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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph M. Strickland, Master in Equity

Appellate Case No. 2021-001219

First Citizens Bank and Trust
Company, Inc,

Respondent,

v.

Justin K. Spires, Timothy J.
Spires, Sr. South Carolina
Department of Probation,
Parole and Pardon Services
and Warren B. Giese as
Solicitor,

Of who, Justin K. Spires and
Timothy J. Spires are the

Appellants.

RECORD ON APPEAL

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Columbia SC 29204
Attorney for Responent

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company, Inc.

Plaintiff,

-VS-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of Probation,
Parole and Pardon Services and Warren B.
Giese as Solicitor,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

**PLAINTIFF'S MOTION AND ORDER FOR
REFERENCE**

IT APPEARING, pursuant to Rule 53(b) of the *South Carolina Rules of Civil Procedure*, that the above entitled action for foreclosure of a mortgage on real property situated in Richland County, South Carolina, is a proper matter to refer to the Master In Equity for Richland County, by order of a Circuit Court Judge or the Clerk of Court, with authority to enter a final judgment in the case;

NOW, upon the motion of the attorneys for the Plaintiff,

IT IS ORDERED that the above entitled action be, and the same hereby is, referred to The Honorable Joseph M. Strickland, Master In Equity for Richland County, to make findings of fact and conclusions of law; dispose of any and all issues and enter a final judgment in the case; order a judicial sale on any day, not just the regular judicial sale day; hear and dispose of any issues after sale or judgment, including, but not limited to, issuance of a Writ of Assistance and any issues involving appraisal under Code Section 29-3-680, et seq.

AND IT IS FURTHER ORDERED that any appeal of an Order will be directed to the South Carolina Supreme Court or South Carolina Court of Appeals.

I SO MOVE:

___s/B. Lindsay Crawford, III___
B. Lindsay Crawford, III (SC Bar# 6510)
Theodore von Keller (SC Bar# 5718)
Sara C. Hutchins (SC Bar# 72879)
B. Lindsay Crawford, IV (SC Bar# 101707)
Email: court@crawfordvk.com
Attorneys for Plaintiff

SIGNATURE PAGE TO FOLLOW



Richland Common Pleas

Case Caption: First Citizens Bank & Trust Company vs Justin K Spires , defendant,
et al
Case Number: 2019CP4005698
Type: Order/Referred to Master or Special Referee

So Ordered

Jocelyn Newman, Chief Judge for Administrative
Purposes, Court of Common Pleas, 5th Judicial
Circuit

Electronically signed on 2019-11-21 15:10:19 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company,
Inc.

Plaintiff,

-VS-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of Probation,
Parole and Pardon Services and Warren
B. Giese as Solicitor,
Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

**MASTER IN EQUITY'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE
(DEFICIENCY JUDGMENT DEMANDED
AS TO DEFENDANT(S) JUSTIN K.
SPIRES AND TIMOTHY J. SPIRES ONLY)**

TO:

Theodore von Keller, Esquire
B. Lindsay Crawford, III, Esquire
B. Lindsay Crawford, IV, Esquire
Christopher B. Lusk, Esquire
Crawford & von Keller, LLC.
PO Box 4216
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Justin K. Spires
30 Cardington Court
Columbia, SC 29209

Timothy J. Spires, Sr.
30 Cardington Court
Columbia, SC 29209

South Carolina Department of Probation,
Parole and Pardon Services
2221 Devine Street
Columbia, SC 29250

Warren B. Giese as Solicitor
1315 Blanding Street
Columbia, SC 29201

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred by Order of Reference to the undersigned Master In Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the cause. Any appeal from the decision of the Master In Equity shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held and from the evidence presented, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on October 9, 2019.
2. The Summons and Complaint were filed on October 9, 2019.
3. Service was made upon the Defendant(s) named in the Complaint as is shown by the proof of service filed herein.
4. The Defendant(s), Justin K. Spires, Timothy J. Spires, Sr., South Carolina Department of Probation, Parole and Pardon Services and Warren B. Giese as Solicitor is/are in default as shown by Affidavit filed herein.
5. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Service Members Civil Relief Act.
6. The Defendant(s) was/were notified of the time, date and place of hearing in this matter.
7. For value received, Justin K. Spires and Timothy J. Spires, Sr. made, executed and delivered a Note, dated August 31, 2006, promising thereby to pay to the order of First Citizens Bank & Trust Company the sum of \$99,998.00, with interest at the (initial) rate of 6.875% per annum. Other terms and conditions are stated in the note, which is of record herein.

8. To better secure the payment of the Note described above, Defendant Justin K. Spires made, executed and delivered to First Citizens Bank & Trust Company, Inc. a Mortgage, in writing, dated August 31, 2006, covering real property in Richland County, which is the same as that described in the Complaint. The Mortgage was recorded on September 1, 2006, and is of record in the Office of the Register of Deeds for Richland County Book 1224 at Page 3744.

9. This Mortgage constitutes a purchase money mortgage.

10. The Plaintiff in this action is the mortgagee of record and owner and holder of the Note and Mortgage it is seeking to foreclose.

11. The titleholder of record of the subject property as of the filing of the Lis Pendens in this action was/were Justin K. Spires, who was/were the original mortgagor(s).

12. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

13. Having specifically considered each of the following: the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time and labor devoted to the case, including reviewing the various loan documents, performing the title search, preparing, filing and serving the pleadings, preparing for the hearing, including preparing the judgment and other documents requested by the Court, attending the hearing, preparing for and attending the sale, and preparing any post-sale documents requested by the Court; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$1,932.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of

the Note and Mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

14. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

a. Principal Balance due as of March 30, 2019	<u>\$57,355.96</u>
b. Interest from February 30, 2019 to February 12, 2020 at 6.875% per annum	<u>\$2,016.73</u>
c. Advancements to Escrow (insurance/taxes/any other properly chargeable advancements)	<u>\$ 3,914.37</u>
d. LESS:	<u>\$ 0.00</u>
e. Late Charges	<u>\$ 504.84</u>
f. Costs of collection prior to hearing	<u>\$ 987.06</u>
g. Attorney's Fee (as referenced above)	<u>\$1,932.00</u>

Total Debt secured by note and mortgage, including interest to date:	<u><u>\$66,710.96</u></u>
--	---------------------------

Interest for the period from the date shown in b. above through the date of this judgment, at above stated rate, to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein, and interest after the date of judgment at the rate of 6.875% per annum, pursuant to the terms of the note and mortgage, on the judgment debt should be added to such judgment debt to comprise the amount of the Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

15. The Plaintiff is seeking foreclosure of its mortgage and has demanded a deficiency judgment against the Defendant(s) Justin K. Spires and Timothy J. Spires, Sr., pursuant to Section 29-3-660, Code of Laws of South Carolina, 1976, and the entry of an immediate

deficiency judgment pursuant to Section 29-3-650, Code of Laws of South Carolina, 1976. The Plaintiff has reserved unto itself the option to waive such demand for deficiency judgment prior to the sale of the mortgaged property.

16. The following Defendant(s), claim or may claim lien/liens upon or interest in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such junior lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCF. The said Defendant(s) and such claim(s) or lien(s) is/are as follows:

a) That the Defendant, South Carolina Department of Probation, Parole and Pardon Services, may have or claim to have an interest in the subject property by virtue of a judgment against Timothy Spires, in the original amount of \$421.97, filed in Richland County on December 11, 2014, in Judgment Roll No. 2014-CP-40-07670. Said judgment is junior and subordinate to the lien of the Plaintiff herein.

b) That the Defendant, Warren B. Giese as Solicitor, may have or claim to have an interest in the subject property by virtue of a judgment against Justin Kirby Spires and Tim Spires, in the original amount of \$3,287.00, filed in Richland County on March 9, 2012, in Judgment Roll No. 2010-CP-40-04001. Said judgment is junior and subordinate to the lien of the Plaintiff herein.

17. The loan is not applicable for the Home Affordable Modification Program as that program sunset on December 31, 2016.

18. The attorney for the Plaintiff, in compliance with The Supreme Court of South Carolina *Administrative Order Re: Mortgage Foreclosures Actions*, 2011-05-02-01, has certified that pursuant to Supreme Court Administrative Order 2011-05-02-01 the Mortgagor(s) have been served with the required notice of rights, and more than 30 days have elapsed since service upon the Mortgagor(s), and the Mortgagor(s) have failed, refused, or voluntarily elected not to participate in any foreclosure intervention process.

CONCLUSIONS OF LAW:

I, therefore, conclude as follows:

19. The Plaintiff has offered exhibits and the Court has accepted them.

20. The Plaintiff's mortgage is declared to be a 1st lien against the subject property and any interest held by the aforementioned Defendant(s) is junior and subordinate to the lien of the Plaintiff herein.

21. The Plaintiff should have (judgment on its note, which shall be entered immediately, and it should have) judgment of foreclosure of its mortgage; and the mortgaged property should be ordered sold at public auction after due advertisement.

22. The Plaintiff's lien constitutes a purchase money mortgage on the Mortgaged Property.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

23. That there is due to the Plaintiff on its note and mortgage the sum of \$66,710.96, representing the Total Debt due to the Plaintiff as set out in the aforementioned paragraph, together with interest thereon at the rate provided above to the date hereof.

24. That the amount due in the preceding paragraph (the "Total Debt" as set forth in the aforementioned paragraph, and later accrued interest and costs) shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 6.875% per annum, pursuant to the terms of the note and mortgage.

25. That the judgment amount shall be subject to increase to permit the Plaintiff to recover additional costs, commission and expenses, including but not limited to the deposit made in compliance with § 14-11-310, *South Carolina Code of Laws*, 1976. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the Court

without further hearing. The judgment may also be increased to include supplemental compensation for attorney's services not contemplated by the initial attorney's fee award. Jurisdiction over the attorney's fee award and total debt is reserved to the undersigned to facilitate the assessment and payment of any such costs and/or supplemental compensation.

26. That the Defendant(s) Justin K. Spires and Timothy J. Spires, Sr. is/are liable for the aforesaid debt shall, prior to the date and time of the sale of the subject property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

27. The following defendants have no further interest in the property which is the subject of this action and the Clerk of Court/Register of Deeds is hereby ordered to release said liens in so much as it pertains to the property which is the subject of this action:

South Carolina Department of Probation, Parole and Pardon Services and Warren B.

Giese as Solicitor

28. That on default of payment prior to the date and time of the sale, the mortgaged premises, hereinafter described, shall be sold by the Master In Equity at public auction, at the Richland County Courthouse, in the County and State aforesaid, at 12:00 Noon on the next convenient sales day hereafter, on the following terms, that is to say:

a) FOR CASH: The Master In Equity shall require a deposit at the conclusion of the bidding 5% of the amount of the bid, in cash or equivalent, as evidence of good faith, the same to be applied on the purchase price in case of compliance with the bid, but in case of non-compliance within twenty (20) days, the same to be forfeited and applied to the costs and then to the Plaintiff's debt.

b) Interest on the balance of the bid shall be paid to the day of compliance at the rate of 6.875% per annum.

c) The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

d) Purchaser to pay for the deed and the cost of recording the deed.

29. That if the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the Master In Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.

30. That a personal or deficiency judgment having been demanded against Justin K. Spires and Timothy J. Spires Sr. by the Plaintiff, the sale of the subject property will remain open for thirty (30) days pursuant to Section 15-39-720, Code of Laws of South Carolina, 1976; provided, however, that the Court recognizes the option reserved by the Plaintiff to waive such deficiency judgment prior to the sale, and the advertisement of such sale shall provide for the possibility of a waiver of the deficiency judgment by the Plaintiff prior to the sale; and that should the Plaintiff hereafter notify the Court in writing of its election to waive a deficiency judgment, and without notice other than the announcement at the sale that a deficiency judgment has been waived and that the sale will be final, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

31. That, in addition to all notices to the property owner(s) which are required by the SCRCF or other law, in a case involving property owner's SCRCF 55 default, or an any other case or circumstance where property owner(s) would not ordinarily receive a copy of the Order of Foreclosure and/or the Notice of Sale, the party seeking foreclosure (Foreclosing Party) shall,

within 5 (five) days of the execution of this Order cause this Order and the Notice of Sale (if available) to be served by US Mail upon said property owner(s). An affidavit of such service shall be filed with the Clerk of Court expeditiously. In cases where the Notice of Sale is executed later in time than the Order, service shall be accomplished separately, and shall be sent no later than 5 (five) days from receipt by the Foreclosing Party.

32. That the Master In Equity, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within twenty (20) days after the date of sale, then the Master In Equity may re-advertise the premises for sale on the next, or some other subsequent, salesday, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

33. That the Master In Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the amount to the Plaintiff, or the Plaintiff's Attorney, of the amount of the Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRCP.

34. That it is further ORDERED, ADJUDGED AND DECREED that, in the event the successful bidder is other than the Defendant(s) in possession herein, upon the presentation of

this Order or a Writ of Assistance the Sheriff of Richland County is hereby directed to eject and remove from the premises the occupant(s) of the property sold, together with any and all personal property located thereon, and to put the successful bidder, or his assigns, in full, quiet and peaceable possession.

35. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant(s) named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

36. That it is further ORDERED, ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant(s) Justin K. Spires, who was/were the titleholder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

37. That the Master In Equity shall retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71(c), SCRCF, and hearing any issues involving appraisal proceedings under § 29-3-680, et seq., *South Carolina Code of Laws*, 1976.

38. That it is further ORDERED, ADJUDGED AND DECREED that, if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the mortgaged property, hereinafter described, the Master In Equity (or the sale officer designated herein) shall pull the property from sale; and in the event that the sale is nevertheless conducted, then such sale will be

null, void and of no force and effect. In such event, the sale will be rescheduled for the next or some subsequent sales day.

