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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge
Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;
SC Housing Corp.; and Twin Creeks Homeowners Association,
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,
is the Appellant.

ACTUAL/CORRECTED

PETITION FOR REHEARING OF APPELLANT
AND REQUEST FOR EN BANC REHEARING

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PETITION FOR REHEARING/REHEARING EN BANC

Pursuant to Rules 221 and 240 of the South Carolina Rules of Appellate Procedure, Appellant respectfully petitions this Court for a rehearing/rehearing en banc of this Court's Opinion dated August 17, 2022, which is attached, to this Petition. Foreclosures are a matter of public concern as foreclosures have a negative effect on the economy and unjust foreclosures erode the public's confidence, in the South Carolina Judicial system and particularly, in the Appellate process, where corrections of the Circuit Court's legal errors should take place and where the Constitutional and Statutory Rights of the parties, should ultimately be protected, via sua sponte if necessary. Both Subject Matter Jurisdiction and an Order granting summary judgment, are questions of law and this Honorable Court has held," Whether a court has subject matter jurisdiction is a question of law we review de novo." Deborah Dereede Living Tr. dated Dec. 18, 2013 v. Karp, 427 S.C. 336, 346, 831 S.E.2d 435, 441 (Ct. App. 2019).“ And the South Carolina Supreme court has held “Appellate courts may decide questions of law with no particular deference to the circuit court's findings. Id. at 15, 690 S.E.2d at 772–73. Turner v. Milliman. Yet in this case every legal error made by the Circuit court, has been affirmed. I hereby reiterate all statements made in my points and authority section of this Petition and incorporate them here by reference and state, the focus of the Petition for Review, is based on the South Carolina Court of Appeals holding, concerning subject matter jurisdiction. And whether, the South Carolina Court of Appeals overlooked legal errors made in the Circuit court's Order, concerning the establishment of the required jurisdictional statement under the South Carolina Rules of Civil Procedure, Rule 8. It appears that there is a violation of the South Carolina Rules of Civil Procedure, Rule, because the record is void of a statement containing facts and legitimate statues that entitle Wells Fargo relief over my rights as a remaining joint tenant. Additionally, binding

stipulations and the law that flows from those stipulations, have been overlooked and this is a departure from precedent established by the South Carolina Court of Appeals, whom has held “stipulations are binding on the parties as well as the court”. (See - McCrea v. City of Georgetown, 384 S.C. 328, 332, 681 S.E.2d 918, 921 (Ct. App. 2009)) and the South Carolina Supreme Court has held “When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts.” WDW Props. v. City of Sumter, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000). And the law that flowed from those stipulations is S. C. Code Ann. § 27-7-40(a)(ii) which is fully addressed under the points and authority section of the Petition. Respectfully, my Federal and State Substantive Due Process rights have been violated because I have subjected to a frivolous law suit, as the Complaint is not signed in accordance with 15-36-10(A)(1), which provides in relevant part: A pleading filed in a civil or administrative action on behalf of a party who is represented by an attorney must be signed by at least one attorney of record. Because the stipulations and laws that flow from those stipulations were overlooked, so those arguments were not heard. ("The fundamental requisite of due process of law is the opportunity to be heard."); S.C. Dep't of Soc. Servs. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995). The Note is not enforceable in this proceeding and is a stale claim, under the South Carolina Probate Court Code Ann.62-3-803 additionally, under the South Carolina Code Ann. 36-3-401(a) a person that did not sign the note in not liable on the Note. Lastly, Wells Fargo has been deemed to be a “secured creditor” in a departure from precedent established in this Honorable Court. In Matter of Estate of Margaret Dever Hover Gurnham et al, v. Estate of Margaret Gurnham, Op. 27360, filed Feb., 26, 2014, the South Carolina Supreme Court clarified, secured creditors have 2 avenues to seek relief and

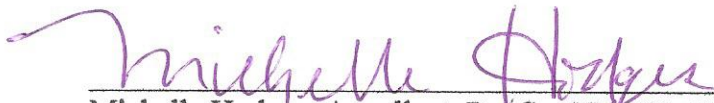
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the South Carolina Court of Appeals has overlooked that possible statutes that would entitle to Wells Fargo to relief are missing and apparently do not exist.

