.C. Property and Casualty Ins. | Pending |
| 5428-State v. Roy L. Jones | Pending |
| 5430-Wilfred Allen Woods v. Etta Catherine Woods | Pending |

| | |
|---|---|
| 5431-Lori Stoney v. Richard Stoney | Pending |
| 5432-Daniel Dorn v. Paul Cohen | Pending |
| 5433-The Winthrop University Trustees v. Pickens Roofing | Pending |
| 5434-The Callawassie Island v. Ronnie Dennis | Pending |
| 5435-State v. Joshua W. Porch | Pending |
| 5436-Lynne Vicary v. Town of Awendaw | Pending |
| 5438-The Gates at Williams-Brice v. DDC Construction Inc. | Pending |
| 5441-State v. David A. Land | Pending |
| 5442-Otha Delaney v. First Financial | Pending |
| 5443-State v. Steven Hoss Walters, Jr. | Pending |
| 5444-Rose Electric v. Cooler Erectors of Atlanta | Pending |
| 5446-State v. Rickey Mazique | Pending |
| 5447-Rent-A-Center v. SCDOR | Pending |
| 5448-Shanna Kranchick v. State | Pending |
| 5449-A. Marion Stone III v. Susan B. Thompson | Pending |
| 5450-Tzvetelina Miteva v. Nicholas Robinson | Pending |
| 5451-Pee Dee Health v. Estate of Hugh Thompson, III (3) | Pending |
| 5452-Frank Gordon, Jr. v. Donald W. Lancaster | Pending |
| 5453-Karen Forman v. SCDLLLR (3) | Pending |
| 5454-Todd Olds v. City of Goose Creek | Pending |
| 5455-William Montgomery v. Spartanburg County | Pending |

| | |
|---|---|
| 5456-State v. Devin Johnson | Pending |
| 5458-William Turner v. SAIIA Construction | Pending |
| 5460-Frank Mead, III, v. Beaufort Cty. Assessor | Pending |
| 5462-In the matter of the Estate of Eris Singletary Smith | Pending |
| 5464-Anna D. Wilson v. SCDMV | Pending |
| 5469-First Citizens Bank v. Park at Durbin Creek | Pending |
| 5472-SCDSS v. Andrew Myers | Granted 06/16/17 |
| 5473-State v. Alexander Carmichael Huckabee, III | Pending |
| 5475-Sara Y. Wilson v. Charleston Co. School District | Pending |
| 2015-UP-330-Bigford Enterprises v. D. C. Development | Pending |
| 2015-UP-466-State v. Harold Cartwright, III | Pending |
| 2015-UP-547-Evalena Catoe v. The City of Columbia | Pending |
| 2016-UP-052-Randall Green v. Wayne Bauerle | Pending |
| 2016-UP-056-Gwendolyn Sellers v. Cleveland Sellers, Jr. | Pending |
| 2016-UP-068-State v. Marcus Bailey | Pending |
| 2016-UP-109-Brook Waddle v. SCDHHS | Pending |
| 2016-UP-132-Willis Weary v. State | Pending |
| 2016-UP-135-State v. Ernest M. Allen | Pending |
| 2016-UP-137-Glenda R. Couram v. Christopher Hooker | Pending |
| 2016-UP-138-McGuinn Construction v. Saul Espino | Pending |
| 2016-UP-139-Hector Fragosa v. Kade Construction | Pending |
| 2016-UP-141-Plantation Federal v. J. Charles Gray | Pending |

| | |
|---|---|
| 2016-UP-158-Raymond Carter v. Donnie Myers | Pending |
| 2016-UP-184-D&C Builders v. Richard Buckley | Pending |
| 2016-UP-199-Ryan Powell v. Amy Boheler | Pending |
| 2016-UP-206-State v. Devatee Tymar Clinton | Pending |
| 2016-UP-261-Samuel T. Brick v. Richland Cty. Planning Comm'n | Pending |
| 2016-UP-268-SCDSS v. David and Kimberly Wicker | Denied 06/16/17 |
| 2016-UP-274-Bayview Loan Servicing v. Scott Schledwitz | Pending |
| 2016-UP-276-Hubert Bethune v. Waffle House | Pending |
| 2016-UP-280-Juan Ramirez v. Progressive Northern | Pending |
| 2016-UP-315-State v. Marco S. Sanders | Pending |
| 2016-UP-320-State v. Emmanual M. Rodriguez | Pending |
| 2016-UP-325-National Bank of SC v. Thaddeus F. Segars | Pending |
| 2016-UP-330-State v. William T. Calvert | Pending |
| 2016-UP-331-Claude Graham v. Town of Latta (2) | Denied 06/16/17 |
| 2016-UP-338-HHH Ltd. of Greenville v. Randall S. Hiller | Pending |
| 2016-UP-340-State v. James Richard Bartee, Jr. | Pending |
| 2016-UP-351-Tipperary Sales v. S.C. Dep't of Transp. | Pending |
| 2016-UP-352-State v. Daniel W. Spade | Denied 06/16/17 |
| 2016-UP-366-In Re: Estate of Valerie D'Agostino | Pending |
| 2016-UP-367-State v. Christopher D. Campbell | Pending |
| 2016-UP-368-Overland, Inc. v. Lara Nance | Pending |