39. That after the Order Confirming Sale and Disbursements has been issued and filed, the Master In Equity shall direct the Clerk of Court/Register of Deeds to release of record the mortgage lien being foreclosed, which mortgage lien is/are described in the Findings of Fact hereinabove.

40. That the following is a description of the premises herein ordered to be sold:

All that certain piece, parcel, tract or lot of land, together with all improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown and delineated as Lot Number Thirty four (34), Block "V" on a plat of Waterbury, Phase 2, a/k/c East Pines, by Civil Engineering of Columbia, dated May 21, 1983, and recorded in the Register of Deeds Office for Richland County in Plat Book "Y, at page 529 and further shown on a plat prepared for William T. Bloom and Ruth S. Bloom, by Belter & Associates, Inc., dated May 21, 1983. Said property having such shapes, courses, distances, metes and bounds as shown upon said plat, reference being craved thereto as often as necessary for a more complete and accurate description; all measurements being a little more or less.

This being the same properly heretofore conveyed to Justin Spires by Deed of Ruth S. Bloom recorded at the Register of Deeds Office for the County of Richland September 1, 2006 in Book R1224 at Page 3742.

TMS #: 19213-01-45

AND IT IS SO ORDERED.

SIGNATURE TO FOLLOW FORM 4

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2019-CP-40-05698

First-Citizens Bank & Trust Company, Inc.

PLAINTIFF

vs.

Justin K. Spires, Timothy J. Spires, Sr., South
Carolina Department of Probation, Parole and
Pardon Services and Warren B. Giese as Solicitor

DEFENDANTS

Submitted by: Crawford & von Keller, LLC Post Office Box 4216, Columbia, SC 29240 Email: court@crawfordvk.com	Attorney for Plaintiff
---	------------------------

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other – _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other – _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other – _____
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow); ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: Order For Judgment of Foreclosure and Sale.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
First-Citizens Bank & Trust Company, Inc.	Justin K. Spires and Timothy J. Spires, Sr.	\$ to be determined
If applicable, describe the property, including tax map information and address, referenced in the order: 30 Cardington Ct., TMS #: 19213-01-45		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

**SIGNATURE PAGE TO FOLLOW
For Clerk of Court Office Use Only**

This judgment was entered on the _____ day of _____, 2020 and a copy mailed first class or placed in the appropriate attorney's box on this the _____ day of _____, 2020 to attorneys of record or to parties (when appearing pro se) as follows:

B. Lindsay Crawford, III (SC Bar# 6510)
Theodore von Keller (SC Bar# 5718)
B. Lindsay Crawford, IV (SC Bar# 101707)
Christopher B. Lusk (SC Bar# 103221)
Crawford & von Keller, LLC.
PO Box 4216
1640 St. Julian Place (29204)
Columbia, SC 29240
Phone: 803-790-2626
Email: court@crawfordvk.com
ATTORNEYS FOR THE PLAINTIFF

Justin K. Spires
30 Cardington Court
Columbia, SC 29209

Timothy J. Spires, Sr.
30 Cardington Court
Columbia, SC 29209

South Carolina Department of Probation,
Parole and Pardon Services
2221 Devine Street
Columbia, SC 29250

Warren B. Giese as Solicitor
1315 Blanding Street
Columbia, SC 29201

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT



Richland Common Pleas

Case Caption: First Citizens Bank & Trust Company vs Justin K Spires , defendant,
et al
Case Number: 2019CP4005698
Type: Master/Order/Foreclosure & Sale and Form 4

It is so Ordered

s/Joseph M. Strickland, 3055

Electronically signed on 2020-02-17 09:40:18 page 14 of 14

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

First-Citizens Bank & Trust
Company, Inc.

Plaintiff,

-vs-

Justin K. Spires, Timothy J. Spires,
Sr., South Carolina Department of
Probation, Parole and Pardon
Services and Warren B. Giese as
Solicitor,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

MOTION AND ORDER VACATING
SALE

4000.0142

WHEREAS, on July 6, 2020 a foreclosure sale was held by Joseph M. Strickland, as Master In Equity, for Richland County, pursuant to Master In Equity's Order and Judgment filed herein on February 18, 2020;

AND WHEREAS, it further appears that, unknown to Plaintiff, the Defendant, Justin Kirby Spires filed Bankruptcy Case No.20-02810 on July 6, 2020. The foreclosure sale held July 6, 2020 is therefore vacated as it was conducted after the pendency of the bankruptcy.

THEREFORE, it is ordered that the Sale on July 6, 2020 is vacated.

AND IT IS SO ORDERED.

I SO MOVE:

____s/B. Lindsay Crawford, II____
B. Lindsay Crawford, III (SC Bar# 6510)
Theodore von Keller (SC Bar# 5718)
B. Lindsay Crawford, IV (SC Bar# 101707)
Christopher B. Lusk (SC Bar# 103221)
Email: court@crawfordvk.com
Attorneys for Plaintiff

SIGNATURE PAGE TO FOLLOW



Richland Common Pleas

Case Caption: First Citizens Bank & Trust Company vs Justin K Spires , defendant,
et al
Case Number: 2019CP4005698
Type: Master/Order/Other

It is so Ordered

s/Joseph M. Strickland, 3055

Electronically signed on 2020-07-08 12:30:57 page 2 of 2

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 JR Number 2019-CP-40-5698

First-Citizens Bank & Trust Company, Inc.,)
)
)
)

Plaintiff (s),)

vs.)

Justin K. Spires, Timothy J. Spires, Sr., South)
 Carolina Department of Probation, Parole and)
 Pardon Services and Warren B. Giese as)
 Solicitor,)

Defendant (s).)

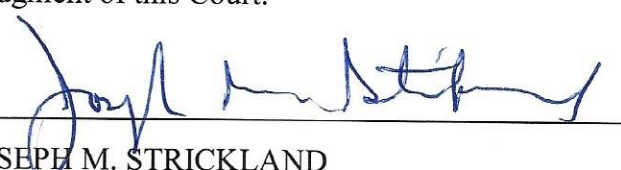
Master's Report on Sale and Disbursements
 and
 Order of Confirmation

Pursuant to Rule 71, SCRPC
 (Public Sale)

1. Pursuant to Order of Court and after due notice and advertisement, I sold subject property to:
 - (a) the Plaintiff for the sum of \$ 69,407.20, that amount being the highest bid made on Sales Day, January 6, 2021. The Plaintiff thereafter paid only the costs as provided in said Order and became the grantee/assigned its bid to .
 - (b) the highest bidder on Sales Day, , for the sum of \$. The successful bidder thereafter complied with the bid, as provided for in said Order, and became the grantee/assigned the bid to .
2. That I have executed and delivered to said grantee a good and sufficient deed of conveyance of said property.
3. I have received and disbursed the costs as set out on the attached Statement of Disbursements which resulted in the disbursement of proceeds of sale/a surplus of \$ -----
4. , notice of which is being sent to all parties who may wish to apply for said surplus, pursuant to Rule 71(c), SCRPC.

IS THEREFORE ORDERED that the said sale and the Master's Report on Sale and Disbursements are hereby confirmed as a judgment of this Court.

January 14, 2021


 JOSEPH M. STRICKLAND
 Master in Equity for Richland County

0
ELECTRONICALLY FILED - 2021 Jun 15 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4005698

1/11/2021

C.A.# 2019-CP-40-5698

Record on Appeal022

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust
Company, Inc.

Plaintiff,

-vs-

Justin K. Spires, Timothy J. Spires,
Sr., South Carolina Department of
Probation, Parole and Pardon
Services and Warren B. Giese as
Solicitor,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

**MASTER IN EQUITY'S REPORT ON
SALE AND DISBURSEMENTS
ORDER AWARDING DEFICIENCY
AND ORDER CONFIRMING SALE
(Deficiency Judgment Demanded)**

The undersigned as Master In Equity for Richland would respectfully show:

1. That pursuant to the Judgment of Foreclosure and Sale of this Court heretofore made in the above-captioned action dated and filed on February 18, 2020, and after due advertisement by publication according to law, on December 7, 2020, as directed, I, the undersigned, as Master In Equity for Richland, offered for sale and sold the property therein described unto the Plaintiff, First-Citizens Bank & Trust Company, Inc., for the sum of sixty-nine thousand four hundred seven and 20/100 dollars (\$69,407.20), that amount being the highest bid therefore, which bid has been complied with.
2. That the proceeds of said sale have been paid out and disbursed by the undersigned.
3. That the Plaintiff has demanded that a deficiency judgment be entered against the Defendant(s), Justin K. Spires and Timothy J. Spires, Sr., in the event that the proceeds of sale are insufficient to pay in full the total indebtedness due to the Plaintiff; and that the Plaintiff is entitled to a deficiency judgment against the said Defendant(s), Justin K. Spires and Timothy J. Spires, Sr., in the amount of \$2,693.96, as calculated as shown on the statement attached hereto.

Crawford & von Keller, LLC.
Post Office Box 4216
Columbia, South Carolina 29240

4. That the undersigned has executed and delivered a deed to the subject property unto Plaintiff,
First-Citizens Bank & Trust Company, Inc..

WHEREFORE, it is

ORDERED that the Plaintiff have judgment against the Defendant(s), Justin K. Spires and Timothy
J. Spires, Sr., in the amount of \$2,693.96.

IT IS FURTHER ORDERED that this Report, the foreclosure sale and resulting deed be, and they
are, hereby confirmed.

AND IT IS SO ORDERED.



Joseph M. Strickland, Master In Equity for Richland
County

Richland County, South Carolina

January 14, 2021

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2019-CP-40-05698

First-Citizens Bank & Trust Company, Inc.,
PLAINTIFF(S)

Justin K. Spires, Timothy J. Spires, Sr., South Carolina
Department of Probation, Parole and Pardon Services
and Warren B. Giese as Solicitor,
DEFENDANT(S)

Submitted by: B. Lindsay Crawford, III., Theodore von Keller or B Lindsay
Crawford, IV, Crawford & von Keller, LLC.
Email: court@crawfordvk.com

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- ☐ **NOTE:** ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case: Order For Confirming Sale.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
First-Citizens Bank & Trust Company	Justin K. Spires and Timothy J. Spires, Sr.	\$2,693.96
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: 30 Cardington Ct., TMS #: 19213-01-45		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge

Judge Code

Date

Justin K. Spires
30 Cardington Court
Columbia, SC 29209

Timothy J. Spires, Sr.
30 Cardington Court
Columbia, SC 29209

South Carolina Department of Probation,
Parole and Pardon Services
2221 Devine Street
Columbia, SC 29250

The Honorable Alan Wilson
South Carolina Attorney General
Dennis Office Building
1000 Assembly Street, Room 519
Columbia, SC 29211

Warren B. Giese as Solicitor
1315 Blanding Street
Columbia, SC 29201

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company,
Inc.

Plaintiff,

-VS-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of
Probation, Parole and Pardon Services
and Warren B. Giese as Solicitor,
Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

RULE TO SHOW CAUSE

TO RESPONDENTS:

Pursuant to Section 53, SCRCP, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment of Writ of Assistance in the cause.

Occupants who are tenants under a valid lease agreement dated on or before May 20, 2009, may be entitled to protections the Protecting Tenants at Foreclosure Act (Title VII, S.896). If the occupant believes this Act applies, then occupant should attend the hearing listed below to present supporting documentation.

Now, therefore, upon reviewing the attached Petition,

IT IS ORDERED THAT you are required to appear before the undersigned Joseph M. Strickland, Master In Equity for Richland County at the Richland County Judicial Center, 1701 Main Street, Courtroom 2-D, Columbia, South Carolina 29201 on the 26th day of February, 2021, at 10:00 am, to show cause, if any you have, why you should not be required to forthwith vacate the property **commonly known as 30 Cardington Ct., TMS# 19213-01-45**, taking with you all personal belongings.

IT IS FURTHER ORDERED that service of the Rule to Show Cause be made by the Sheriff, his deputy, or by any other person not less than eighteen (18) years of age, that is not an attorney in or a party to the action, pursuant to Rule 4, *South Carolina Rules of Civil Procedure*.

IT IS FURTHER ORDERED that if the above-named Respondents cannot be located after diligent search, they may be served the Rule to Show Cause, and Order by mailing it to their last known address and by posting the notice on the premises. Personal service upon any occupants of the residence shall be considered personal service upon the above-named Respondent(s).

If you vacate the premises prior to the above date, the Petitioner's attorneys, Crawford & von Keller, LLC request that you advise them of that fact by calling 803-790-2626.

AND IT IS ORDERED.

SIGNATURE PAGE TO FOLLOW



Richland Common Pleas

Case Caption: First Citizens Bank & Trust Company vs Justin K Spires , defendant,
et al
Case Number: 2019CP4005698
Type: Order/Rule To Show Cause

It is so Ordered

s/Joseph M. Strickland, 3055

Electronically signed on 2021-02-09 13:58:38 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company,
Inc.

Plaintiff,

-vs-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of
Probation, Parole and Pardon Services
and Warren B. Giese as Solicitor,
Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

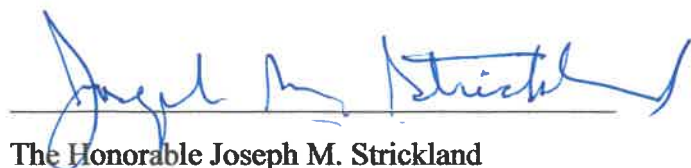
ORDER FOR WRIT OF ASSISTANCE

This matter comes before me upon a Petition requesting that the Sheriff of Richland County remove peaceably or forcibly the Defendant, or any occupants, and all of their personal property located within or on the premises described herein.