Factual background

My Mother Mrs. Ruth Ladson Witherspoon executed the Note and Mortgage in March of 2012 and passed away on July 5, 2015. The subject property was held in joint tenancy, at the time of my Mother's passing, which Wells Fargo stipulated to in paragraph 8 of the complaint by referencing the "Deed of NVR and I stipulated to it in paragraph 5 of my Sixth amended Answer. The "Special Warranty" was recorded in March of 2012. Wells Fargo supposed security interest ceased to exist upon my Mothers passing, by operation of law. Wells Fargo is seeking relief that it is not entitled to and has received a grant of summary judgment. However, the Order is void for lack of subject matter jurisdiction and violation of substantive due process rights to cross examine witnesses concerning the Note and to be heard, as binding stipulations made in the complaint were ignored and so was the copy of the Special Warranty Deed. And the law that flowed from those stipulations is S. C. Code Ann. § 27-7-40(a)(ii) which is fully addressed under the points and authority section of the Petition.

Respectfully submitted,



Michelle Hodges, Appellant, Pro Se, 874-692-3748 9/1/2022
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POINTS AND AUTHORITIES

South Carolina Court of Appeals held Circuit court had subject matter jurisdiction, Wells Fargo has standing and implied that Wells Fargo is a secured creditor

The South Carolina Court of Appeals affirmed “Wells Fargo waived its right to seek a deficiency judgment against Hodges’s mother’s estate in its complaint. Therefore, the circuit court properly found it had subject matter jurisdiction in this case”.

(R. Op. p.7, lines 1-3) 2. We hold the Circuit court heard and correctly determined that Wells Fargo had standing because Wells Fargo it is in possession of the original note, which is supported by the record. See S. C. Code Ann. 36-3-301 (“Person entitled to enforce an instrument means (i) the holder of the instrument...”) (Op. p. 2, paragraph 4, last line) 3. The S. C. Court of Appeals stated “additionally, a secured creditor, such as Wells Fargo.....” (Opinion, p.)

Points and Authorities, in opposition of Deficiency judgment waiver establishing SMJ Laws overlooked in determining Note is enforceable in this action

The South Carolina Court of Appeals’ reliance on the Circuit court’s statement of a waiver of a deficiency judgment as a way of establishing jurisdiction is misplaced, because the South Carolina Rules of Civil Procedure, Rule 8 governs how subject matter jurisdiction is established and provides in relevant part: (1) a short and plain statement of the grounds including facts and statutes upon which the court’s jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled. And the record is void of the required statement of facts and legitimate statutes that would establish subject matter jurisdiction in this particular, case. The Circuit court did note that it had general subject matter jurisdiction to rule on foreclosures and also

cited to the property being located in the county of the court, in its order dated 8/7/2019. A deficiency judgment is a factor, in this particular case, but not in establishing subject matter jurisdiction, as it is more of an afterthought and defined by the South Carolina Supreme Court, as "a debt". (See - In Matter of Estate of Margaret Dever Hover Gurnham et al, v. Estate of Margaret Gurnham, Op. 27360, filed Feb., 26, 2014) In the same case, the South Carolina Supreme Court further clarified the following: "The Probate Code generally defines "claims" to include "liabilities of the decedent...". And stated "Thus, "[b]roadly speaking, all claims against the decedent should be presented for allowance, and the word 'claims' includes such debts or demands as existed against the decedent in his or her lifetime and that might have been enforced against him or her by personal actions for the recovery of money." C.J.S. *Executors & Administrators* § 548 (Supp. 2013) Further, the South Carolina Supreme Court clarified, the two avenues in which a secured creditor may seek relief, which concerns the Note and Mortgage and is as follows: "Under the first avenue, the secured creditor may pursue foreclosure proceedings on the security for the mortgage without presenting a claim against the estate and, thus, may do so outside the time limits of the non-claim statute". "Alternatively, the secured creditor may seek to recover directly from the assets of the estate, which then requires the claim to be presented in the probate court within the time limits of the non-claim statute." "However, if the creditor chooses the first avenue and the foreclosure proceedings fail to yield the full amount of the security, the creditor must have presented a claim on the security in probate court within the time limits prescribed by the non-claim statute." See - In Matter of Estate of Margaret Dever Hover Gurnham et al, v. Estate of Margaret Gurnham, Op. 27360, filed Feb., 26, 2014) The South Carolina Court of Appeals has overlooked that Notes/liabilities of the decedent, must be pursued in the probate court, as