| | |
|---|---|
| 2016-UP-382-Darrell L. Goss v. State | Pending |
| 2016-UP-392-Joshua Cramer v. SCDC (2) | Pending |
| 2016-UP-395-Darrell Efird v. The State | Pending |
| 2016-UP-402-Coves Darden v. Francisco Ibanez | Pending |
| 2016-UP-403-State v. Arthur Moseley | Pending |
| 2016-UP-404-George Glassmeyer v. City of Columbia (2) | Pending |
| 2016-UP-406-State v. Darryl Wayne Moran | Pending |
| 2016-UP-408-Rebecca Jackson v. OSI Restaurant Partners | Pending |
| 2016-UP-411-State v. Jimmy Turner | Pending |
| 2016-UP-413-SCDSS v. Salisha Hemphill | Pending |
| 2016-UP-421-Mark Ostendorff v. School District of Pickens | Pending |
| 2016-UP-424-State v. Daniel Martinez Herrera | Pending |
| 2016-UP-430-State v. Thomas James | Pending |
| 2016-UP-431-Benjamin Henderson v. Patricia Greer | Pending |
| 2016-UP-436-State v. Keith D. Tate | Pending |
| 2016-UP-447-State v. Donte S. Brown | Pending |
| 2016-UP-448-State v. Corey J. Williams | Pending |
| 2016-UP-452-Paula Rose v. Charles Homer Rose, II | Pending |
| 2016-UP-454-Gene Gibbs v. Jill R. Gibbs | Pending |
| 2016-UP-461-Melvin T. Roberts v. Mark Keel | Pending |
| 2016-UP-473-State v. James K. Bethel, Jr. | Pending |
| 2016-UP-475-Melissa Spalt v. SCDMV | Pending |

| | |
|---|---|
| 2016-UP-479-State v. Abdul Furquan | Pending |
| 2016-UP-482-SCDSS v. Carley J. Walls | Granted 06/16/17 |
| 2016-UP-483-SCDSS v. Mattie Walls | Granted 06/16/17 |
| 2016-UP-485-Johnson Koola v. Cambridge Two (2) | Pending |
| 2016-UP-486-State v. Kathy Revan | Pending |
| 2016-UP-487-Mare Baracco v. Beaufort Cty. | Pending |
| 2016-UP-489-State v. Johnny J. Boyd | Pending |
| 2016-UP-515-Tommy S. Adams v. The State | Pending |
| 2016-UP-519-Live Oak Village HOA v. Thomas Morris | Pending |
| 2016-UP-527-Grange S. Lucas v. Karen A. Sickinger | Pending |
| 2016-UP-528-Betty Fisher v. Bessie Huckabee and Lisa Fisher v. Betty Huckabee | Pending |
| 2016-UP-529-Kimberly Walker v. Sunbelt | Pending |
| 2017-UP-002-Woodruff Road v. SC Greenville Hwy. 146 | Pending |
| 2017-UP-009-In the matter of Daryl Snow | Pending |
| 2017-UP-013-Amisub of South Carolina, Inc. v. SCDHEC | Pending |
| 2017-UP-015-State v. Jalann Williams | Pending |
| 2017-UP-017-State v. Quartis Hemingway | Pending |
| 2017-UP-021-State v. Wayne Polite | Pending |
| 2017-UP-022-Kenneth W. Signor v. Mark Keel | Pending |
| 2017-UP-025-State v. David Glover | Pending |
| 2017-UP-026-State v. Michael E. Williams | Pending |

| | |
|---|---|
| 2017-UP-028-State v. Demetrice R. James | Pending |
| 2017-UP-029-State v. Robert D. Hughes | Pending |
| 2017-UP-031-FV-I, Inc. v. Bryon J. Dolan | Pending |
| 2017-UP-037-State v. Curtis Brent Gorny | Pending |
| 2017-UP-040-Jeffrey Kennedy v. Richland Sch. Dist. Two | Pending |
| 2017-UP-043-Ex parte: Mickey Ray Carter, Jr. and Nila Collean Carter | Pending |
| 2017-UP-054-Bernard McFadden v. SCDC | Pending |
| 2017-UP-059-Gernaris Hamilton v. Henry Scott | Pending |
| 2017-UP-065-State v. Stephon Robinson | Pending |
| 2017-UP-070-State v. Calvert Myers | Pending |
| 2017-UP-071-State v. Ralph Martin | Pending |
| 2017-UP-082-Kenneth Green v. SCDPPPS | Pending |
| 2017-UP-103-State v. Jujuan A. Habersham | Pending |
| 2017-UP-108-State v. Michael Gentile | Pending |
| 2017-UP-117-Suzanne Hackett v. Alejandra Hurdle Harless | Pending |
| 2017-UP-118-Skydive Myrtle Beach, Inc. v. Horry County | Pending |
| 2017-UP-145-Cory McMillan v. UCI Medical Affiliates | Pending |

# The Supreme Court of South Carolina

Henton T. Clemmons, Jr., Employee, Petitioner,

v.