Upon examining the Judgment of Foreclosure and Sale issued in the above case, and upon reading the Petition, it appears to the Court that the Plaintiff has complied with the requirements of the Rule to Show Cause and The Protecting Tenants at Foreclosure Act (title VII, S.896), and that a Writ of Assistance should be issued against the above-named Defendant(s) or any occupants of the subject premises **commonly known as 30 Cardington Ct., Columbia, SC 29209, TMS# 19213-01-45.**

IT IS HEREBY ORDERD that the Sheriff of Richland County or his authorized deputies be, and they hereby are, authorized and directed to enter upon the premises described in the Petition and in the Judgment of Foreclosure and Sale at any time after 1:00 p.m. on the 3rd day of May, 2021, and to either peaceably or forcibly remove the Defendant(s) or any occupants and all personal property of same located within or on the premises, and that force may be used, if necessary, to enter the premises described hereinabove.

March 19, 2021



The Honorable Joseph M. Strickland

Master in Equity for Richland County

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2019-CP-40-05698

First-Citizens Bank & Trust Company,
Inc.,

Plaintiff

ORDER

-vs-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of Probation,
Parole and Pardon Services and Warren
B. Giese as Solicitor,

Defendant(s)

This matter was before me on Friday, June 4, 2021 pursuant to the Defendants Justin K. Spires and Timothy J Spires Sr. (the “ Defendants”) Motion for Relief from Default Judgment. Present at the hearing were Sean M. French Sr., attorney for the Defendants and Theodore von Keller, attorney for Plaintiff. After consideration of the Court filings, argument of counsel and the submissions of counsel, the Court denies the motion as set forth herein.

A. FACTS

Defendants Justin K. Spires and Timothy J. Spires Sr. entered into a Promissory Note dated August 31, 2006 with Plaintiff. Pursuant to the terms of the Note, Plaintiff provided financing to Defendants to enable Defendants to purchase real property located at 30 Cardington Court, Columbia, SC 29209. Defendants granted Plaintiff a security interest in the real property as reflected in the Note and Mortgage. Defendants defaulted under the terms of the Note and Plaintiff filed suit in October 2019 and obtained service on the Defendants on October 15, 2019 as reflected in the Affidavits of Service filed with the Court. Defendant’s responsive pleadings were due on or before November 15, 2019. Plaintiff filed an Affidavit of Default on November 20, 2019.

A Notice of Hearing was mailed to Defendants on January 21, 2020. An Order of Judgment of Foreclosure and Sale was signed by Master in Equity Judge Strickland and entered on February 18, 2020. Notice of Sale was published on March 20, 2020 with a sales date scheduled of April 6, 2020. The April 6, 2020 sales date was cancelled due to COVID-19.

On May 15, 2020, Plaintiff submitted its Certification of Compliance with the Coronavirus Aid, Relief and Economic Security Act, Affidavit of Default, Notice of Motion and Motion for Default Judgment and proposed Order of Default Judgment for Repossession and Writ of Assistance.

A Notice of Sale and Judgment was mailed on June 19, 2020 for the July 6, 2020 sales date. A foreclosure sale was held on July 6, 2020 and Plaintiff was the successful, high bidder. On July 9, 2020, Plaintiff became aware that Defendant Justin K. Spires filed for Bankruptcy on July 6, 2020 and Plaintiff moved to vacate the foreclosure sale.

On November 20, 2020, a new Judgment for Foreclosure and Sale was signed by Judge Strickland. A foreclosure sale was held on December 7, 2020 and Plaintiff was the successful, high bidder.

On January 25, 2021, a Notice to Vacate letter was sent to the Defendants. A Rule to Show Cause was filed on February 8, 2021 and the Rule to Show Cause was posted on February 24, 2021 due to the occupant of the home refusing to accept service.

The Order for Writ of Assistance was signed on March 19, 2021. On May 17, 2021, Defendant filed its Motion to Vacate the Sale, Motion for Relief from Default and Motion to Dismiss the action for Lack of Personal Jurisdiction.

B. UNDER S.C.R.C.P. 4, PERFECT SERVICE IS NOT REQUIRED TO ESTABLISH PROPER SERVICE OF PROCESS.

South Carolina has never required exacting compliance with the rules to effect service of process. *Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (SC 1995). See *Foster v. Crawford*, 57 S.C. 551, 36 S.E. 5 (1900) (when officer's return defective as to time and place of service, it can be amended to state facts); *Saunders v. Bobo*, 2 Bailey 492 (1831) (sheriff's incomplete return that was not sworn to may be amended); *Miller v. Hall*, 1 Speers 1 (1842). Rather, the Court inquires whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings. *Roche*, supra.

Service of Process was obtained on October 12, 2019 by leaving a copy at the dwelling house or of the mortgaged property with some person of suitable age and discretion then residing therein. As reflected in the affidavit of service, the person served, Mitch Smith, informed the process server that he was a co-resident in the dwelling house of Defendant Justin Spires and Timothy J. Spires, Sr. The Defendants offered no evidence that they had provided Plaintiff with a writing identifying a new or different address than the mortgaged property. S.C. Code of Laws Section 37-1-201((6) "when the civil rules on service are followed, there is a presumption of proper service." 62B Am Jur 2d Process § 111 (1990). As service of process was obtained in a manner compliant with S.C.R.C.P 4 service was therefore proper service under the laws of South Carolina.

C. THE DEFENDANT IS NOT ENTITLED TO RELIEF UNDER RULE 60(b) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

In determining whether to grant relief under Rule 60(b)(1) of the South Carolina Rules of Civil Procedure, the court must consider the following factors: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct.App.2001).

In regards to the first prong of the test, Defendant Justin K. Spires did not move promptly for relief from judgment. The record before the Court reveals that the Defendants received no less than 11 separate notices regarding this foreclosure prior to filing for relief: 1) personal service of the Summons and Complaint ;2) Notice of Hearing dated January 21, 2020; 3) Notice of Sale published March 20, 2020; 4) Order of Judgment and Notice of Sale mailed June 16, 2020 to record address ; 5) July 3, 2020 telephone call to Plaintiff by Justin Spires; 6) July 6, 2020 filing of bankruptcy by Justin Spires on the eve of the foreclosure sale; 7) publication for the July 6, 2020 foreclosure sale ; 8) Notice of Sale and Judgment mailed for December 7, 2020; 9) publication of Notice of Sale;10) Notice to Vacate dated January 25, 2021 and 11) Rule To Show Cause posted February 24, 2021.

At oral argument, counsel for the Plaintiff also provided the Court with the Notice of Bankruptcy sent to Plaintiff's law firm by Defendant Justin Spires' bankruptcy counsel on July 6, 2020 in an effort to stop the foreclosure sale. Despite multiple notices of the foreclosure proceedings from as early as January, 2020, Defendants, however, did not move for relief until May 17, 2021. Defendants' motion did not occur until fifteen (15) months after the initial Judgment of Foreclosure and Sale and five (5) months after the Foreclosure Sale was held. Defendants have therefore failed to meet the test of promptly moving for relief despite knowledge of the foreclosure and foreclosure sale.

In regards to the second prong of the test, Defendants also cannot show an appropriate reason for the failure to act promptly. Defendants' motion asserts service was not properly obtained, however, when service is obtained in a manner compliant with S.C.R.C.P. 4, service is presumed to be proper. As set forth above, there were no less than eleven (11) documents regarding the Foreclosure action that were sent to Defendants. In additional, Plaintiff's affidavit reflects a phone call between the Bank and Defendant Justin Spires the day before the foreclosure sale in which he was informed of the pending foreclosure sale .This phone call apparently led to the filing of bankruptcy by Justin Spires in an attempt to stop the sale. All of this establishes that Defendants had personal knowledge that the action was ongoing, failed to take action and have failed to provide an appropriate reason for the failure to act promptly.

More importantly, Defendants cannot show a meritorious defense. The present case is an action for the foreclosure of property secured by a Note and Mortgage. Under the terms of the contract and South Carolina Law, Plaintiff is entitled to the foreclosure of its secured collateral upon the default of the Defendants. Neither the contract nor South Carolina Law grants Defendants the right to reinstate the contract.

In the present case, the Affidavit of the Representative of Plaintiff reflects that the Defendants are past due for the March 30, 2019 payment through February 12, 2020 payment and that there was

due and owing \$63,791.90 on the subject account at the time the first Order of Judgment of Foreclosure and Sale.

Defendants' only defense to an action for Foreclosure would be that the payments required under the Contract have been made and Plaintiff's verified account is in error. Defendants have not and cannot meet this burden. The uncontradicted Affidavit of Plaintiff is that Defendants were more than 11 months in default of payments at the time of the first Order of Judgment of Foreclosure and Sale and Defendants have not made a payment since February 2019, over two years ago. As the foreclosure sale has occurred, Plaintiff asserts that it cannot reinstate the loan, as no loan exists. Defendants' only option at this juncture, if any, would be full payment. The Defendants have failed to offer full repayment and therefore lack a meritorious defense.

Additionally, the relief sought by Defendants would prejudice Plaintiff. As set forth in Plaintiff's uncontradicted affidavit, the account more than 11 months in default of payments at the time of the first Order of Judgment of Foreclosure and Sale and Defendants have not made a payment since February 2019, over two years ago. Furthermore, the property has been sold. The secured collateral is real property, which is subject to depreciation. Plaintiff would be prejudiced by the grant of the Motion for Relief from Default.

Service of Process was done in a manner compliant with S.C.R.C.P. 4 and Defendants cannot meet the facts for relief required by SCRCP 60 (b), therefore the motion is denied.

AND IT IS SO ORDERED

Electronic signature of Judge Joseph M. Strickland, Master of Equity for Richland Co. to follow

Columbia, South Carolina

June 16, 2021



Richland Common Pleas

Case Caption: First Citizens Bank & Trust Company vs Justin K Spires , defendant,
et al
Case Number: 2019CP4005698
Type: Master/Order/Other

It is so Ordered

s/Joseph M. Strickland, 3055

Electronically signed on 2021-06-21 15:26:40 page 5 of 5

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

First-Citizens Bank & Trust Company, Inc.

Plaintiff

-vs-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of Probation,
Parole and Pardon Services and Warren B.
Giese as Solicitor,

Defendant(s)

**ORDER DENYING MOTION TO
RECONSIDER**

The matter before the Court is a Motion to Reconsider filed by Defendants pursuant to Rule 59(e), SCRCPP. Defendants move the Court to alter or amend its Order filed June 21, 2021, which denied Defendants' Motion for Relief from Default Judgment. Defendants' motion, filed July 1, 2021, is timely. Defendants' motion sets forth two grounds this Court should consider to alter or amend its Order.

A hearing was conducted on August 18, 2021. Theodore von Keller participated and argued on behalf of Plaintiffs. Shawn M. French, Sr. participated and argued on behalf of Defendants.

The purpose of a motion to alter or amend judgment is to ask the trial judge to reconsider matters contemplated in a decision on the merits. *Pye v. Estate of Fox*, 369 S.C. 555, 565-566, 633 S.E.2d 505, 510 (2006). "[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court alter or amend the judgment, but also as a vehicle to seek reconsideration of issues and arguments." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-779 (2004) (internal quotation marks omitted).

Based upon the record and evidence of this case, the arguments of counsel, and the foregoing, this Court can discern no new facts, legal theories or applications of law which were not previously considered by the Court in its June 21, 2021 Order. Defendants' two grounds upon which the Motion for Reconsideration is based were fully briefed and argued by counsel in their Motion for Relief from

Default and considered by the Court. Therefore, Defendants' Motion to Reconsider is denied.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that
Plaintiffs' Motion to Reconsider this Court's Order filed June 21, 2021 is denied.

AND IT IS SO ORDERED

(JUDGE'S SIGNATURE PAGE TO FOLLOW)



Richland Common Pleas

Case Caption: First Citizens Bank & Trust Company vs Justin K Spires , defendant,
et al
Case Number: 2019CP4005698
Type: Master/Order/Other

It is so Ordered

s/Joseph M. Strickland, 3055

Electronically signed on 2021-09-21 13:22:22 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company,
Inc.

Plaintiff,

-vs-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of
Probation, Parole and Pardon Services
and Warren B. Giese as Solicitor,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.:

SUMMONS
(Mortgage Foreclosure)
Non-Jury
(Deficiency Judgment Demanded)

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, Crawford & von Keller, LLC., PO Box 4216, Columbia, SC 29240, within thirty (30) days after service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for a judgment by default granting the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDE(S), AND/OR TO PERSON UNDER SOME LEGAL DISABILITY, INCOMPETENTS AND PERSONS CONFINED AND ACTIVE MILITARY MEMBERS:

YOUR ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a Guardian *ad Litem* within thirty (30) days after service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff.

____s/B. Lindsay Crawford, III____
B. Lindsay Crawford, III (SC Bar# 6510)
Theodore von Keller (SC Bar# 5718)
Sara C. Hutchins (SC Bar# 72879)
B. Lindsay Crawford, IV (SC Bar# 101707)
Crawford & von Keller, LLC.
PO Box 4216
Columbia, SC 29240
Phone: 803-790-2626
Email: court@crawfordvk.com

Attorneys for Plaintiff

Columbia, South Carolina

October 9, 2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

First-Citizens Bank & Trust Company, Inc.

CASE NO.

Plaintiff,

**COMPLAINT
(Mortgage Foreclosure)**

-vs-

**Non-Jury
(Deficiency Judgment Demanded)**

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of Probation,
Parole and Pardon Services and Warren B.
Giese as Solicitor,

Defendant(s).

The Plaintiff, complaining of the Defendants above-named, would respectfully show unto this Honorable Court:

1. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.
2. That the Plaintiff is the owner and holder of the promissory note and mortgage, hereinafter described, which are the subjects of this action.
3. The loan is not applicable for the Home Affordable Modification Program as that program sunset on December 31, 2016.
4. That the real property hereinafter described, which is the subject of this action, is situated and located in Richland County, South Carolina.
5. That some interest in or lien upon such real property is held or may be claimed by the Defendants herein.
6. That on or about August 31, 2006, for value received, Justin K. Spires and Timothy J. Spires, Sr. executed and delivered to First Citizens Bank & Trust Company a certain promissory note, in writing, according to the terms and conditions set out therein, by which said maker promised to pay to First Citizens Bank & Trust Company the sum of \$99,998.00, together with interest thereon at the rate of 6.875% per annum.

