

1981 S.C. Op. Atty. Gen. 52 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-32, 1981 WL 96558

Office of the Attorney General

State of South Carolina

Opinion No. 81-32

March 31, 1981

**\*1 SUBJECT: Mortgages and Foreclosures, Liens, Taxation and Revenue, Masters-in-Equity**

When a Master-in-Equity holds a reference on a mortgage foreclosure action he has no duty to search outside the evidence presented to him to find liens.

TO: The Honorable Curtis G. Shaw  
Judge  
The Family Court of the Eighth Judicial Circuit

DISCUSSION:

The facts related in your letter are as follows: A mortgage foreclosure action was brought in the Court of Common Pleas which action was referred to the Master. The Master held a hearing at which evidence regarding the mortgage, costs and attorney's fees was presented. No evidence regarding taxes was presented.

The Master's report was confirmed by the circuit court. In its decree the court ordered that out of the proceeds of the sale 'any taxes which may be due' should be paid. The Master paid all amounts ordered by the court but did not pay any taxes as he had no knowledge of any being due. The present owner of the land is seeking to collect against the Master's surety for delinquent taxes billed to the owner by the county.

QUESTION:

When a Master-in-Equity holds a reference on a mortgage foreclosure action, does he have a duty to search outside the evidence presented to him for liens?

OPINION:

This case arises out of the authority vested in the circuit court by [§ 12-49-60 Code of Laws of South Carolina \(1976\)](#). That section says that when any real estate is sold under a court proceeding, the Court 'shall, on motion of any person interested in such real estate or in the purchase or proceeds of the sale thereof' order taxes to be paid out of the proceeds as a lien prior to all others. The Master-in-Equity is the recipient of this order as it is he who conducts the sale. [§ 15-39-630 Code of Laws of South Carolina \(1976\)](#).

Four reasons support the view that the Master is not personally liable for the payment of these taxes. First, no evidence was presented regarding taxes. It is elementary that a judge is limited to making a decision on the evidence before him and on nothing more. See 59 C.J.S. [Mortgages](#) § 678a. Thus, it appears that the Master had a duty to not search outside the record before him for other liens.

Secondly, the Master's report was confirmed and made a judgment of the court. The report presumably made no finding about the taxes. Thus, the inclusion of paying 'any taxes which may be due' in the court's order contradicted the court's confirmation

of the report. The directive to the officer making a judicial sale that he pay any taxes due is a 'universal' practice. See [Bomar v. City of Spartanburg](#), 181 S.C. 453, 187 S.E. 921, 924 (1936). The directive in this case was standard boiler-plate language that simply did not square with the facts in the report and cannot be construed as directing the Master to search the title for a tax lien.

Thirdly, the cases applying § 12-49-60 do not even suggest that the Master or other officer conducting a judicial sale has the duty to search out liens on the property. See [Truesdale v. Bellinger](#), 172 S.C. 80, 172 S.E. 784 (1934); [Purdy v. Strother](#), 184 S.C. 210, 192 S.E. 159 (1937); and [Trustees of Wofford College v. Burnett](#), 209 S.C. 92, 39 S.E.2d 155 (1946). Neither do the other cases I have found on the subject of a tax lien on the proceeds of a foreclosure sale. See [Annely v. DeSaussure](#), 12 S.C. 488 (1879); and [Smith v. Gatewood](#), 3 S.C. 333 (1872).

\*2 Lastly, the decision not to pay the taxes, based on the assumption that no taxes were due since no evidence was presented that they were due, was a 'judicial' decision, not a 'ministerial' one, for which a judge is not personally liable. See [Truesdale v. Bellinger, supra](#), 172 S.E. at 787; see also 12 S.C. Digest, 'Judges', Keys 36-37.

Therefore, in conclusion it is the opinion of this office that when a Master-in-Equity holds a reference on a mortgage foreclosure action he has no duty to search outside the evidence presented to him to find other liens.

Eugene W. Yates, III  
Assistant Attorney General

1981 S.C. Op. Atty. Gen. 52 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-32, 1981 WL 96558

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.