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shown in the above precedent. see (Margaret Dever Hoever Gurnham case mentioned above). Therefore statements in this foreclosure action about the enforceability of the Note, are not appropriate and is a departure from the above mentioned precedent. Therefore a legal error has been made in the South Carolina Court of appeals Opinion, in holding that “Wells Fargo is entitled to enforce the Note, in this action. Further in making its ruling that Wells Fargo is entitled to enforce the Note, the South Carolina Court of appeals has overlooked binding stipulations made in paragraph 8 of the complaint and paragraph 5 and 7 of my Sixth amended Answer, and the laws that flow from the stipulations are missing from the Circuit court’s order, namely the South Carolina Probate Code Ann. 62-3-803 which provides in relevant, part: (a) All claims against a decedent’s estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or un liquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the heirs of the decedent, unless presented within the earlier of the following dates: (1) one year after the decedent’s death. Respectfully, in overlooking the above law the South Carolina Court of Appeals has overlooked that the Circuit court held “The loan was entered intobetween the Defendant’s mother and NVR Finance” (R. Order dated 8/7/2019, p. 8, lines 7-8). And the Complaint shows that the Note and Mortgage were executed by my Mom, Ruth Witherspoon. (R. Complaint, p. 158, lines 2-7) The South Carolina Court of appeals’ reliance, on the deficiency judgment being waived, to establish Subject Matter Jurisdiction in this case, is not in accordance with SCRPC, Rule 8 and is a misapplication of law. Respectfully, the South Carolina Court of Appeals’ reliance on S. C. Code 36-3-301, as a statute that entitles the holder to relief is misplaced because, it does not meet the jurisdictional question, as to whom

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the holder can seek relief from, in accordance with the controlling rule of law that determines jurisdiction; which is under the South Carolina Rules of Civil Procedure, Rule 8(a)(2) and provides in relevant part: a short and plain statement of the facts and statutes showing the pleader is entitled to relief. Further, South Carolina Court of Appeals has overlooked that S. C. Code Ann. 36-3-401(a), provides in relevant part: “A person is not liable on an instrument unless (i) the person signed the instrument”. The South Carolina Court of Appeals reliance of S.C. Code 36-3-301 to establish the enforceability of the Note is not in accordance with the SCRCF, Rule 8, as shown above. The South Carolina Court of Appeals has overlooked law that further applies to this particular case concerning enforceability of the Note, under the South Carolina Probate Code Ann. Section 62-3-803, as shown above.

**Law in opposition of Wells Fargo being deemed a “secured creditor”
(a status that means Wells Fargo has a valid lien)**

In preparing this Petition, I searched the record and the South Carolina Code for a definition of “Secured creditor”, to no avail. However, I found the definition of “mortgage” under the South Carolina Code Ann. §29-3-330(1), which provides in relevant part: “Mortgage” means a lien against real property that is granted to secure the payment of money ...”. The South Carolina Court of Appeals is relying on the Circuit court’s declaration that Wells Fargo is a Secured creditor/has an existing valid lien and this is a departure from precedent established in this Honorable Court, in Carolina Attractions, Inc., v. Courtney, 287 S.E. 140, 145, 337 S.E. 2d 244, 247 (Ct. App. 1985), citing to California Bank of v. Leahy, 129 Cal. App. 243, 18 P. (2d) 709, 711 (1933) and quoting “ (Whenever, in law or equity, a lien is created or declared there are two things prominently concerned, namely an obligation and a res or rem to which or upon which that obligation fastens itself...”. The South Carolina Court of Appeals has overlooked

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stipulations and laws that flow from those stipulations made by the parties in paragraph 8 of the complaint and paragraph 5 and 7 of the Sixth Amended Answer, that discuss property interests and security interests, namely the South Carolina Code Ann 27-7-40(a)(i), which provides in relevant part:

“ In the event of the death of a joint tenant survived by more than one joint tenant in the estate, the entire interest of the deceased joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship”. And in Harms v. Sprague 105 Ill. 2d 215 (1984) 473 N.E. 2d 930 the Illinois Supreme Court held, ““The property right of the mortgaging joint tenant is extinguished at the moment of his death.” “While John Harms was alive, the mortgage existed as a lien on his interest in the joint tenancy”. “Upon his, death, his interest ceased to exist and along with it the lien of the mortgage”. The South Carolina Court of Appeals has held “stipulations are binding on the parties as well as the court”. (See - McCrea v. City of Georgetown, 384 S.C. 328, 332, 681 S.E.2d 918, 921 (Ct. App. 2009)) and the South Carolina Supreme Court has held “When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts.” WDW Props. v. City of Sumter, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000). The South Carolina Court of Appeals has over looked that stipulations made in the complaint and the laws that flow from those stipulations are missing from the Circuit court’s Order and this is a departure from precedent established, as shown above