Lowe's Home Centers, Inc.-Harbison, Employer, and
Sedgwick Claims Management Services, Inc., Carrier,
Respondents.

Appellate Case No. 2015-001350

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ORDER

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Respondents filed a petition for rehearing and Petitioner filed a return in opposition. After careful consideration, we deny the petition for rehearing, withdraw the former opinion, and substitute the attached opinion in its place.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ Costa M. Pleicones A.J.

s/ James E. Moore A.J.

Columbia, South Carolina
June 28, 2017

**THE STATE OF SOUTH CAROLINA**
**In The Supreme Court**

Henton T. Clemmons, Jr., Employee, Petitioner,

v.

Lowe's Home Centers, Inc.-Harbison, Employer, and Sedgwick Claims Management Services, Inc., Carrier, Respondents.

Appellate Case No. 2015-001350

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal from the Workers' Compensation Commission

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Opinion No. 27708
Heard September 21, 2016 – Refiled June 28, 2017

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**REVERSED AND REMANDED**

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Preston F. McDaniel, of McDaniel Law Firm, of Columbia, for Petitioner.

Helen F. Hiser, of Mount Pleasant, and Kelly F. Morrow, of Columbia, both of McAngus Goudelock & Courie, for Respondents.

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**JUSTICE HEARN:** Petitioner Henton T. Clemmons, Jr. injured his back and neck while working at Lowe's Home Center in Columbia and brought a claim for disability benefits under the scheduled-member statute of the South Carolina Workers' Compensation Act (the Act). Although all the medical evidence indicated Clemmons had lost fifty percent or more of the use of his back, the Workers' Compensation Commission awarded him permanent partial disability based upon a forty-eight percent impairment to his back. The court of appeals affirmed. *Clemmons v. Lowe's Home Ctrs, Inc.-Harbison*, 412 S.C. 366, 772 S.E.2d 517 (Ct. App. 2015). We now reverse and hold the Commission's finding of only forty-eight percent loss of use was not supported by substantial evidence.

## FACTUAL/PROCEDURAL BACKGROUND

In September 2010, Clemmons was assisting a customer at Lowe's when he slipped and fell, severely injuring his back. Clemmons visited neurological specialist, Dr. Randall Drye, and was diagnosed with a herniated disc which caused severe spinal cord compression and necessitated immediate surgery. Dr. Drye removed Clemmons' herniated disc and fused his C5 and C7 vertebrae by screwing a rod into his spine. After surgery, Clemmons underwent extensive inpatient and outpatient physical rehabilitation; however, he continued to experience pain in his neck and back, as well as difficulty balancing and walking.

Clemmons filed a workers' compensation claim to recover medical expenses and temporary total disability benefits. Lowe's admitted Clemmons had suffered an accepted, compensable injury in the course of his employment and agreed to pay temporary total disability benefits until Clemmons reached maximum medical improvement (MMI) or returned to work.

In June 2011, Dr. Drye determined Clemmons had reached MMI and, per the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition* (*AMA Guides*), assigned Clemmons a whole-person impairment rating of twenty-five percent based on his cervical spine injury, which converts to a seventy-one percent regional impairment to his spine. Dr. Drye also determined Clemmons could return to work at Lowe's subject to certain permanent restrictions.[1] A few months later,

[1] Clemmons' work restrictions prohibit him from standing or walking for more than an hour at a time, stair-climbing, repetitively reaching overhead, and lifting more than thirty pounds.

Lowe's agreed to accommodate Clemmons' restrictions and permitted him to return to his previous position as a cashier.

In June 2012, Dr. Drye conducted a follow-up evaluation and reached the same conclusion he had a year earlier—that Clemmons had reached MMI and required the same permanent work restrictions. Thereafter, Lowe's requested a hearing before the Commission to determine whether Clemmons was owed any permanent disability benefits.

Prior to the hearing, Clemmons visited a number of medical professionals for additional opinions regarding his condition. Physical therapist Tracy Hill evaluated Clemmons and, pursuant to the *AMA Guides*, assigned him a thirty-six percent whole-person impairment rating and a ninety-one percent regional impairment rating with respect to his back. Dr. Leonard Forrest of the Southeastern Spine Institute also evaluated Clemmons and assigned him a whole-person impairment rating of forty percent, which translates to a ninety-nine percent regional impairment to his back. In addition to the *AMA Guides* impairment ratings, Clemmons presented medical testimony from general practitioner Dr. Gal Margalit, who opined to a reasonable degree of medical certainty that Clemmons had lost more than fifty percent of the functional capacity of his back.