7. That in order to better secure the payment of the said note and debt, in accordance with the terms and conditions thereof, the said Justin K. Spires executed and delivered on August 31, 2006 a mortgage, of real estate to First Citizens Bank & Trust Company, Inc., its successors and assigns, covering the following described property:

All that certain piece, parcel, tract or lot of land, together with all improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown and delineated as Lot Number Thirty four (34), Block "L" on a plat of Waterbury, Phase 2, a/k/a East Pines, by Civil Engineering of Columbia, dated May 21, 1983, and recorded in the Register of Deeds Office for Richland County in Plat Book "Y, at page 529 and further shown on a plat prepared for William T. Bloom and Ruth S. Bloom, by Belter & Associates, Inc., dated May 21, 1983. Said property having such shapes, courses, distances, metes and bounds as shown upon said plat, reference being craved thereto as often as necessary for a more complete and accurate description; all measurements being a little more or less.

This being the same properly heretofore conveyed to Justin Spires by Deed of Ruth S. Bloom recorded at the Register of Deeds Office for the County of Richland September 1, 2006 in Book R1224 at Page 3742.

TMS #: 19213-01-45

8. That on September 1, 2006, said mortgage was recorded in the Office of the Register of Deeds for Richland County Book 1224 at Page 3744.

9. This mortgage constitutes a purchase money mortgage.

FOR A FIRST CAUSE OF ACTION
(Mortgage Foreclosure)

10. The Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

11. That according to the terms and conditions of said Note and Mortgage, it is provided that, in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable at the option of the holder.

12. That the monthly payments due on said Note and Mortgage are in default; that the conditions of said Note and Mortgage have been broken; that the Plaintiff elects to and does, declare the entire balance of said indebtedness due and payable; that the balance as of August 23, 2019 is \$57,355.96; that also due

and owing is interest as provide at the rate set forth in the Note; that also due are late charges and the costs and disbursements of this action, including attorney's fees.

13. That it has become and is necessary for the Plaintiff to employ legal counsel to prosecute this action; and that a reasonable fee for the services of the Plaintiff's counsel should, according to the terms of said note and mortgage, be added to the amount of the mortgage debt.

14. Pursuant to '37-3-105, *South Carolina Code of Laws* (1976 as amended), the mortgage lien, which is subject to this action, is a first lien on real estate and is not a '*consumer loan*' for the purposes of the South Carolina Consumer Protection Code. Any notices of right to cure have been given as required.

15. That the Plaintiff has advanced and/or may advance certain sums for taxes and insurance and for inspecting and/or securing the subject property, which sums, according to the terms of said mortgage, should be added to the amount of the mortgage debt.

16. That the Defendant, South Carolina Department of Probation, Parole and Pardon Services, may have or claim to have an interest in the subject property by virtue of a judgment against Timothy Spires, in the original amount of \$421.97, filed in the Office of the Clerk of Court for Richland County on December 11, 2014, in Case No.: 2014-CP-40-07670. Said judgment is junior and subordinate to the lien of the Plaintiff herein.

17. That the Defendant, Warren B. Giese as Solicitor, may have or claim to have an interest in the subject property by virtue of a judgment against Justin Kirby Spires and Tim Spires, in the original amount of \$3,287.00, filed in the Office of the Clerk of Court for Richland County on March 9, 2012, in Case No.: 2010-CP-40-04001. Said judgment is junior and subordinate to the lien of the Plaintiff herein.

18. That the Plaintiff has the right to seek a deficiency judgment against Justin K. Spires and Timothy J. Spires Sr.. That in the event that the net amount realized by the Plaintiff upon the sale of the subject property is insufficient to pay in full the total indebtedness of the Plaintiff, including costs of collection, the Plaintiff demands a personal judgment against said Defendant(s) in the amount of such deficiency.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein; and

Find that the Plaintiff's Mortgage be declared a first lien purchase money mortgage and that the Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes, insurance premiums and/or inspection or securing expenses, which may have been paid, a reasonable sum as attorney's fees and the costs of this action; and

That the Plaintiff's real property be sold under the direction of this Court, that the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale, and

Second, to the payment and discharge of the amount due on the Plaintiff's note and mortgage, together with attorney's fees and costs as aforesaid, and

Third, the surplus, if any, be distributed pursuant to Rule 71 of the South Carolina Rules of Civil Procedure; and

That the Plaintiff be awarded a deficiency judgment against the Defendant(s), Justin K. Spires and Timothy J. Spires Sr., in the event that the proceeds of the sale of the collateral property are insufficient to pay in full the indebtedness, including costs of collection; and

That the Court issue an Order directing the Sheriff to place the successful purchaser at the foreclosure sale in possession of the subject real property, and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property, if not removed shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the Mortgaged Property by placing said property on the public street or highway or by any other means, including by force if necessary; and

An Order granting the appointment of a receiver should it become necessary, to secure and supervise the rental of the property to be foreclosed with the authority to take possession thereof and collect rents,

issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt; and

An Order be entered for reimbursement of all costs of inspecting and securing the property incurred by the Plaintiff as a result of the delinquency; and

The Defendant(s), and all persons whomever claiming by and through said Defendant(s), be forever barred of right, title and interest, of, in and to the Mortgaged Property and Collateral, and each and every part thereof; and

For such other and further relief as may be just and proper.

____s/B. Lindsay Crawford, III____
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Columbia, South Carolina
October 9, 2019

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EXHIBITS

(No exhibits were marked during the hearing.)



1 **CALL TO ORDER:**

2 **THE COURT:** This is civil action number 2019-CP-40-
3 5698 First Citizens Bank and Trust Company
4 versus Justin Spires and others. The matter
5 before the Court is a motion by Mr. Spires to
6 set aside the foreclosure sale. Is that
7 accurate, Mr. French?

8 **MR. FRENCH:** There's actually two motions, Your
9 Honor. There are two Mr. Spires. One is
10 Justin Spires, one is Timothy Spires, Sr. I
11 filed separately. May not have been necessary
12 but they have slightly different arguments. I
13 can go to that if you want me to or we can
14 wait.

15 **THE COURT:** Let me ask for clarity of the record,
16 are they both defendants in the case?

17 **MR. FRENCH:** Yes, Your Honor.

18 **THE COURT:** Okay. Whose motion are you going to
19 argue first?

20 **MR. FRENCH:** I think we can argue them at the same
21 time. Is that an issue or ...

22 **MR. VON KELLER:** I don't think so. I don't think I
23 paid much attention to the fact that there were
24 two. I thought they were duplicates. But
25 they're essentially the same argument, aren't



1 they?

2 **MR. FRENCH:** They are. Just a slightly different
3 fact pattern, which can be summed up in the
4 fact that Timothy Spires didn't even live at
5 the property, never has lived at the property
6 where he was allegedly served at.

7 **THE COURT:** Before we get started, for clarity of
8 the record, what's the situation now? Mr. von
9 Keller, what's the ---

10 **PLAINTIFF'S POSITION:**

11 **MR. VON KELLER:** The -- Your Honor, the property was
12 sold. I provided Your Honor with a memorandum.
13 The facts are a little bit convoluted in the
14 fact that this happened during the beginning of
15 Covid, and we have -- you issued the judgement.
16 We've scheduled a sale. We had to cancel the
17 sale because of Covid. Then we rescheduled.
18 We then -- he files bankruptcy. We had to
19 cancel that sale. So we actually ended up
20 having three notices of sale. The -- at the
21 final sale that occurred, my client was the
22 successful bidder. That's been quite a while
23 ago actually. And we then could not gain
24 possession of the property and we field a writ
25 of assistance with you, and you issued a writ.



1 And we served -- we attempted to serve the writ
2 on the Defendant, could not get service, and we
3 posted it. And then this action happened. But
4 we -- the final sale was in December of 20,
5 December 7th, 2020. So we've been the -- you
6 issued a master's deed, everything's finalized.

7 **THE COURT:** Uh-huh. Okay.

8 **MR. FRENCH:** I believe the final sale was actually -
9 - it was a deficiency sale. The first sale was
10 December, the second was January. Doesn't
11 matter much. Just for the record.

12 **MR. VON KELLER:** My -- I -- I have it the other way
13 around.

14 **THE COURT:** All right. Is your client going to
15 waive deficiency or that's not even on the
16 table?

17 **MR. VON KELLER:** My recollection is we waived
18 deficiency but let me double check that.

19 **THE COURT:** All right.

20 **MR. FRENCH:** There is a judgement against -- a
21 deficiency judgement was entered.

22 **MR. VON KELLER:** Well then we did not waive
23 deficiency then.

24 **THE COURT:** Is that something worth negotiating?
25 Will that settle this case?



1 **MR. VON KELLER:** I approached my client, Your Honor,
2 at the hearing where Shawn was asking for an
3 injunction and we agreed to stay -- to stop the
4 writ of ejectment. I asked my client if they
5 -- could they provide me with a reinstatement
6 figure. The problem is is that now the loan --
7 now the deed has been issued, master's deed has
8 been issued, the property's been turned over to
9 the bank's REO department. They no longer have
10 an active loan. There's no loan to reinstate.
11 The loan's been accelerated. I provided Your
12 Honor with an affidavit with my memorandum.
13 The accelerated loan is some -- the affidavit
14 reflects that the accelerated loan is, I think,
15 I want to say \$65,000. Let me check that.

16 **MR. FRENCH:** 59 maybe.

17 **MR. VON KELLER:** \$63,791. So I'm not --
18 reinstatement's not an option. The entire loan
19 is due. \$63,000.

20 **THE COURT:** Oh no, not reinstatement, waiving
21 deficiency.

22 **MR. VON KELLER:** Sir?

23 **THE COURT:** Waiving your judgement, your deficiency
24 judgement, that's what I -- I may have
25 misspoken. I'm not suggesting you reinstate.



1 I was just wondering if the deficiency
2 judgement itself could be waived, if that would
3 settle his motion.

4 **MR. VON KELLER:** I don't know. Shawn's not
5 mentioned that to me and I didn't take it to my
6 client.

7 **MR. FRENCH:** And we talked -- we mentioned it
8 briefly last time we spoke. But the problem is
9 I've got two clients here, Your Honor.

10 **THE COURT:** Yeah.

11 **DEFENDANT'S POSITION:**

12 **MR. FRENCH:** Timothy who is only on the note, he's
13 not on the mortgage. And there's some weird
14 facts with this that we haven't had a chance to
15 talk about. May be moot, but ... And --
16 Timothy, Sr. I should say. There's two
17 Timothys. Junior is not involved in this case.
18 Timothy, Sr. who's never lived there, and
19 they're claiming he was served, you know, at
20 this property address. And then you've got
21 Justin. Justin owns the house. While, you
22 know, a deficiency judgement is fine and dandy,
23 there is likely equity in the house that he's
24 facing to lose. Our arguments are basically he
25 was trying to reinstate. And I finally got



1 today their reinstatement quote which is just
2 shy of 15,000 good through 12/30/2020. I just
3 got this today. I'm not trying ---

4 **MR. VON KELLER:** That didn't come to me.

5 **MR. FRENCH:** That's the only copy I brought with me.
6 I couldn't get an affidavit. But that was in
7 December, but I imagine what happened, I can
8 only guess with banks and computer systems, if
9 the first sale was in December, that may have
10 caused problems with this. Anyway, there was
11 reinstatement 15,000, in my client's affidavit
12 he tried to reinstate, he went there, they
13 wouldn't accept him on that letter. The waiver
14 of the deficiency for Timothy would completely
15 remove any interest he has in this case at all,
16 Your Honor, because if they weren't seeking a
17 deficiency they wouldn't even have named him as
18 a defendant. Waiver of deficiency for Justin
19 however a cold comfort at best. It's only a
20 \$2,200 deficiency judgement. It was a full
21 debt bid and then they had all the -- they did
22 a deficiency for all the post-judgement cost
23 and fees.

24 **THE COURT:** What did you hand Mr. von Keller?

25 **MR. VON KELLER:** This is -- so apparently a



1 reinstatement back from December of 2020,
2 that's why I misunderstood Shawn. I thought he
3 was saying that this was a reinstatement he
4 just got. But this ---

5 **MR. FRENCH:** No, it's not one he just got.

6 **MR. VON KELLER:** Okay. This goes back to December
7 of 2020.

8 **THE COURT:** Is it a copy of a check?

9 **MR. VON KELLER:** No, it's just ---

10 **MR. FRENCH:** It was a reinstatement quote that he
11 got. And in his affidavit, Justin Spires went
12 to reinstate with this money, and they wouldn't
13 accept it.

14 **THE COURT:** Did he have a check, a cashier's check
15 or something?

16 **MR. FRENCH:** He did have the funds. He had settled
17 a personal injury lawsuit. But they wouldn't
18 take it.

19 **THE COURT:** They wouldn't take what though?

20 **MR. FRENCH:** \$14,369.90.

21 **THE COURT:** Did he have a check or did he just ---

22 **MR. FRENCH:** He did. I believe he did. I mean he's
23 -- I honestly don't know, Your Honor. I don't
24 want to speak out of turn. He had the funds
25 from a personal injury ---



1 **THE COURT:** You said they wouldn't take it. I
2 thought ---

3 **MR. FRENCH:** Well he showed up with the money ---

4 **THE COURT:** He tendered the funds.

5 **MR. FRENCH:** Correct. He tried to at the bank.

6 **THE COURT:** Oh, at the bank.

7 **MR. FRENCH:** Correct.

8 **THE COURT:** Okay. All right. I'm sorry, in
9 interrupted you. Go ahead.

10 **MR. FRENCH:** No, I'm sorry, Your Honor.

11 **THE COURT:** That's all right. Go ahead.