Lack of SMJ and violation of due process/ Orders are void

As shown above, the Circuit lacked subject matter jurisdiction to rule on this particular case, where the question is, is Wells Fargo entitled to relief based on a Note and Mortgage that was executed by my Mom, Mrs. Ruth Ladson Witherspoon, against Defendant/Appellant Michelle

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Hodges, over my rights as one of the remaining joint tenants and this questions has not been answered by Wells Fargo presenting statutes that do not support its claim of relief or just be having the court declare, it is a “secured creditor”.

In addition as noted above, the binding stipulations from the Complaint and my Sixth amended Answer, along with the copy of the Warranty Deed, have been ignored by the Circuit, which is a violation of Substantive Federal and State Constitutional right to be heard. (“The fundamental requisite of due process of law is the opportunity to be heard.”); S.C. Dep't of Soc. Servs. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995). Further, the Complaint has not be signed, in accordance with rule in accordance with the South Carolina Rules of Civil Procedure, which is a violation of my statutory to address a valid claim again me. I have stated the above, because the South Carolina Supreme Court has held a “Void can be attacked at any time and in any proceeding. Therefore I request this Honorable to dismiss the Order of summary judgment and deem all orders made in the Circuit court and “void as nitio”, as the rulings were made with subject matter jurisdiction and violation of my substantive Federal and States as mention above. I also request that the South Carolina Court of Appeal declare, it Opinion dated 8/17/2022, as void, because affirms a void and under the law voids, its order is also void. In *Badeaux v. Davis*, 337 S.C. 195, 205, 522 S.E.2d 835, 840 (Ct. App. 1999) This Honorable Court held (“Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court.”) (quoting *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct. App. 1998). And “A void order is one rendered in the absence of proper due process or jurisdiction. *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002). Because the South Carolina Court of Appeals overlooked the above violations of my Substantive rights a legal error has been com-mitted and all Orders issued are

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“Void Ab Nitio”, because there was also a lack of subject matter jurisdiction and a violation of my substantive Federal and State rights as shown above.

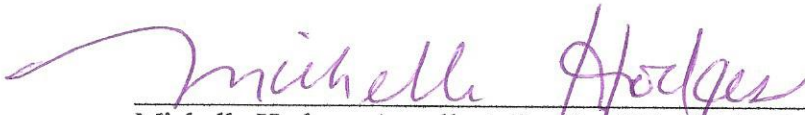
CONCLUSION

I reiterate all of the above statements and incorporate them here by reference and respectfully request a rehearing/rehearing en banc concerning the South Carolina Court of Appeals Opinion dated 8/17/2022, which affirms the Circuit court’s Order dated 8/7/2019; because this Court’s finding that the Circuit had Subject Matter Jurisdiction, based on the fact that Wells Fargo, waived its right to seek a “Deficiency Judgment” is not in accordance with the SCRCPP, Rule 8, because it is not supported with any statements of facts along with legitimate statutes, that show Wells Fargo is entitled to relief over my rights as one of the remaining joint tenants, the court lacks subject matter jurisdiction and this has been overlooked as explained in this petition. The court has also overlooked the violation of my Substantive Federal and State right to cross examine witnesses concerning the Note and my Substantive Federal and State right to be heard, as the record shows that Wells Fargo stipulated to my rights in paragraph 8 of the complaint and I provided a copy of the Special Warranty Deed which was ignored along with the stipulations made in the complaint. I hereby request that this Honorable accept this Petition for Review and dismiss Wells Fargo’s Complaint for lack of subject matter jurisdiction and violation of my Federal and State Substantive Due Process right to cross examine witnesses and be heard, because the Order issued is void, of any statutes that entitle Wells Fargo to relief, against me, accordance with the SCRCPP, Rule and my Substantive Federal and State rights, as shown above have been violated. (“The fundamental requisite of due process of law is the opportunity to be heard.”); S.C. Dep’t of Soc. Servs. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

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I have been subjected to a frivolous law suit 15-36-10, as the Complaint has not been signed, which is in violation of my Substantive right to address a Complaint that has been signed under the South Carolina Code Ann 15-36-10(A)(1), which provides in relevant part: A pleading filed in a civil or administrative action on behalf of a party who is represented by an attorney must be signed by at least one attorney of record. The Circuit court ruling was made without subject matter jurisdiction and as I pointed out my Substantive Due Process Rights have been violated and the orders issued by the Circuit court and this Court, are void, per the Honorable Court which held, a void order is one rendered in the absence of proper due process or jurisdiction. Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002).