At the hearing, based on the consensus among all the medical experts who examined him, Clemmons argued he was entitled to permanent total disability under the scheduled-member statute based on his loss of fifty percent or more of the use of his back. Lowe's, on the other hand, argued Dr. Drye's twenty-five percent whole-person rating and Clemmons' return to work indicated Clemmons had suffered less than a fifty percent impairment to his back, and thus Clemmons was only entitled to permanent partial disability.

The Single Commissioner determined Clemmons was not permanently and totally disabled, finding Clemmons sustained only a forty-eight percent injury to his back and was thereby limited to an award of permanent partial disability under the scheduled-member statute. The full Commission adopted and affirmed the Commissioner's order in its entirety. The court of appeals also affirmed, holding the Commission's findings of fact were supported by substantial evidence. We issued a writ of certiorari to review the court of appeals' decision.

## ISSUES PRESENTED

I. Did the court of appeals properly apply the substantial evidence standard to the evidence in this case when affirming the Commission's findings?

II. Did the court of appeals improperly infuse wage loss into and as a consideration for an award made under the scheduled-member statute?[2]

## STANDARD OF REVIEW

The South Carolina Administrative Procedures Act governs judicial review of decisions by the Workers' Compensation Commission. S.C. Code Ann. § 1-23-380 (Supp. 2015). An appellate court's review is limited to the determination of whether the Commission's decision is supported by substantial evidence or is controlled by an error of law. *Grant v. Grant Textiles*, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007).

The Court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact; however, the Court may reverse or modify a decision of the Commission if it is affected by an error of law or is clearly erroneous in view of the substantial evidence on the record as a whole. S.C. Code Ann. § 1-23-380(5). While the findings of an administrative agency are presumed correct, they may be set aside if they are unsupported by substantial evidence. *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing *Kearse v. State Health & Hum. Servs. Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." *Adams v. Texfi Indus.*, 341 S.C. 401, 404, 535 S.E.2d 124, 125 (2000) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)).

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[2] Based on our resolution of the first question it is not necessary for us to reach the merits of this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address additional issues when the disposition of the first issue is dispositive).

## LAW/ANALYSIS

Clemmons argues the court of appeals erred in finding the Commission's order was supported by substantial evidence. Specifically, Clemmons contends *all* the medical evidence in the record shows he suffered at least a fifty percent loss of use to his back, thus entitling him to the presumption of permanent *total* disability under the scheduled-member statute. We agree.

In pertinent part, the scheduled-member statute reads:

> In cases included in the following schedule, the disability in each case is considered to continue for the period specified and the compensation paid for the injury is as specified: . . .
>
> (21) for the loss of use of the back in cases where the loss of use is forty-nine percent or less, sixty-six and two-thirds percent of the average weekly wages during three hundred weeks. In cases where there is fifty percent or more loss of use of the back, sixty-six and two-thirds percent of the average weekly wages during five hundred weeks. The compensation for partial loss of use of the back shall be such proportions of the periods of payment herein provided for total loss as such partial loss bears to total loss, except that *in cases where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under Section 42-9-10(B).* The presumption set forth in this item is *rebuttable*[.]

S.C. Code Ann. § 42-9-30 (emphasis added).

Although a claimant's degree of impairment is usually a question of fact for the Commission, if all the evidence points to one conclusion or the Commission's findings "are based on surmise, speculation or conjecture, then the issue becomes one of law for the court . . . ." *Polk v. E.I. duPont de Nemours Co.*, 250 S.C. 468, 475, 158 S.E.2d 765, 768 (1968) (citing *Hines v. Pacific Mills*, 214 S.C. 125, 131, 51 S.E.2d 383, 385 (1949)); *see also Randolph v. Fiske-Carter Constr. Co.*, 240 S.C. 182, 189, 125 S.E.2d 267, 270 (1962) (holding where there is absolutely no evidence to support the Commission's findings, the question becomes a question of law).

We find the Commission's conclusion with respect to loss of use is unsupported by the substantial evidence in the record. Specifically, there is *no*

evidence in the record that Clemmons suffered anything less than a fifty percent impairment to his back. Every doctor and medical professional who assigned an *AMA Guides* impairment rating indicated Clemmons lost more than seventy percent of the use of his back, including Dr. Drye, whom the Commission particularly relied on in making its findings. Indeed, there is nothing in the record to support the Commission's finding of a forty-eight percent impairment rating.