12 **MR. FRENCH:** So as I said, to answer your question
13 about the waiver of deficiency, if there were
14 no deficiency demand, Timothy Spires wouldn't
15 even be a party to this case. Is that
16 accurate, Ted?

17 **MR. VON KELLER:** I want to just stop you for just a
18 minute, Your Honor. I'm looking at the
19 Defendant's affidavit. And I think the facts
20 are a little bit different.

21 **MR. FRENCH:** Okay.

22 **MR. VON KELLER:** He says that in December he had a
23 check from a car accident and that he goes to
24 the bank to approach them with the
25 reinstatement. And they said they couldn't



1 accept a reinstatement unless he paid the
2 entire amount of the loan. Well that's after
3 the foreclosure sale, Your Honor. That makes
4 perfect sense. The property had been sold by
5 then.

6 **MR. FRENCH:** Except he had a reinstatement here
7 saying it's good through 12/30/2020. I realize
8 that's where that confusion on his part came
9 from.

10 **MR. VON KELLER:** Yeah. Well we don't know ---

11 **MR. FRENCH:** Well -- sorry, Ted.

12 **MR. VON KELLER:** He doesn't mention in here when he
13 went to the bank. So all I know is that the
14 sale's on December 7th.

15 **MR. FRENCH:** The first sale. The second sale was in
16 January.

17 **MR. VON KELLER:** You say that but I don't know.

18 **MR. FRENCH:** I can pull the court records up on my
19 computer and show you.

20 **MR. VON KELLER:** All right.

21 **MR. FRENCH:** I looked at them with my client because
22 they were confused by the whole deficiency
23 process, that's why I'm familiar. It's a long
24 case.

25 **MR. VON KELLER:** Yeah, I think that's not correct



1 because the public index reflects that the
2 master's order of the deficiency was done on
3 January 15.

4 **MR. FRENCH:** Well it would have been the second
5 sale. The deficiency would have been around 6
6 ---

7 **THE COURT:** Actually we had several -- we didn't do
8 them on schedule. I have to go back and check.
9 I can find out. Hold on just a second. The
10 sale was December?

11 **MR. VON KELLER:** That's what my understanding is,
12 Your Honor. My record reflects that the sale
13 was on December 7, 2020.

14 **MR. FRENCH:** It says, Plaintiff -- on the report of
15 sale, the report of sale says, the Plaintiff
16 bid on sale today January 6th, 2021, \$69,407.

17 **THE COURT:** Okay. So that's what we had, a
18 deficiency sale in January.

19 **MR. FRENCH:** That was the second sale date.

20 **MR. VON KELLER:** Oh, so when you said the second,
21 that's what you mean?

22 **MR. FRENCH:** Yeah, yeah, yeah, I'm sorry.

23 **MR. VON KELLER:** Yeah because I'm looking here at
24 the master's deed, the sale was on December
25 7th. So that's what -- we were just talking



1 about different things.

2 **MR. FRENCH:** Yeah, I figured that was the case.

3 **THE COURT:** The deficiency sale became final in
4 January?

5 **MR. FRENCH:** Correct, Your Honor.

6 **THE COURT:** January 6th. Thank you.

7 **MR. FRENCH:** We agree on that point, Ted?

8 **MR. VON KELLER:** Sir?

9 **MR. FRENCH:** We agree on that point, that the sale,
10 the second part?

11 **MR. VON KELLER:** Yeah. I'm just looking for the
12 order. I wanted to see if there was an entry
13 of the deficiency judgement. That's what I'm
14 looking for in the file. Why don't we proceed
15 with your argument.

16 **MR. FRENCH:** Okay. I've got it here somewhere.
17 Yeah, order of deficiency sale on January 15.
18 It's \$2,692.96 signed January 14th and entered
19 January 15th.

20 **MR. VON KELLER:** Okay.

21 **MR. FRENCH:** I've got it pulled up.

22 **THE COURT:** Mr. French, go ahead.

23 **MR. FRENCH:** Yeah, basically this -- there are two
24 motions. They're pretty much the same motion
25 accept for Timothy Spires who is a Defendant by



1 virtue of having signed the original note, he
2 never has lived at that property. Is ex-wife
3 and her boyfriend, Mitch, who is the one the
4 process server gave the papers to, under his
5 affidavit, lived there.

6 **THE COURT:** Whoa, whoa, whoa, Mitch says he never
7 lived there.

8 **MR. FRENCH:** Not lived there. She lived there, his
9 ex-wife lived there. He didn't live there.

10 **THE COURT:** Okay. Please proceed.

11 **MR. FRENCH:** And he was there at 8 a.m. for whatever
12 reason. His affidavit he says he told the
13 process server, Tim doesn't live here. And he
14 also says the process server never asked if he
15 -- you know, if Mitch resided there. Whether
16 he did and Mitch doesn't remember or whether he
17 didn't, Mitch's testimony is that he didn't ask
18 and Mitch didn't tell him. The affidavit from
19 the process server checks the box that says
20 he's a co-resident but it also said that
21 Timothy Spires lives there and he didn't. And
22 so really this becomes -- the first issue is
23 the complete lack of personal service on
24 Timothy Spires and on Justin Spires. Now I
25 realize there is an issue with what Justin



1 Spires knew, which is why I filed these as two
2 separate motions because the facts are slightly
3 different. There's no evidence Timothy Spires
4 knew any of this was going on. Quite the
5 opposite. He didn't know this was happening
6 until a couple weeks ago. And he didn't even
7 know there was -- the affidavit filed a couple
8 days ago by First Citizens mentioned a note
9 modification signed -- I don't have a copy of
10 the note modification signed in 2016 by Justin
11 Spires only. Which I just note that for the
12 record. I quite frankly don't know what to
13 make with that. So I -- you know, Timothy
14 Spires, his best day is, yeah, the deficiency
15 is waived, gets taken off of his record, his
16 credit and everything. But -- and then Justin
17 Spires, he wants to keep his house. He was
18 trying to reinstate it, there was confusion, I
19 -- you know, the paperwork said December 30th.
20 The bank probably in their system said, no, the
21 foreclosure's happened, we can't take it. I
22 don't know right now. That's my guess. So
23 when he showed up with the -- you know, to
24 reinstate, they wouldn't accept it in December
25 of this year.



1 **THE COURT:** So your bottom line is you want to set
2 aside the sale for lack of personal
3 jurisdiction?

4 **MR. FRENCH:** That's it, Your Honor. And there's a -
5 - one thing I will say too, you'll remember
6 there was a hearing on the writ of assistance
7 done virtually. My client thought that was the
8 foreclosure hearing. And if you'll look at the
9 notice of sale for that, it said it was a
10 foreclosure hearing -- the notice that was
11 posted, it said it was for a foreclosure
12 hearing.

13 **THE COURT:** Now if I grant your motion what's going
14 to happen?

15 **MR. FRENCH:** We're gonna, one, try and get the debt
16 verified and try to reinstate it because it's
17 -- as Mr. von Keller said, as Ted said, they
18 can't reinstate right now.

19 **THE COURT:** Reinstate and catch up all the payments.
20 Now he'd be due for another six months.

21 **MR. FRENCH:** Yes, Your Honor. I was hoping to get a
22 reinstatement figure updated to ask, you know,
23 can you do this. But they weren't able to
24 provide it obviously ---

25 **THE COURT:** Uh-huh.



1 **MR. FRENCH:** --- so I wasn't able to ask my client.

2 **THE COURT:** Is there a way he could redeem it?

3 **MR. FRENCH:** You mean refinance it completely?

4 **THE COURT:** Yeah.

5 **MR. FRENCH:** I don't know. Is that even possible,
6 Ted?

7 **MR. VON KELLER:** Well I think the problem is is -- I
8 don't think the problem is in finding a way to
9 get First Citizens to do that. I think the
10 problem is can your guy come up with, you know,
11 almost \$70,000. That's where the real problem
12 is.

13 **MR. FRENCH:** I don't know. I've got two guys here.
14 And so one probably not, one maybe. I don't
15 know, I haven't asked.

16 **THE COURT:** Okay.

17 **MR. FRENCH:** I mean honestly, you know, I'd probably
18 tell them to -- because there is 10s of
19 thousands of equity in this house. You get it
20 on REO it's going to turn around, it's going to
21 sell real fast.

22 **THE COURT:** Setting aside a sale is a pretty serious
23 request.

24 **MR. FRENCH:** I understand.

25 **THE COURT:** And not that I'm afraid to make a



1 decision on that, but it is a serious request.
2 I'm trying to maybe do it with mediation.

3 **MR. FRENCH:** I understand.

4 **THE COURT:** If they're willing to redeem it maybe
5 we'd be in business, but I don't know what to
6 say because you say lack of personal
7 jurisdiction, that means they didn't have
8 notice of proceedings. Now you say Mr. Timothy
9 Spires, Sr. didn't know about this until a few
10 weeks ago. Is that ...

11 **MR. FRENCH:** That's correct, Your Honor.

12 **THE COURT:** That's accurate. Mr. Justin Spires
13 though has known for quite a while.

14 **MR. FRENCH:** He has had actual knowledge. I think
15 that the record -- you know, it's safe to say
16 he did have knowledge of this for -- I don't
17 know how long exactly.

18 **THE COURT:** He filed bankruptcy.

19 **MR. FRENCH:** He did file bankruptcy, Your Honor.
20 Now he always -- I definitely would never
21 dispute that he knew that he owed the money and
22 was trying to keep it up. Whether -- we go
23 through this all the time, foreclosure people
24 don't understand what that means.

25 **MR. VON KELLER:** But here's the problem that I have.



1 We need to kinda stick to the record here. His
2 own affidavit says that he called the bank in
3 2020 when he got his tax return, and this is
4 before July -- this is paragraph 13 of his
5 affidavit. He said, the lady told me my house
6 was in the foreclosure process. Number two, he
7 calls a bankruptcy lawyer on July 3. Number
8 three, the bankruptcy attorney, the Reed Law
9 Firm faxes my office the notice of bankruptcy
10 on July 6. Us, the foreclosing attorney.
11 Clearly he knew in December, but from this
12 conversation from his own affidavit, he knew in
13 December of 2020 that the matter was in
14 foreclosure. Your Honor, in my memorandum one
15 of the things I tried to point out to you was
16 he's required to get relief from a final order.
17 He's got to show he acted properly. There are
18 12 notices that went to him before we get Mr.
19 French's motion. 12 notices of the bankruptcy
20 and he does nothing. That in and of itself is
21 a bar to relief from default. And then, as
22 Your Honor correctly pointed out, he's got to
23 show a meritorious defense. So if you were to
24 set this aside what happens? We reserve him
25 and we go -- we just do another foreclosure.



1 They can't pay \$70,000. And in regards to the
2 service, the affidavit of service says that
3 they served it on -- it's identified here, the
4 process server says he serves Mitch Smith, a
5 co-resident, a white male, 41 to 45 years old
6 identifies it in the house. You know, I've
7 cited the figure, Your Honor, the rules from
8 the South Carolina Supreme Court that perfect
9 service is not required if you comply with the
10 basically the spirit of what the Court of
11 Appeals and Supreme Court have said, if you
12 comply with the rules and the spirit of the
13 rules, then that gives you personal
14 jurisdiction and that gives you notice.

15 **THE COURT:** Did Justin Spires live in the house?

16 **MR. FRENCH:** Yes, Your Honor, he did.

17 **THE COURT:** He lived there?

18 **MR. FRENCH:** He did.

19 **THE COURT:** All right. Service allegedly was made
20 on ---

21 **MR. FRENCH:** Mitch Smith.

22 **THE COURT:** --- Mitch Smith who didn't live there,
23 but was Justin's mother's boyfriend?

24 **MR. FRENCH:** Correct, Your Honor.

25 **THE COURT:** But he did visit?



1 **MR. FRENCH:** Correct.

2 **MR. VON KELLER:** I would point out, Your Honor, that
3 that is the record address for both Defendants.
4 We have no other address for Timothy Spires,
5 Sr. He signed the note -- he signed the note
6 with his son, and the mortgage. And the
7 mortgage is over the property where they were
8 served. That is the only address that we had.
9 And the rules require if he's going to insist
10 on another address, he's got to provide that to
11 the creditor in writing. And that's not before
12 you.

13 **THE COURT:** Okay.

14 **MR. FRENCH:** Your Honor, he's got an ongoing
15 relationship with First Citizens. In fact the
16 note has another address on it that -- for
17 Timothy Spires on the face of it. So that
18 argument -- and there's no argument -- the fact
19 that that's where Justin lived and -- that
20 doesn't give them licence to serve -- there's
21 no -- there's nothing in the law that allows
22 someone to consent to service at an address
23 they don't live at. The statute is -- and he
24 has it in his memorandum, leaving a copy at a
25 dwelling house of usual place of abode with



1 some person suitable age of discretion then
2 residing therein. That's not Timothy's usual
3 place of abode. It is Justin's. But it was
4 handed to someone who didn't reside there.

5 **MR. VON KELLER:** Again, there's nothing in the
6 record. The only record shows that the service
7 address was the mortgage address. At the time
8 of the entering into the note there was no
9 property. The record address is the mortgage
10 address. There's nothing in the file that
11 reflects that anyone gave -- what the statute
12 requires is written notice of a different
13 address. We are -- the bank -- the creditor is
14 entitled to rely on the information unless the
15 debtor does something differently. There's
16 nothing in our case law that suggests we gotta
17 go out and figure out where you live. We rely
18 on the record address which is the mortgage
19 address. That's where all the correspondence
20 went to both of these Defendants. If he wants
21 to say he doesn't live there, then give us a
22 different address.

23 **THE COURT:** Mr. French?

24 **MR. FRENCH:** His affidavit, I believe, does give a
25 different address. And I'm trying to pull up



1 right now the record. Because the record has
2 a different address on it, a property address
3 but it has a different address.