Respectfully submitted,



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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

Wells Fargo Bank, N.A., Respondent,

v.

Michelle Hodges, Individually and as the Personal
Representative of the Estate of Ladson Witherspoon;
Stanley Witherspoon; SC Housing Corp.; and Twin
Creeks Homeowners Association, Inc., Defendants,

Of Whom Michelle Hodges, Individually, is the
Appellant.

Appellate Case No. 2019-001565

Appeal From Greenville County
Robin B. Stilwell, Circuit Court Judge
Perry H. Gravely, Circuit Court Judge

Unpublished Opinion No. 2022-UP-326
Submitted July 27, 2022 – Filed August 17, 2022

AFFIRMED

Michelle Hodges, of Simpsonville, pro se.

Matthew Todd Carroll and Bryant Sparks Caldwell, both
of Womble Bond Dickinson (US) LLP, of Columbia; and

15.

Shelton Sterling Laney, III, of Womble Bond Dickinson
(US) LLP, of Greenville, all for Respondent.

PER CURIAM: Michelle Hodges appeals circuit court orders denying her motion to alter or amend her answer and counterclaims for a seventh time, granting Wells Fargo Bank, N.A. (Wells Fargo), summary judgment on Hodges's counterclaims, and referring the underlying foreclosure matter to the master-in-equity.

On appeal, Hodges argues the circuit court (1) abused its discretion in denying her motion to amend her answer and counterclaims for a seventh time; (2) erred in granting summary judgment to Wells Fargo on her counterclaims; (3) violated her due process rights; (4) erred in allowing pre-signed interrogatory verifications; (5) "err[ed] in deciding the facts and not framing the issues before referring the case to the master"; (6) erred in granting Wells Fargo's motion to strike her jury trial demand; (7) erred in referring the case to the master; and (8) erred in finding the loan was in default as of the May 2017 payment date.

Regarding Hodges's first argument, we find this issue without merit because Hodges did not establish what new facts or claims, if any, her seventh amended complaint would have added. *See* Rule 15(a), SCRPC (stating that a party may amend a pleading once as a matter of course, after which "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party"); *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) ("In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be 'freely given.'" (quoting *Forman v. Davis*, 371 U.S. 178, 182 (1962))).

Hodges argues her seventh amended answer would have included her "holder in due course" argument, which is analogous to her standing argument in her sixth amended answer. However, we hold the circuit court heard and correctly determined that Wells Fargo had standing because Wells Fargo is in possession of the original promissory note, which is supported by the record. *See* S.C. Code Ann. § 36-3-301 (Supp. 2021) ("Person entitled to enforce' an instrument means (i) the holder of the instrument . . .").

Hodges also argued her seventh amended answer added allegations about joint tenancy to support her lack of subject matter jurisdiction claim; however, Hodges had already raised this allegation in her third amended answer. Therefore, the circuit court did not abuse its discretion in refusing to allow Hodges to amend her answer and counterclaims for a seventh time as such amendments would not have established new facts or claims and would have been an exercise in futility. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019) ("In rare cases, however, a trial court may deny a motion to amend if the amendment would be clearly futile.").

As to Hodges's second argument, we find that this issue, when viewed in the light most favorable to Hodges, is without merit because she failed to show any genuine issue of material fact existed. Thus, Wells Fargo was entitled to judgment as a matter of law, and the circuit court did not err in granting summary judgment on Hodges's counterclaims and affirmative defenses in Wells Fargo's favor. *See Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438-39 (2003) ("In reviewing the grant of a summary judgment motion, the Court applies the same standard as the trial court under Rule 56(c), SCRPC: 'summary judgment is proper when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.'" (quoting *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 114-15, 410 S.E.2d 537, 545 (1991))); *id.* at 69, 580 S.E.2d at 439 ("In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party.").

As to Hodges's third argument, the record shows no indication this argument was raised to or ruled upon by the circuit court; therefore, it is not properly before this court. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Germain v. Nichol*, 278 S.C. 508, 509, 299 S.E.2d 335, 335 (1983) ("Appellant has the burden of providing [an appellate court] with a sufficient record upon which [the appellate court] can make its decision.").

