

1975 WL 29184 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 18, 1975

*1 The Master in Equity for Charleston County may not charge a commission for 'moneys passing through his hands' upon that portion of a judgment debt which remains unrealized after a sale of property ordered by the Master.

TO: Ben Scott Whaley
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ISSUE:

Whether the Master in Equity for Charleston County may charge a commission for 'moneys passing through his hands' upon the portion of a judgment debt which remains unrealized after a sale ordered by the Master.

CITATION:

[Barr, et al., v. Barr, 82 S.C. 573, 64 S.E. 858 \(1909\)](#)

STATUTES:

Section 27-201(4) of the 1962 Code

Section 27-203.1(2) of the 1962 Code

Sections 27-401(15) and 27-401(21) of the 1962 Code

Civ. Code 1902, § 3113

Civ. Code 1902, § 3118

REFERENCE AUTHORITY:

80 C.J.S. 'Sheriffs and Constables', § 240.

DISCUSSION:

Section 27-203.1(2) of the 1962 Code specifically provides that the Master in Equity of Charleston County may charge specific rates as commissions 'on moneys passing through his hands'. This conditioning phrase also appears in the general statutory authority for masters' fees. Section 27-201(4) of the 1962 Code. The latter section authorizes masters to charge commissions on moneys passing through their hands at the same rates allowed by law to sheriffs. The applicable language of § 27-201(4) as it now exists, is identical to that found in § 3113 of the Civil Code of 1902.

Thus, to understand the phrase 'moneys passing through his hands', it is appropriate to consider the lawful fees and commissions for sheriffs. Section 27-401 of the 1962 Code sets forth the general fee schedule for sheriffs and is in substantially the same language as it appeared in Section 3118 of the Civil Code of 1902.

The two predecessor statutes to Sections 27-201 and 27-401 of the 1962 Code as they existed in 1902 framed the issues for a State Supreme Court case in 1909. In Barr, et al v. Barr, the Supreme Court was called upon to decide whether, in addition to a commission on all moneys collected, the Master was entitled to a commission on moneys paid to the plaintiff by the judgment debtor. 82 S.C. 573, 64 S.E. 858 (1909). The Court responded in the negative, adopting the construction that moneys paid directly to the plaintiff were not collected by the Master and, hence, had not passed through the hands of the Master, as required by § 3113 of the Civil Code of 1902. 82 S.C. 573, 476; 64 S.E. 858, 859 (1909). As relates to a judgment debt which remains unsatisfied after the sale, not only has the master not collected the moneys to the extent of the deficiency, but also the deficient moneys have not been paid directly to the plaintiff. While property sold at the order of the master may be bid in at substantially less than the amount of the judgment debt, neither the statutes nor the opinion of the Barr Court suggests different treatment in that circumstance than in a simple insufficient recovery from the sale.

*2 In its analysis, the Barr Court offered some elucidation as to what constitutes money passing through the master's hand. Looking to portions of Section 3118 of the Civil Code of 1902 (now found at § 27-401(15) and § 27-401(21) of the 1962 Code), the Court concluded that the Master was entitled to a commission for 'transferring money, bonds, or other securities for money', in addition to a commission on actual collections by the Master. 82 S.C. 473,577; 64 S.E. 858, 859 (1909). Both circumstances, that of actually collecting moneys and that of actually transferring moneys, suggest that the moneys or proceeds were at some point within the distributive power of the Master.

Inasmuch as masters' fees for moneys passing through their hands are related to statutory provisions for sheriffs' fees, it is appropriate to consider some general authority on the latter. Ordinarily, a sheriff is only entitled to commissions on that amount which he collects and pays over. 80 C.J.S. 'Sheriffs and Constables', § 240. Further, where money is collected for a property sale, the sheriff is usually only entitled to a percentage of the proceeds of the sale. 80 C.J.S., § 240.

CONCLUSION:

In South Carolina, fees and commissions due to masters in equity are intricately related to those due to sheriffs. As a result, the State Supreme Court has found that as relates to masters, the phrase 'moneys passing through his hands' refers to money actually collected and to money actually transferred by the master.

Therefore, it is the opinion of this Office that the Master in Equity for Charleston County may not charge a commission on those moneys which do not pass through his hands. More specifically, to the extent that a debt for which a sale was ordered by the Master is not satisfied by the bid in offer, the Master in Equity has neither collected moneys from the sale nor transferred moneys as a result of it. To that same extent, the unrealized moneys have not passed through the hands of the Master in Equity for the purposes of Section 27-203.1(2) of the 1962 Code.

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