4 **THE COURT:** Go ahead. Take your time.

5 **MR. VON KELLER:** When you say the record, what do
6 you mean.

7 **MR. FRENCH:** The note you filed.

8 **MR. VON KELLER:** What?

9 **MR. FRENCH:** The note you filed with your ...

10 **MR. VON KELLER:** Oh, the note does in fact -- the
11 note which is prior to the acquisition of the
12 property, the note does say an apartment.

13 **MR. FRENCH:** Sorry, Your Honor. The internet's
14 taking a minute to upload ---

15 **THE COURT:** No, take your time.

16 **MR. FRENCH:** --- the exhibits.

17 **THE COURT:** Take your time.

18 **MR. FRENCH:** All right. The first page of the
19 exhibits, Your Honor, the promissory note has
20 an address of I think 83 or 6340 Barns Terry
21 Road, Unit F. And in his affidavit, Mr. Spires
22 said, you know, here's my address. First
23 Citizens has that address and that's where I
24 lived for 30 years.

25 **THE COURT:** If I set aside the sale, what's Mr.



1 Spires, Sr. going to do?

2 **MR. FRENCH:** First of all the question is, you know,
3 how much -- you know, is to verify the debt.
4 But there's also this question that popped up
5 recently with this note modification that was
6 signed by only Justin. Now I don't know what
7 affect that has on Mr. Timothy Spires, Sr. And
8 I haven't had time to think about that.

9 **THE COURT:** All right.

10 **MR. FRENCH:** But the question is, you know, try to -
11 - to be honest they're either going to
12 reinstate or try to pay the loan off most
13 likely.

14 **THE COURT:** And the status now is that Mr. Justin
15 Spires lives at the property, is that correct?

16 **MR. FRENCH:** Yes, Your Honor.

17 **THE COURT:** His mother still with him?

18 **MR. FRENCH:** It's -- no, he lives with his daughter.
19 But the mother isn't there. His -- Mr. Spires'
20 mother is still there. Yes, Your Honor.

21 **THE COURT:** Mr. Justin Spires' mother?

22 **MR. FRENCH:** Yes, Mr. Justin Spires, his mother and
23 Mr. Justin Spires' daughter.

24 **THE COURT:** Okay. Have they made any preparations
25 to move at all?



1 **MR. FRENCH:** I believe so, Your Honor. I told them
2 to. And I would ask the Court, I'm not aware
3 of the statute Ted has mentioned about the
4 notice address.

5 **MR. VON KELLER:** I'm relying on -- in the consumer
6 protection code, when you -- the case law that
7 talks about that you have to send the notice of
8 home right to cure to the record address, and
9 the consumer protection code defines the record
10 address as the last address provided by the
11 consumer in writing.

12 **MR. FRENCH:** Right. And I'm not arguing -- I have
13 no idea. I'm not arguing that they didn't send
14 that other consumer protection code. But I
15 think service is a completely different issue.

16 **MR. VON KELLER:** Well how else do you obtain an
17 address then? I mean if I tell you in the loan
18 documents that my address is 102 Green Street,
19 and where then are you to send your process
20 server to serve me? 102 Green Street because
21 that's the address that I provided you until
22 such time as you give me a new address.

23 **MR. FRENCH:** You have to do a skip trace -- you know
24 this. And you also know that -- you know, I've
25 got Mitch saying ---



1 **MR. VON KELLER:** No ---

2 **MR. FRENCH:** --- I told him Tim doesn't live here.

3 **MR. VON KELLER:** I don't agree with you at all. I
4 mean if Mr. Spires, you know, wanted the bank
5 to have a different address he needed to
6 provide that to them. We don't have an
7 obligation to find him.

8 **THE COURT:** Please address the bench.

9 **MR. FRENCH:** Sorry, Your Honor.

10 **MR. VON KELLER:** Sorry, sir.

11 **THE COURT:** That's all right. That's all right.
12 Anything further, Mr. French?

13 **MR. FRENCH:** No, Your Honor.

14 **DECISION:**

15 **THE COURT:** Okay. I don't -- I'm persuaded, quite
16 frankly, by the fact that Mr. Justin Spires had
17 notice. And because of the state of
18 proceedings post-judgement post-sale post-
19 eviction, I'm inclined to deny the motion to
20 set aside the judicial sale. That's a fairly
21 serious thing to ask to do. Now as far as the
22 eviction's concerned, Mr. French, how much time
23 would your clients need to move?

24 **MR. FRENCH:** I'd say at least another 30 days, Your
25 Honor.



1 **THE COURT:** Okay. Mr. von Keller, could you give
2 them more than 30 days? I know your client's
3 probably screaming at you about how long this
4 is taking.

5 **MR. VON KELLER:** Well, Your Honor, I was, you know
6 when you initially called my name I thought you
7 were gonna ask would I agree to 30 and I was
8 going to ask for less time. So I think my
9 obligation, my duty -- excuse me, my duty to my
10 client if you're inclined to give them 30 days,
11 to go with the 30 days. I have no authority to
12 alter that one way or the other.

13 **THE COURT:** Well 30 days is a holiday. And in your
14 order denying the motion to set aside the
15 judicial sale, order that the property be
16 vacated by July 12th, 2021.

17 **MR. VON KELLER:** July 12?

18 **THE COURT:** Yes, sir. That's a Monday. That's the
19 second Monday in July.

20 **MR. VON KELLER:** Very well, Your Honor. I will
21 provide a proposed order to you and Mr. French.

22 **MR. FRENCH:** Your Honor, would you, for the record,
23 you addressed Justin Spires. Would you address
24 Mr. Timothy Spires too?

25 **THE COURT:** His motion is likewise denied.



1 **MR. FRENCH:** Thank you, Your Honor.

2 **THE COURT:** I don't know if you plan to appeal or
3 not. You know the requirements of posting bond
4 and all that kind of stuff ---

5 **MR. FRENCH:** For a foreclosure sale, yes, Your
6 Honor.

7 **THE COURT:** Okay. Just to be clear.

8 **MR. FRENCH:** I don't know if it would even matter
9 'cause the sale's already happened, so ...

10 **MR. VON KELLER:** No, I believe if you were to appeal
11 they have to post a bond now, appeal of a
12 foreclosure.

13 **THE COURT:** To stop the eviction they'd have to post
14 a bond.

15 **MR. FRENCH:** I believe so.

16 **THE COURT:** Okay. All right.

17 **MR. VON KELLER:** Your Honor, when Shawn asked you
18 about the ruling in regard to the other Mr.
19 Spires, I could not understand what you said.

20 **THE COURT:** I said his motion is likewise denied.

21 **MR. VON KELLER:** Is what, sir?

22 **MR. FRENCH:** Denied.

23 **THE COURT:** Likewise denied.

24 **MR. VON KELLER:** Thank you, sir.

25 **(There being nothing further, the hearing concluded**



at 2:57 p.m.)

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COUNTY OF RICHLAND

Defendants.

The hearing before the Honorable Joseph M. Strickland, Master-In-Equity for Richland County, was taken at 1701 Main Street, Courtroom 2-D, Columbia, South Carolina on the 18th day of August, 2021 before Travis McLeod, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

Theodore von Keller, Esquire
 Crawford & von Keller, LLC
 1640 St. Julian Place
 Columbia, South Carolina 29204
 Attorney for the Plaintiff

Shawn M. French, Sr., Esquire
 The French Law Firm, LLC
 1476 Ben Sawyer, Suite 3
 Mount Pleasant, South Carolina 29464
 Attorney for the Defendants

Also Present: Justin Spires, Timothy Spires

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EXHIBITS

(No exhibits were marked during the hearing.)



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

1 CALL TO ORDER:

2 **THE COURT:** This is civil action number 2019-CP-40-
3 5698. Is that the correct docket number?

4 **MR. FRENCH:** 5698?

5 **MR. VON KELLER:** Yes, sir. 2019-40-5698.

6 **THE COURT:** Okay. First Citizens Bank and Trust
7 versus Justin Spires and others. My notes
8 indicate this is a Motion to Reconsider. All
9 right. This is a Motion to Reconsider the --
10 my ruling that, not to set aside the
11 foreclosure, is that correct?

12 **MR. FRENCH:** You're correct, Your Honor.

13 **THE COURT:** All right. You may proceed. Y'all can
14 sit down if you'd like.

15 DEFENDANT'S POSITION:

16 **MR. FRENCH:** Thank you, Your Honor. Shawn French,
17 for Justin Spires and Timothy Spires.

18 **THE COURT:** Uh-huh.

19 **MR. FRENCH:** To make it brief the Order denying the
20 motion to set aside was based upon a few
21 erroneous things. First of all, the thrust of
22 the motion especially with Timothy Spires, as
23 well as Justin Spires with the lack of personal
24 service, the Court found that, one, it didn't
25 matter that Timothy Spires had never lived at



1 the property, and it very much matters under
2 Rule 4. They delivered the documents to a
3 place where he didn't live. The bank argued
4 that's the address they have on record for him.
5 There was an affidavit presented by the
6 individual who was actually handed the papers
7 who said, Timothy's never lived here and I told
8 the process server this. The -- so the Court
9 has no jurisdiction. Additionally, the Court,
10 you know, use at the argument of the -- the
11 Plaintiff, the Wam and Sundown factors, those
12 don't apply in this case, Your Honor. The
13 Court never had personal jurisdiction. Under
14 BB&T V. Taylor, without personal jurisdiction
15 any action is void. Not voidable, not even to
16 be set aside as a void.

17 **THE COURT:** Uh-huh.

18 **MR. FRENCH:** All that aside, also that, you know,
19 the argument was there were no defenses, but
20 there was a defense. My client had -- you
21 know, we said in the last hearing there were
22 issues he was trying to raise with how much was
23 owed, and then at the last hearing there was an
24 affidavit submitted by Tracy Hinnant, which
25 said there had been a loan modification. And



1 there had to had been a loan of modification,
2 which had altered the interest rate, which
3 wasn't ever used for the judgements. The
4 judgement actually used a higher interest rate
5 than was actually half of it.

6 **THE COURT:** Who was Tracy Hen- ---

7 **MR. FRENCH:** I -- I don't have a copy -- excuse me,
8 Your Honor?

9 **THE COURT:** Who was Tracy Hinnant?

10 **MR. FRENCH:** She was the witness who signed an
11 affidavit that was submitted in their response
12 of motion. She works at First Citizens.

13 **THE COURT:** Okay. All right.

14 **MR. FRENCH:** And in her affidavit she -- she
15 admitted there was loan modification. And I
16 submitted it with a Motion to Reconsider.
17 Yeah, it was a loan modification, and here's
18 First Citizens documents, which were partially
19 discussed and presented at the last hearing,
20 showing the interest rate was lower than what
21 they used for the judgement. And so we've,
22 kind of, got a mess here. And they're saying
23 there is no defense. It's not necessary 'cause
24 Wam and Sundown, both of those cases dealt with
25 -- neither one of them, I mean, dealt with it



1 -- the fact that there wasn't the service.
2 They both dealt with, you know, potentially
3 questionable service, but not even questionable
4 service, people trying to get out of default a
5 few days after they were served.

6 The -- here we're dealing with the BB&T V.
7 Taylor case, where it said, BB&T V. Taylor says
8 clearly, there is -- without personal service
9 its void. And, you know, that's the -- the
10 request of the argument. There was a
11 misunderstanding of -- misapplication of law
12 under the other and the facts.

13 **THE COURT:** Okay. Mr. von Keller.

14 **PLAINTIFF'S POSITION:**

15 **MR. VON KELLER:** Good morning, Your Honor. Ted von
16 Keller for First Citizens. Your Honor, keeping
17 this very brief, I would like to make five
18 points. Number one point is, this is not a
19 Summary Judgement hearing, it's not an issue of
20 whether there is a disputed issue of fact.
21 There was sufficient evidence in the record for
22 you to conclude that service was done properly.
23 The sworn affidavit of the process server
24 indicates that he served Mr. Spires but serving
25 Mitch Smith a co-resident. It's a sworn



1 affidavit that says he determined that this is
2 where he resided and he served a person of age
3 and discretion who reside therein.

4 **THE COURT:** Which -- which Mr. Spires?

5 **MR. VON KELLER:** The -- both were served through
6 this gentleman, sir.

7 **THE COURT:** Okay.

8 **MR. VON KELLER:** Justin and Timothy.

9 **THE COURT:** Okay.

10 **MR. VON KELLER:** The -- the same affidavit says the
11 same thing.

12 **THE COURT:** Now, Timothy never lived there though,
13 that's what Mr. ---

14 **MR. VON KELLER:** He was -- the process server states
15 that he resided -- that was a -- the residence
16 and this was a co-resident. So there is
17 sufficient evidence in the record for you to
18 have found that fact. Counsel argues that it
19 is undisputed. Well, it is in fact disputed.

20 Number two argument is that, under Rule
21 60, Mr. Spires has to establish an excusable
22 neglect, mistake or inadvertence. You have no
23 evidence of any of that. There's no excusable
24 neglect or mistake or inadvertence here. I
25 pointed out to you, point number three in the



1 hearing, that Mr. Spires received 11 notices of
2 his foreclosure hearing and even on the eve of
3 the sale filed bankruptcy to prevent the sale
4 from going forward. That bankruptcy case was
5 dismissed and yet he still never did anything
6 to get relief from default. This matter
7 proceeded to a sale, it's been sold, title has
8 conveyed.

9 So that takes me to the forth point.
10 Prejudice to the non-moving party. There's no
11 loan anymore to reinstate, Your Honor. When
12 the sale took place the mortgage was
13 extinguished, it -- there's no loan for Mr.
14 Spires to reinstate, so that is serious
15 prejudice to my client. We're sitting here
16 with a property that we own and cannot do
17 anything with it.