While there is medical evidence that Clemmons' whole person was impaired less than fifty percent, the issue under the scheduled-member statute is not impairment as to the whole body, but rather it is the loss of use of a specific body part—in this case, Clemmons' back. *See Therrell v. Jerry's Inc.*, 370 S.C. 22, 28, 31, 633 S.E.2d 893, 896, 898 (2006) ("emphasiz[ing] the need for the commission to examine the particular injury at issue in every case to determine how a physician's . . . impairment rating is properly applied" and indicating it is appropriate to consider the regional impairment for injuries to scheduled members, while injuries to unscheduled members should be couched in terms of whole-person impairment). Indeed, South Carolina courts have repeatedly considered regional impairment ratings when determining awards under section 42-9-30(21). *See, e.g.*, *Burnette v. City of Greenville*, 401 S.C. 417, 420–21, 423, 737 S.E.2d 200, 202–03 (Ct. App. 2012) (Burnette's first injury caused an impairment to her back of thirteen percent, based on an eight percent lumbar impairment and a five percent cervical impairment; and after her second injury she was assigned a seventy-two percent impairment to her cervical spine and a sixteen percent lumbar impairment, which translated to whole-person ratings of twenty-five percent and twelve percent, respectively.); *Lawson v. Hanson Brick Am., Inc.*, 393 S.C. 87, 89, 710 S.E.2d 711, 712 (Ct. App. 2011) (noting claimant had been assigned a twenty-five percent whole-person rating which translates to a thirty-three percent lumbar impairment). All the medical evidence in the record points to only one conclusion: Clemmons has suffered an impairment to his back greater than fifty percent. Therefore, we hold Clemmons has lost more than fifty percent of the use of his back and is presumptively permanently and totally disabled under section 42-9-30(21).

## CONCLUSION

For the foregoing reasons, we conclude the Commission's findings were not supported by substantial evidence and we reverse the court of appeals. We hold Clemmons has lost more than fifty percent of the use of his back and remand to the

Commission for a new hearing to determine his percentage of impairment and whether the presumption of permanent and total disability under section 42-9-30(21) has been rebutted.

**BEATTY, C.J., KITTREDGE, J., and Acting Justices Costa M. Pleicones and James E. Moore, concur.**

**THE STATE OF SOUTH CAROLINA**
**In The Court of Appeals**

Wachesaw Plantation East Community Services Association, Inc., Respondent,

v.

Todd C. Alexander, Appellant.

Appellate Case No. 2011-198986

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Appeal From Georgetown County
Joe M. Crosby, Master-in-Equity

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Opinion No. Op. 5494
Heard May 11, 2017 – Filed June 28, 2017

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**AFFIRMED**

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Charles T. Smith, of Georgetown, for Appellant.

Stephanie Carol Trotter, of McCabe, Trotter & Beverly, P.C., of Columbia, for Respondent Wachesaw Plantation East Community Services Association, Inc.

Jack M. Scoville, Jr., of Jack M. Scoville, Jr., P.A., of Georgetown, for Respondent William George.

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**GEATHERS, J.:** In this lien foreclosure action filed by Respondent Wachesaw Plantation East Community Services Association, Inc. (the Association), Appellant Todd C. Alexander (Homeowner) seeks review of an order of the Master-in-Equity

denying his motion to vacate the judicial sale of his property. Homeowner argues (1) the master erred in denying the motion to vacate because the sale price was inadequate and was accompanied by other circumstances warranting the interference of the court, namely, Homeowner's health problems and his lack of prior knowledge of the judicial sale; (2) the sale constituted a forfeiture of Homeowner's property because the sale was involuntary and resulted in a price that was $135,000 less than the property's tax valuation; (3) the third-party bidder, Respondent William George (Bidder), was unjustly enriched because Homeowner was unable to attend the sale; and (4) Homeowner had an equitable right to redeem his property up to the time Bidder complied with the bid and received the deed to the property. We affirm.

## I. Circumstances Warranting Interference

Homeowner first argues that the inadequacy of the sale price combined with his health problems and his lack of prior knowledge of the sale warranted setting it aside. We disagree.

"[T]he determination of whether a judicial sale should be set aside is a matter left to the sound 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 judgment is controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." *Regions Bank v. Owens*, 402 S.C. 642, 647, 741 S.E.2d 51, 54 (Ct. App. 2013). This standard of review "merely represents the appellate courts' effort to incorporate the two sound principles underlying the proper review of an equity case."[1] *Crossland v. Crossland*, 408 S.C. 443, 452, 759 S.E.2d 419, 423–24 (2014) (quoting *Lewis v. Lewis*, 392 S.C. 381, 391, 709 S.E.2d 650, 655 (2011)). "[T]hose two principles are the superior position of the trial [court] to determine credibility and the imposition of a burden on an appellant to satisfy the appellate court that the preponderance of

[1] Like an action to foreclose a mortgage, an action to foreclose a lien for the unpaid assessments of a homeowners' association is an action in equity. *Cf.* S.C. Code Ann. § 27–31–210(a) (2007) (providing for an action to foreclose a lien for unpaid condominium regime fees and allowing the action to be brought "in like manner as a mortgage of real property"); *Dockside Ass'n v. Detyens*, 294 S.C. 86, 88, 362 S.E.2d 874, 875 (1987) (interpreting section 27-31-210(a) to require the "treatment of assessment lien foreclosures as actions in equity").

the evidence is against the finding of the trial court." *Id.* at 452, 759 S.E.2d at 424 (first alteration in original) (quoting *Lewis*, 392 S.C. at 391, 709 S.E.2d at 655).