As to Hodges's fourth argument, we find the record is insufficient to review this issue. While it is clear Hodges brought this issue before the circuit court and the circuit court ruled upon it, Hodges's interrogatories and Wells Fargo's responses are not included in the record. *See id.* ("Appellant has the burden of providing [an appellate court] with a sufficient record upon which [the appellate court] can make its decision.").

As to Hodges's fifth argument, we find it abandoned because she did not present any argument on this issue outside of the issue statement. *See Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.").

As to Hodges's sixth and seventh arguments, we find these issues abandoned because Hodges provided only short and conclusory statements without any supporting legal authority aside from a cite to Rule 38(a), SCRCP, which states simply that the right to a jury trial under the South Carolina Constitution or a state statute is preserved inviolate. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").¹

As to Hodges's eighth argument, we find this issue without merit. The record indicates Hodges did not make required mortgage payments after her mother, the original mortgagor, died. Additionally, a secured creditor, such as Wells Fargo in this action, is not required to file a claim against a decedent's estate if the secured creditor is solely seeking to foreclose the mortgage and is not attempting to hold the estate liable for the deficiency following the foreclosure sale. *See* S.C. Code Ann. § 62-3-104 (2022) (stating the probate code "has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein"); *In re Est. of Hover*, 407 S.C. 194, 205, 754 S.E.2d 875, 881 (2014) ("[A] secured creditor may pursue foreclosure proceedings on the security for the mortgage without presenting a claim against the estate and, thus, may do so outside the time limits of the nonclaim statute."). Here,

¹ To the extent Hodges argues the circuit court erred in granting summary judgment on her claim for breach of fiduciary duty, we find this issue is without merit because a fiduciary relationship cannot be created by the unilateral act of one party, Hodges failed to cite to relevant authority showing a private cause of action for denial of a loan modification exists, and Hodges failed to produce any evidence to support any element for breach of fiduciary duty. *See Spence v. Wright*, 395 S.C. 148, 160, 716 S.E.2d 920, 926 (2011) (clarifying that the existence of a duty and whether the law recognizes a duty are issues of law to be decided by the court); *Regions Bank v. Schmauch*, 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003) ("[T]he normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature."); *id.* ("[N]o fiduciary relationship between a bank and its depositor exists when the bank is unaware of any special trust reposed in it.").

Wells Fargo waived its right to seek a deficiency judgment against Hodges's mother's estate in its complaint. Therefore, the circuit court properly found it had subject matter jurisdiction in this case.

To the extent Hodges argues unclean hands, joint tenancy, and bias by the circuit court, these issues were not raised in Hodges's statement of issues on appeal. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."). Further, we find these issues abandoned on appeal, as they are supported only by conclusory arguments with little to no relevant legal authority. *See Glasscock, Inc.*, 348 S.C. at 81, 557 S.E.2d at 691 ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

To the extent Hodges argues about a deficiency judgment, foreclosure intervention, bankruptcy, a bankruptcy-related res judicata argument, and issues with discovery, we find these issues are not properly before this court as they were not included in Hodges's initial brief nor were they included in her statement of issues on appeal. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); Rule 211(b), SCACR ("The final brief(s) shall be identical to the brief(s) previously served under Rule 208"). Further, even if these issues were properly before this court, it is unclear based on the record whether Hodges raised these issues or if they were ruled upon by the circuit court. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Germain*, 278 S.C. at 509, 299 S.E.2d at 335 ("Appellant has the burden of providing [an appellate court] with a sufficient record upon which [the appellate court] can make its decision.").

AFFIRMED.²

THOMAS, MCDONALD, and HEWITT, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge
Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;
SC Housing Corp.; and Twin Creeks Homeowners Association,
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,
is the Appellant.

PROOF OF SERVICE OF
CORRECTED
PETITION FOR REHEARING OF APPELLANT
AND REQUEST FOR EN BANC REHEARING
AND SUPPORTING DOCUMENTS


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CONCERNING
WELLS FARGO V. MICHELLE HODGES
CASE NUMBER 2019-001565

I hereby certify that today (9/2/2022), I served copies of the attached Corrected Petition for Rehearing /Rehearing en banc and Notice and Motion requesting that this Honorable Court, please accept my correct Petition for rehearing. I placed the above mentioned documents in the mail at Postal Annex, located at 2607 Woodruff Rd. Ste. E., Simpsonville, SC 29681, on the following parties, as shown below:

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