18 And fin- -- finally, number five. The --
19 and I'm gonna change -- I'm gonna change what
20 I said, six points. Five is that, as you know,
21 under the case law the burden is on Mr. Spires,
22 and he just has not established that burden to
23 show that there's some excusable neglect or
24 marital risk defense here, because he was 11
25 months behind in -- at the time of the



1 foreclosure. And he's -- Mr. French is arguing
2 that, well, he had the dispute over the
3 interest rate, but there's 11 payments in the
4 arrears here, so he is simply not carrying his
5 burden.

6 And I had another point, but it escapes me
7 at the moment. But those -- oh, I know what it
8 was. There's nothing new here. He's filed a
9 Motion for Reconsideration and we've -- we've
10 had all these arguments before, when we were
11 before you before. You -- there's nothing new
12 for you to consider here. So I respectfully
13 ask, that the Motion for Reconsideration be
14 denied.

15 **THE COURT:** Okay. Mr. French.

16 **DEFENDANT'S RESPONSE:**

17 **MR. FRENCH:** First, I'll ask the Court not to
18 conflict Justin and Timothy Spires, they're
19 different defendants and they're both my
20 client.

21 **THE COURT:** Uh-huh.

22 **MR. FRENCH:** All the notices were sent to Justin's
23 address. No notices were sent to Timothy,
24 there's nothing. As far as service is
25 concerned, the presumption is that service was



1 done, and we have met presumption and rebutted
2 it with the third parties affidavit, from Ms.
3 Smith, the person who their aff- -- process
4 server says that he served. He says, that's
5 not what I said, and that's not the truth.
6 There's nothing saying Timothy ever lived
7 there. There's nothing saying Justin ever got
8 the -- he got the letters, but he never was
9 served with the documents. In addition, there
10 is the -- he says I have to show mistake,
11 inadvertence and cause or excusable neglect
12 under 60(b) but that's 60(b), but 60 -- or
13 60(b)(1), 60(b)(4) says, if the judgement is
14 void. BB&T V. Taylor says, if there's no
15 personal service there's no personal
16 jurisdiction, and the judgement is void.

17 Finally, he keeps talking about a burden
18 that doesn't apply, because there was never
19 service. But Wam and the Sundown factors don't
20 -- this isn't -- if the Court finds that they
21 were served, then there is a defense. He -- he
22 said that -- the 11 months, even if there was
23 11 months, okay, but they've got a deficiency
24 judgement, Your Honor. This isn't even a -- a
25 deficiency waived foreclosure. They got a



1 deficiency judgement against my client, so the
2 amount of money very much matters.

3 **THE COURT:** Okay. This is still the judgement still
4 -- still pending, still valid, less than 10
5 years old?

6 **MR. VON KELLER:** I did look at that, Your Honor. I
7 believe that may be correct. I'll defer to Mr.
8 French on that. I can't -- really don't know
9 the answer to that at this moment, but let me
10 see if I can find your Order of foreclosure.

11 **THE COURT:** Okay. Mr. French is that -- is that ---

12 **MR. VON KELLER:** I see that the amount ---

13 **THE COURT:** --- is that still ---

14 **MR. VON KELLER:** --- the deed was issued in January
15 of '21. If there's been an entry of a
16 deficiency judgement I'm -- I simply don't know
17 that at this moment.

18 **MR. FRENCH:** On January 15th of 2021, there was a
19 deficiency judgement, Your Honor.

20 **THE COURT:** Okay.

21 **MR. VON KELLER:** All right. Okay. Thank you.

22 **DECISION:**

23 **THE COURT:** Okay. So, based on the arguments
24 presented the motion is denied. Let me ask you
25 though, is there a chance of -- of settling the



1 deficiency judgement then, Mr. von Keller and
2 Mr. French?

3 **MR. VON KELLER:** I'll talk to Mr. French and see he
4 has anything to propose and I will take it to
5 my client. I -- that -- nothing has been
6 suggested to me yet, so I have -- I don't know
7 what they would propose.

8 **THE COURT:** Okay. Okay, any further?

9 **MR. FRENCH:** That's it.

10 **MR. VON KELLER:** Nothing from First Citizens, Your
11 Honor.

12 **MR. FRENCH:** Nothing further, Your Honor.

13 **THE COURT:** Okay. Thank you so much.

14 **MR. FRENCH:** Thank you.

15 **(There being nothing further, the hearing concluded**
16 **at 10:17 a.m.)**

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO.

First-Citizens Bank & Trust Company, Inc.,

**NOTICE OF RIGHT TO FORECLOSURE
INTERVENTION**

Plaintiff,

-vs-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of Probation,
Parole and Pardon Services and Warren B.
Giese as Solicitor,

Defendant(s).

TO: Timothy J. Spires, Sr. and Justin K. Spires

PLEASE TAKE NOTICE THAT pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01, you may have a right to Foreclosure Intervention.

To be considered for any available Foreclosure Intervention, you must communicate with an otherwise deal with Plaintiff through its law firm, Crawford & von Keller, LLC. You must communicate any requests for Foreclosure Intervention consideration to Crawford & von Keller, LLC. within thirty (30) days from your receipt of this Notice by writing to the undersigned attorney PO Box 4216, Columbia, SC 29240 or calling (803) 790-2626.

IF YOU FAIL TO COMMUNICATE AN INTEREST IN BEING EVALUATED FOR FORECLOSURE INTERVENTION TO THE PLAINTIFF'S ATTORNEY WITHIN THIRTY (30) DAYS AFTER BEING SERVED WITH THIS NOTICE, THEN THE PLAINTIFF WILL CONSIDER SUCH FAILURE AN ELECTION NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION AND WILL PROCEED WITH THE FORECLOSURE ACTION.

CRAWFORD & VON KELLER, LLC.

By: ___s/B. Lindsay Crawford, III___
B. Lindsay Crawford, III (SC Bar# 6510)
Theodore von Keller (SC Bar# 5718)
Sara C. Hutchins (SC Bar# 72879)
B. Lindsay Crawford, IV (SC Bar# 101707)
Crawford & von Keller, LLC.
PO Box 4216
Columbia, SC 29240
Phone: 803-790-2626
Email: court@crawfordvk.com

Columbia, South Carolina
October 9, 2019

Attorneys for Plaintiff

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL
BE USED FOR THAT PURPOSE**

ELECTRONICALLY FILED - 2019 Oct 09 12:22 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4005698

FIRST-CITIZENS BANK & TRUST COMPANY, INC.

-VS-

Justin K. Spires, Timothy J. Spires, Sr., South Carolina Department of Probation, Parole and Pardon Services and Warren B. Giese as Solicitor,

CASE NUMBER: 2019-CP-40-05698

RECORD OF HEARING ON FEBRUARY 12, 2020

Plaintiff is represented by Crawford & von Keller, LLC. The following Defendant(s)/ Person(s) appeared at the hearing: _____.

Following a review of the court file, it appears that the Defendants were served and are in default and that the case has been properly referred to The Honorable Joseph M. Strickland, Master In Equity for Richland County with authority to issue a final judgment. Plaintiff's attorney offered the Promissory Note as Exhibit 1. The Mortgage was submitted as Plaintiff's Exhibit 2. An Affidavit of the debt figures was offered as Exhibit 3. S/he offered an Affidavit of Compliance and/or Certificate of Exemption of the South Carolina State Supreme Court's Administrative Order Re: Mortgage Foreclosure Actions, dated May 2, 2011 (2011-05-02-01) as Exhibit 4 and an Affidavit in support of the Plaintiff's request for an award of attorney's fees as Plaintiff's Exhibit 5.

The Plaintiff, having proved its case for the foreclosure of its mortgage, is entitled to a Judgment of Foreclosure and Sale as prayed for in its Complaint. An attorney's fee of \$1,932.00 was approved, and the judgment debt was set at \$66,710.96 effective February 12, 2020. The property is to be advertised for sale on April 6, 2020.

That a personal or deficiency judgment having been demanded by the Plaintiff, the sale of the subject property will remain open for thirty (30) days.

s/ B. Lindsay Crawford, III (SC Bar# 6510)

B. Lindsay Crawford, III (SC Bar# 6510)

Theodore von Keller (SC Bar# 5718)

B. Lindsay Crawford, IV (SC Bar# 101707)

Christopher B. Lusk (SC Bar# 103221)

Email: court@crawfordvk.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
C/A NO.: 2019-CP-40-5698

First Citizens Bank and Trust Company,
Plaintiff,
vs.
Justin Spires, Timothy Spires, Sr., et al.
Defendant(s).

Motion to:

1. Vacate the sale;
2. Set Aside the Default Judgment and Set Aside the Entry of Default;
3. Dismiss this Action against Timothy J. Spires, Sr. For Lack of Personal Jurisdiction under Rule 12(b)2;

TO LINDSAY CRAWFORD, OF CRAWFORD AND VON KELLER ATTORNEYS FOR PLAINTIFF:

Defendant Timothy Spires, Sr., by and through his Attorney Shawn M. French, Sr. of the French Law Firm, LLC at 1476 Ben Sawyer Blvd, Ste. 3, Mt. Pleasant, SC 29464, hereby moves pursuant to Rules 4, 5, 12(b)2, 55, and 60(b) of the South Carolina Rules of Civil Procedure as well as other rules, statutes and case law before this Honorable Court for an **Order Vacating the Sale, Setting Aside the Judgment by Default, Setting Aside the Entry of Default, and Dismissing this Action for Lack of Personal Jurisdiction.**

CASE HISTORY

1. The Complaint and Lis Pendens in this action were filed October 9, 2019.
2. According to the Affidavit of Service filed on November 13, 2019, the Summons and Complaint were delivered to Mitch Smith at 30 Cardington Court, Columbia SC 29209.

3. Mr. Timothy Spires, Sr. did not live at that address and had never lived at that address.
4. Upon information and belief, Mitch Smith is the boyfriend of his son's mother and did not live at that address either.
5. There is nothing on record showing a copy of the Summons and Complaint and the Notice of Foreclosure Intervention were ever served in any fashion on Timothy Spires.
6. Timothy Spires did not know of the existence of this action until the week of May 10th.
7. Copies of the affidavits of Thomas Mitchell Smith and Timothy J. Spires, Sr. are filed with this and included with this motion.

I. THE COURT DOES NOT HAVE PERSONAL JURISDICTION OVER TIMOTHY J. SPIRES, SR. BECAUSE THE SUMMONS, COMPLAINT AND N IN THIS ACTION WERE NEVER SERVED ON HIM.

Personal jurisdiction is normally obtained over a defendant by the service of the summons, which, pursuant to Rule 4, SCRCF, is typically achieved when a process server hands a copy of the summons and complaint to the individual personally or by leaving copies at the individual's residence, or by delivering them to an agent authorized by law to receive service of process. *see* Rule 4(d)(1).

"Rule 4, SCRCF, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Bb & T v. Taylor, 633 S.E.2d 501, 369 S.C. 548 (S.C. 2006) *Citing* Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995)."

The court never had personal jurisdiction over Timothy J. Spires, Sr. "A judgment is void if a court acts without personal jurisdiction." Id.

II. THE SALE SHOULD BE VACATED AND DEEMED VOID

Voiding the sale and allowing Mr. Spires to defend the case is the only way to avoid injustice. "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 Bank, NA v. Turner, 378 S.C. 147, 662 S.E2d 424 (S.C.App 2008) *quoting* Poole v. Jefferson Standard Life Ins. Co., 174 S.C. 150, 157, 177 S.E. 24, 27 (1934).

The South Carolina Supreme Court said in Poole "As said in *Farr v. Gilreath* 23 S.C. 502 'It is the policy of the law to sustain judicial sales when it can be done *without violating principle or doing injustice.*' [italics in original] Id. at 26. A judicial sale cannot stand when sustaining the sale results in injustice and a failure of equity.

There was a complete and total lack of due process for Mr. Timothy Spires, Sr. in this action. The only remedy is to void the sale.

III. THE DEFAULT JUDGMENT SHOULD BE SET ASIDE AND THE ENTRY OF DEFAULT SHOULD BE SET ASIDE

Rule 55(c) South Carolina Rules of Civil Procedure states "For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." Rule 60(b) South Carolina Rules of Civil Procedure states that "...the court may relieve a party . . . from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (3) fraud, misrepresentation, or other misconduct of an adverse party. . ."

Timothy Spires, Sr. did not answer the complaint because he did not receive notice of the filing and did not receive the Summons and Complaint. The Process server left the documents at

a property he has never left with someone who did not reside there and was not authorized to accept service on his behalf.

There are defenses available to Timothy Spires. First, he has a defense because he was never served. Second, his son, Justin, received multiple conflicting payoff and reinstatement amounts from the plaintiff. He was trying to pay the arrearage but was constantly being told different number and was unable to get the correct number from the bank. The Bank had a duty to provide a reinstatement and failed in that duty. To this day he has not received a proper accounting of the amounts due. Finally, Mr. Spires was not properly represented at the closing and was denied his right to chose an attorney. This is a proper defense under the South Carolina Attorney Preference statute.

IV. THE ACTION SHOULD BE DISMISSED AS AGAINST TIMOTHY SPIRES, SR.

The Complaint in this matter was filed by the plaintiffs on October 9, 2019. Since that time, the Plaintiffs have not served the complaint on the defendants. They have made attempts but have not actually served the plaintiff. More than 120 days have passed since the filing of this action.

Rule 3(a) of the South Carolina Rules of Civil Procedure says:

a) Commencement of civil action. A civil action is commenced when the summons and complaint are filed with the clerk of court if:

- (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or
- (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

S.C. Code ann. Section 15-3-20(B) says, “(B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing,” and it has been more than 120 days since this action was filed without service having been perfected.

Rule 12(b) SCRPC says that an action may be dismissed by motion for lack of personal jurisdiction and insufficiency of service of process. Rule 41(b) grants the court authority to dismiss an action for a plaintiff’s failure to prosecute or to comply with the rules of civil procedure.