"Our courts zealously insure judicial sales be openly and freely conducted and nothing be allowed to chill the bidding." *E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 355, 644 S.E.2d 802, 805–06 (Ct. App. 2007). However, "[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*, 378 S.C. at 150, 662 S.E.2d at 425 (second alteration in original) (quoting *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 157, 177 S.E. 24, 27 (1934)).

> As has been said time and again in cases involving the setting aside of judicial sales, it is the policy of the [c]ourts to uphold such sales when regularly made, and when it can be done without violating principle or doing injustice; and that mere inadequacy of price, unaccompanied by other circumstances [that] would invoke the exercise of the [c]ourt's discretion is not sufficient, unless, perhaps, it is so great as to raise a presumption of fraud or to shock the conscience of the [c]ourt.

*Henry v. Blakely*, 216 S.C. 13, 18, 56 S.E.2d 581, 583 (1949).

Here, Homeowner does not argue that the sale price shocks the conscience. Rather, he asserts (1) the price of $181,000 is inadequate because the fair market value of the property is $316,800 and (2) he did not know about the foreclosure hearing, the foreclosure judgment, or the judicial sale until the day after the sale. He maintains his lack of knowledge of these events constitutes excusable neglect. *See Wells Fargo*, 378 S.C. at 152 n.1, 662 S.E.2d at 426 n.1 (explaining a party seeking to set aside a judicial sale on the ground that the price at which the property was sold was merely inadequate, rather than shocking to the conscience, must show excusable neglect). Homeowner also implies that his health difficulties, including multiple hospitalizations, prevented him from responding to either the Association's imposition of assessments or this action.

Specifically, Homeowner argues he did not know this action had been referred to the master or that a hearing had been scheduled because the Order of Default and

notice of the foreclosure hearing were mailed to his post office box. However, he does not indicate that the post office box was no longer a valid address or that he ever sent a change of address notification to the Association after having accepted service of the Summons and Complaint sent to his post office box.

Homeowner also asserts he was not properly served with notice of the foreclosure judgment or notice of the judicial sale. He points to the lack of an address for him on the Form 4 judgment. However, such an omission is not conclusive as to whether Homeowner was served. In this particular case, the Form 4 judgment lists the address for the Association's attorney, and all previous documents related to this action had been sent to Homeowner by the Association's attorney rather than the master.

Further, "[t]here is no requirement of law that parties to a suit for foreclosure be given personal notice of a judicial sale." *Peoples Fed. Sav. & Loan Ass'n v. Graham*, 291 S.C. 178, 182, 352 S.E.2d 511, 514 (Ct. App. 1987). *Graham* involved a mortgage foreclosure naming as defendants two judgment lienholders in addition to the mortgagors. *Id.* at 179, 352 S.E.2d at 512. The lienholders asserted prejudice from their lack of personal notice of the judicial sale "so they could attend and bid in the protection of their judgments." *Id.* at 182, 352 S.E.2d at 514. This court noted the lienholders did not dispute that the legal requirements "for public notice of the judicial sale were met." *Id.* Likewise, in the present case, Homeowner does not dispute that public notice of the sale was properly given.

In any event, in his Memorandum in Support of Motion to Vacate Sale, Homeowner essentially admits that the foreclosure judgment and notice of the judicial sale were delivered to his post office box and that he simply did not check his post office box until the day after the sale: "[Homeowner] did not know that a foreclosure decree or a notice of sale had been issued until the day after the sale *when the notices were brought to his hospital room*." (emphasis added). Homeowner's affidavit explains that the day after the sale, his property manager notified him that a stranger who claimed he was working for the "new owner" of the house changed the locks on the house. Homeowner contacted an assistant "who had periodically collected [his] mail at the post office," and the assistant "brought the unopened letters to [his] hospital room." Therefore, it is reasonable to infer that the foreclosure judgment and notice of sale were among the uncollected mail items sitting in Homeowner's post office box prior to the date of the sale.

Additionally, while we sympathize with Homeowner's health difficulties, he has not carried his burden of convincing this court that his health difficulties, by themselves, constituted excusable neglect. *See Crossland*, 408 S.C. at 452, 759 S.E.2d at 424 (citing one of the principles underlying the proper review of an equity case as "the imposition of a burden on an appellant to satisfy the appellate court that the preponderance of the evidence is against the finding of the trial court" (quoting *Lewis*, 392 S.C. at 391, 709 S.E.2d at 655)). Homeowner has admitted his disease allowed for periodic stable periods, and his affidavit indicates he was not hospitalized at the time he was served with the Summons and Complaint, the Order of Default, the Notice of Hearing, or the Master's Report and Judgment of Foreclosure and Sale. Further, although Homeowner was in the hospital on the day of the judicial sale, he does not indicate that he was unable to send an agent to the sale to bid for him. Moreover, in his brief and in his Memorandum in Support of Motion to Vacate Sale, Homeowner essentially admits he was able to instruct his attorney to make a last-minute offer to the Association despite his medical condition. Therefore, the record as a whole indicates Homeowner had the ability to effectively participate in this action, either directly or through an agent, despite his health difficulties.

Based on the foregoing, Homeowner has failed to show that the master abused his discretion in declining to set aside the judicial sale. *See Wells Fargo*, 378 S.C. at 150, 662 S.E.2d at 425 ("[T]he determination of whether a judicial sale should be set aside is a matter left to the sound discretion of the trial court.").

## II. Forfeiture and Unjust Enrichment

These issues are not preserved for appellate review because the master did not rule on them and Homeowner did not file a Rule 59(e) motion seeking rulings on these issues. *See West v. Newberry Elec. Coop.*, 357 S.C. 537, 543, 593 S.E.2d 500, 503 (Ct. App. 2004) (holding an issue that was neither addressed by the trial court in the final order nor raised in a Rule 59(e), SCACR, motion was unpreserved for review by this court).

## III. Timely Redemption

Homeowner maintains he had an equitable right to redeem his property up to the time Bidder complied with his bid and received a deed because the judicial sale

was not complete until that time. Homeowner cites *Goethe v. Cleland*, 323 S.C. 50, 448 S.E.2d 574 (Ct. App. 1994) in support of his argument.

Homeowner's reliance on *Goethe* is misplaced. In *Goethe*, this court held that a judicial sale "was never completed and the proceedings were still subject to attack" because the Clerk of Court discovered an error in the foreclosure order prior to the successful bidder's compliance with the bid "and, consequently, never issued a deed to [the successful bidder]." *Id.* at 55, 448 S.E.2d at 576. In support of this proposition, the court cited section 15–39–870 of the South Carolina Code (2005), which states, "Upon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale . . . 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 . . . ." *Id.*

Both section 15–39–870 and the *Goethe* opinion address the protection afforded bona fide purchasers for value who have no notice of any irregularities surrounding a judicial sale. *See Wooten v. Seanch*, 187 S.C. 219, 223, 196 S.E. 877, 878–79 (1938) (addressing a defect in a judicial sale by holding the precursor to section 15–39–870 protected a bona fide purchaser without notice of any irregularities in the sale even when the sale was not "confirmed by the order of the court"); *Bloody Point Prop. Owners Ass'n v. Ashton*, 410 S.C. 62, 66, 762 S.E.2d 729, 732 (Ct. App. 2014) ("The rationale for [section 15–39–870] is the well-established public policy of protecting good faith purchasers and upholding the finality of a judicial sale." (quoting *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))).

Here, no one discovered any irregularities surrounding the judicial sale prior to issuance of the deed to Bidder. Proper notice of the proceedings was given. *See supra*. Further, the Association sought no deficiency judgment, and therefore, the bidding did not have to remain open for thirty days after the auction.[2] Moreover, no one alleged that the sale price shocked the conscience. *See supra*. Yet, Homeowner essentially maintains that his right of redemption endured between the public auction

[2] *See* S.C. Code Ann. § 15–39–760 (2005) ("The provisions of §§ 15–39–720 to 15–39–750 shall not apply to any suit brought for foreclosure if the complaint therein states that no personal or deficiency judgment is demanded and that any right to such judgment is expressly waived . . . .").

and the issuance of the deed to Bidder because an irregularity in the proceedings *could have been* discovered and a new sale *could have been* ordered during that period. We disagree.

The mere possibility of discovering an irregularity before issuance of the deed does not translate into a longer redemption period. An attack on the very validity of a judicial sale based on irregularities is decidedly different than a property owner's invocation of his right of redemption. The holding that the judicial sale in *Goethe* was never "completed" and the proceedings were still subject to "attack" because the deed had not yet been issued should not be interpreted as a statement concerning the period during which the original owner may exercise his right of redemption.

Rather, South Carolina law concerning the right of redemption recognizes the judicial sale as the public auction itself, an event that is independent and separate from compliance with the bid and execution of the deed. Section 15–39–830 of the South Carolina Code (2005), states, "Upon a judicial sale being made and the terms complied with[,] the officer making the sale must execute a conveyance to the purchaser[,] which shall be effectual to pass the rights and interests adjudged to be sold." The plain language of this provision makes the judicial sale a prerequisite to the execution of the deed to the highest bidder: "Upon a judicial sale *being made* and the terms complied with[,] the officer making the sale must execute a conveyance to the purchaser . . . ." (emphasis added). The statute also makes the highest bidder's compliance with the bid a separate prerequisite to the deed's execution: "Upon a judicial sale being made *and* the terms complied with[,] the officer making the sale must execute a conveyance to the purchaser . . . ." (emphasis added).

Our case law is consistent with the language of section 15–39–830 in recognizing the judicial sale as an event that is independent and separate from compliance with the bid and execution of the deed. In explaining the limits on the power of the officer conducting the sale, our supreme court in *Cooke v. Pennington* designated the expiration of the redemption period as the moment a bona fide bid is made at the judicial sale:

> He may not do anything of himself, and must do all as he is directed by the law under which he acts. He may not, by any misconstruction of it, anticipate the time for sale, within which the owner of the property may prevent a sale of it by paying the demand against him and the expenses

> which may have been incurred from his not having done so before. This the law always presumes that the owner may do until a sale has been made. He may arrest the uplifted hammer of the auctioneer when the cry for sale is made, *if it be done before a bona fide bid has been made*.

15 S.C. 185, 193 (1881) (emphasis added) (quoting *Early v. Doe ex dem. Homans*, 57 U.S. 610, 617–18 (1853)). Likewise, in *Union National Bank of Columbia v. Cook*, 110 S.C. 99, 117, 96 S.E. 484, 489 (1918), our supreme court designated the expiration of the redemption period as the occurrence of the judicial sale: "The [landowner] at any time *before the sale* herein recommended should have the right to redeem the said land from said liens and stop the sale of the said land . . . ." (emphasis added).

Here, Homeowner did not "arrest the uplifted hammer of the auctioneer when the cry for sale [was] made." *Cooke*, 15 S.C. at 193 (quoting *Early*, 57 U.S. at 617–18). Rather, "a bona fide bid [was] made" for the property and the sale was thus complete. *Id.* In other words, although Homeowner had an equitable interest in the property up to the date of the judicial sale,[3] when Bidder "became the successful bidder" and paid the required deposit, "he became the equitable owner" of the property. *See Parrott v. Dickson*, 151 S.C. 114, 122, 148 S.E. 704, 707 (1929) (holding that when the appellant "became the successful bidder" at a public auction "and paid in the required one-third of the purchase price, he became the equitable owner of [the disputed property]").

This transfer by operation of law is not superseded by the conveyance language in section 15–39–830, i.e., "the officer making the sale must execute a conveyance to the purchaser[,] which shall be effectual to pass the rights and interests adjudged to be sold," because the statute effects a transfer of *legal* title to the successful bidder upon his compliance with the bid and the deed's execution. *See Levi v. Gardner*, 53 S.C. 24, 27–28, 30 S.E. 617, 619 (1898) (upholding a jury instruction indicating (1) the successful bidder's acquisition of an equitable title upon

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[3] *Cf. Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 173, 568 S.E.2d 361, 364 (2002) ("[T]he common law recognized an *equitable* right of redemption in the context of mortgages . . . . The mortgagor was given an equitable right to redeem the property irrespective of the terms of the mortgage and this right to redeem was considered *an equitable interest in the land*." (emphases added)).

payment of the purchase money bid at a sheriff's sale and (2) the necessity of a deed to transfer legal title). Therefore, we find no merit in Homeowner's assertion that the conveyance language of section 15–39–830 signifies that the equitable right of redemption cannot expire until the deed is executed.

This transfer of the equitable interest to the successful bidder is in keeping with our precedent emphasizing the importance of stability in judicial sales. "Public interest and precedent dictate the fostering of the stability of judicial sales." *Appeal of Paslay*, 230 S.C. 55, 58, 94 S.E.2d 57, 58 (1956).

> The policy of the law is to sustain judicial sales when fairly made. Under our decisions, *when the auctioneer's hammer falls at such a sale, and the bid thereby accepted has been entered in the book, which the officer making the sale is required by law to keep, a valid contract is made*. The purchaser thereby makes himself a party to the cause, and may, except when there is fraud, misrepresentation, mistake, or other circumstances of unfairness in the sale, or a defect in the title, be compelled by the order of the court to perform his contract. *Justice to the bidder requires that, in the absence of any such circumstances, he should have the benefit of his contract*. It should be mutual. Any other course would make the rights of the purchasers at such sales so uncertain that it would tend to discourage bidding at them–a result so much more injurious in its consequences that it [outweighs] the possible injury resulting in a few isolated cases by a firm adherence to settled principles.

*Id.* at 62, 94 S.E.2d at 60 (emphases added) (quoting *Farrow v. Farrow*, 88 S.C. 333, 343, 70 S.E. 459, 461 (1911)).

Finally, our statutory and case law establishing the judicial sale as an event separate from compliance with the bid and execution of the deed is well illustrated in the April 19, 2011 Judgment of Foreclosure and Sale in the instant matter. In this judgment, the master ordered Homeowner to pay the amount of the judgment to the Association "on or before the date of sale" and clearly indicated the term "sale" to mean the public auction itself: "On default of payment at or before" the sale, the

property "shall be *sold* . . . at *public auction*." (emphases added). We note Homeowner did not appeal the April 19, 2011 foreclosure judgment; therefore, its terms are now the law of the case. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case.").

Based on the foregoing, we hold that the period in which Homeowner was allowed to exercise his right of redemption expired upon the acceptance of the highest bid at the judicial sale.

## CONCLUSION

We affirm the master's denial of Homeowner's motion to vacate the judicial sale.

**AFFIRMED.**

**MCDONALD and HILL, JJ., concur.**