For these reasons the Defendants ask this court to dismiss this action with prejudice.

WHEREFORE, for the foregoing reasons, the Defendant Timothy J. Spires, Sr. requests this court to Vacate Sale, Vacate the Judgment by Default, Vacate the Entry of Default and Dismiss the Complaint.

/s/Shawn M. French, Sr.
Shawn M. French
Attorney for Timothy Spires, Sr.
SC BAR No.: 75007
1476 Ben Sawyer Blvd, Ste. 3
Mt. Pleasant, SC 29464
843-606-6440

I, the undersigned, so hereby certify that I have this 17th day of May, 2021 caused the foregoing Motion to Vacate Sale, Motion to Vacate Judgment, Motion to Set Aside the Entry of Default and to Dismiss Complaint of Timothy J. Spires, Sr. to be served on the Attorneys of record by depositing in the US MAIL, postage prepaid, addressed as follows:

Lindsay Crawford, III
Crawford and Von Keller
PO Box 4216 Columbia, SC 29240
lindsay@crawfordvk.com
ted@crawfordvk.com

May 17, 2021

/s/Shawn M. French, Sr.
Shawn M. French

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
C/A NO.: 2019-CP-40-5698

First Citizens Bank and Trust Company,
Plaintiff,
vs.
Justin Spires, Timothy Spires, Sr., et al.
Defendant(s).

Motion to:

1. Vacate the sale;
2. Set Aside the Default Judgment and the Entry of Default;
3. Dismiss this Action against Justin Spires For Lack of Personal Jurisdiction under Rule 12(b)2;

TO LINDSAY CRAWFORD, OF CRAWFORD AND VON KELLER ATTORNEYS FOR PLAINTIFF:

Defendant Justin Spires, by and through his Attorney Shawn M. French, Sr. of the French Law Firm, LLC at 1476 Ben Sawyer Blvd, Ste. 3, Mt. Pleasant, SC 29464, hereby moves pursuant to Rules 4, 5, 12(b)2, 55, and 60(b) of the South Carolina Rules of Civil Procedure as well as other rules, statutes and case law before this Honorable Court for an **Order Vacating the Sale, Setting Aside the Judgment by Default, Setting Aside the Entry of Default, and Dismissing this Action for Lack of Personal Jurisdiction.**

CASE HISTORY

1. The Complaint and Lis Pendens in this action were filed October 9, 2019.
2. According to the Affidavit of Service filed on November 13, 2019, the Summons and Complaint were delivered to Mitch Smith at 30 Cardington Court, Columbia SC 29209.

3. Mitch Smith is the boyfriend of Justin's mother and did not live at that address. He never delivered the Summons and Complaint to Justin Spires.
 4. There is nothing on record showing a copy of the Summons and Complaint and the Notice of Foreclosure Intervention were ever served in any fashion on Justin Spires.
 5. Justin Spires was unaware of the proceedings until the Hearing in March of 2021 and has been unable to obtain counsel until recently. He thought he would be able to get answers and provide his defenses then, but was not allowed to present his case.
 6. Copies of the affidavits of Thomas Mitchell Smith, Timothy Spires, Sr., and Justin Spires are filed and included with this motion.
 7. Mr. Spires was aware he was behind on his mortgage, but not that a case for foreclosure had been filed. He was in constant communication with the Plaintiff and had been attempting to bring the account current. Unfortunately, he would be given an amount and then be told it was not enough. This happened repeatedly. At no time did they tell him he had been served.
 8. Moreover, Mr. Spires was not even sure of the status of his loan and First Citizens was not helping him obtain that information. It was a balloon note that was to be paid in 2016 but something changed and he has been unable to determine the terms of the loan since then.
- I. THE COURT DOES NOT HAVE PERSONAL JURISDICTION OVER JUSTIN SPIRES. BECAUSE THE SUMMONS, COMPLAINT IN THIS ACTION WERE NEVER SERVED ON HIM.**

Personal jurisdiction is normally obtained over a defendant by the service of the summons, which, pursuant to Rule 4, SCRCP, is typically achieved when a process server hands

a copy of the summons and complaint to the individual personally or by leaving copies at the individual's residence with a resident of that residence, or by delivering them to an agent authorized by law to receive service of process. *see* Rule 4(d)(1).

"Rule 4, SCRCP, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Bb & T v. Taylor, 633 S.E.2d 501, 369 S.C. 548 (S.C. 2006) *Citing* Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995)."

The court never had personal jurisdiction over Justin Spires. "A judgment is void if a court acts without personal jurisdiction." Id.

Leaving the documents with an individual who is not a resident of the house is not adequate service and is not sufficient to confer personal jurisdiction over Justin Spires.

II. THE SALE SHOULD BE VACATED AND DEEMED VOID

Voiding the sale and allowing Justin Spires to defend the case is the only way to avoid injustice. "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 Bank, NA v. Turner, 378 S.C. 147, 662 S.E.2d 424 (S.C.App 2008) *quoting* Poole v. Jefferson Standard Life Ins. Co., 174 S.C. 150, 157, 177 S.E. 24, 27 (1934).

The South Carolina Supreme Court said in Poole "As said in *Farr v. Gilreath* 23 S.C. 502 'It is the policy of the law to sustain judicial sales when it can be done *without violating principle or doing injustice.*' [italics in original] Id. at 26. A judicial sale cannot stand when sustaining the sale results in injustice and a failure of equity.

There was a complete and total lack of due process for Justin Spires in this action. The only remedy is to void the sale.

III. THE DEFAULT JUDGMENT SHOULD BE SET ASIDE AND THE ENTRY OF DEFAULT SHOULD BE SET ASIDE

Rule 55(c) South Carolina Rules of Civil Procedure states “For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).” Rule 60(b) South Carolina Rules of Civil Procedure states that “...the court may relieve a party . . . from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (3) fraud, misrepresentation, or other misconduct of an adverse party. . .”

Justin Spires did not answer the complaint because he did not receive notice of the filing and did not receive the Summons and Complaint. The Process server left the documents with someone who did not reside there and was not authorized to accept service on his behalf.

There are defenses available to Justin Spires. First, he has a defense because he was never served. Second he received multiple conflicting payoff and reinstatement amounts from the plaintiff. He was trying to pay the arrearage but was constantly being told different number and was unable to get the correct number from the bank. The Plaintiff had a duty to provide a reinstatement and failed in that duty. To this day he has not received a proper accounting of the amounts due. Finally, Mr. Spires was not properly represented at the closing and was denied his right to chose an attorney. This is a proper defense under the South Carolina Attorney Preference statute.

IV. THE ACTION SHOULD BE DISMISSED AS AGAINST JUSTIN SPIRES

The Complaint in this matter was filed by the plaintiffs on October 9, 2019. Since that time, the Plaintiffs have not served the complaint on the defendants. They have made attempts but have not actually served the plaintiff. More than 120 days have passed since the filing of this action.

Rule 3(a) of the South Carolina Rules of Civil Procedure says:

a) Commencement of civil action. A civil action is commenced when the summons and complaint are filed with the clerk of court if:

- (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or
- (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

S.C. Code ann. Section 15-3-20(B) says, “(B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing,” and it has been more than 120 days since this action was filed without service having been perfected.

Rule 12(b) SCRCF says that an action may be dismissed by motion for lack of personal jurisdiction and insufficiency of service of process. Rule 41(b) grants the court authority to dismiss an action for a plaintiff’s failure to prosecute or to comply with the rules of civil procedure.

For these reasons the Defendants ask this court to dismiss this action with prejudice.

WHEREFORE, for the foregoing reasons, the Defendant Justin Spires, requests this court to Vacate Sale, Vacate the Judgment by Default, Vacate the Entry of Default and Dismiss the Complaint.

/s/Shawn M. French, Sr.
 Shawn M. French
 Attorney for Timothy Spires, Sr.
 SC BAR No.: 75007
 1476 Ben Sawyer Blvd, Ste. 3
 Mt. Pleasant, SC 29464
 843-606-6440

I, the undersigned, so hereby certify that I have this 17th day of May, 2021 caused the foregoing Motion to Vacate Sale, Motion to Vacate Judgment, Motion to Set Aside the Entry of Default

and to Dismiss Complaint of Justin Spires to be served on the Attorneys of record by depositing in the US MAIL, postage prepaid, addressed as follows:

Lindsay Crawford, III
Crawford and Von Keller
PO Box 4216 Columbia, SC 29240
lindsay@crawfordvk.com
ted@crawfordvk.com

May 17, 2021

/s/Shawn M. French, Sr.
Shawn M. French

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2019-CP-40-05698

First-Citizens Bank & Trust Company,
Inc.,

Plaintiff

**MEMORANDUM OF AUTHORITIES IN
OPPOSITION TO MOTION FOR RELIEF
FROM DEFAULT**

-vs-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of Probation,
Parole and Pardon Services and Warren
B. Giese as Solicitor,

Defendant(s)

A. FACTS

Defendants Justin K. Spires and Timothy J. Spires Sr. entered into a Promissory Note dated August 31, 2006 with Plaintiff. Pursuant to the terms of the Note, Plaintiff provided financing to Defendants to enable Defendants to purchase real property. Defendants granted Plaintiff a security interest in the real property as reflected in the Note and Mortgage. Defendants defaulted under the terms of the contract and Plaintiff filed suit in October 2019 and obtained service on the Defendants on October 15, 2019 as reflected in the Affidavits of Service filed with the Court. Defendant's responsive pleadings were due on or before November 15, 2019. Plaintiff filed an affidavit of default on November 20, 2019.

A Notice of Hearing was mailed to Defendants on January 21, 2020. An Order of Judgment of Foreclosure and Sale was signed by Master in Equity Judge Strickland and entered on February 18, 2020. Notice of Sale was published on March 20, 2020 with a sales date scheduled of April 6, 2020. The April 6, 2020 sales date was cancelled due to COVID-19.

On May 15, 2020, Plaintiff submitted its Certification of Compliance with the Coronavirus Aid, Relief and Economic Security Act, Affidavit of Default, Notice of Motion and Motion for Default Judgment and proposed Order of Default Judgment for Repossession and Writ of Assistance.

A Notice of Sale and Judgment was mailed on June 19, 2020 for the July 6, 2020 sales date. A foreclosure sale was held on July 6, 2020 and Plaintiff was the successful, high bidder. On July 9, 2020, Plaintiff became aware that Defendant Justin Kirby Spires filed for Bankruptcy on July 6, 2020 and Plaintiff moved to vacate the foreclosure sale.

On November 20, 2020, a new Judgment for Foreclosure and Sale was signed by Judge Strickland. A foreclosure sale was held on December 7, 2020 and Plaintiff was the successful, high bidder.

On January 25, 2021 a Notice to Vacate letter was sent to the Defendants. A Rule to Show Cause was filed on February 8, 2021 and the Rule to Show Cause was posted on February 24, 2021 due to the occupant of the home refusing to accept service.

The Order for Writ of Assistance was signed on March 19, 2021. On May 17, 2021 Defendant filed its Motion to Vacate the Sale, Motion for Relief from Default and Motion to Dismiss the action for Lack of Personal Jurisdiction.

B. UNDER S.C.R.C.P. 4, PERFECT SERVICE IS NOT REQUIRED TO ESTABLISH PROPER SERVICE OF PROCESS.

South Carolina has never required exacting compliance with the rules to effect service of process. *Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (SC 1995). See *Foster v. Crawford*, 57 S.C. 551, 36 S.E. 5 (1900)(when officer's return defective as to time and place of service, it can be amended to state facts); *Saunders v. Bobo*, 2 Bailey 492 (1831) (sheriff's incomplete return that was not sworn to may be amended); *Miller v. Hall*, 1 Speers 1 (1842). Rather, the Court inquires whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings. *Roche*, supra.

Service of Process was obtained on October 12, 2019 by leaving a copy at dwelling house of usual place of abode with some person of suitable age and discretion then residing therein. As reflected in the affidavit of service, Mitch Smith, informed the process server that he was a co-resident in the dwelling house of Defendant Justin Spires. "When the civil rules on service are followed, there is a presumption of proper service." 62B Am Jur 2d Process § 111 (1990). As service of process was obtained in a manner compliant with S.C.R.C.P 4 and was therefore proper service under the laws of South Carolina.

C. THE DEFENDANT IS NOT ENTITLED TO RELIEF UNDER RULE 60(b) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

In determining whether to grant relief under Rule 60(b)(1) of the South Carolina Rules of Civil Procedure, the court must consider the following factors: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct.App.2001).

In regards to the first prong of the test, Defendant Justin K. Spires did not move promptly for relief from judgment. The record reveals that the defendant received 11 separate notices regarding this foreclosure prior to filing for relief: 1) personal service of the summons and complaint ;2) notice of hearing dated January 21, 2020; 3) notice of sale published March 20, 2020; 4) order of judgment and notice of sale mailed June 16, 2020 to record address ; 5) July 3, 2020 telephone call by Justin Spires;

6) filing of bankruptcy by Justin Spires on the eve of foreclosure sale; 7) publication for July 6, 2020 sale ; 8) notice of sale and judgment mailed for December 7, 2020; 9) publication of notice of sale; 10) notice to vacate dated January 25, 2021 and 11) rule to show cause posted February 24, 2021 Defendant Justin Spires did not move for relief until May 17, 2021. Defendant Justin Spires' motion did not occur until fifteen (15) months after the initial Judgment of Foreclosure and Sale and five (5) months after the Foreclosure Sale was held.

In regards to the second prong of the test, Defendant also cannot show an appropriate reason for the failure to act promptly. Defendant's Motion asserts service was not properly obtained, however, when service is obtained in a manner compliant with S.C.R.C.P. 4, service is presumed to be proper. As set forth above, there were no less than eleven (11) documents regarding the Foreclosure action that were sent to Defendant Justin Spires. In addition, there was a phone call between the Bank and Defendant Justin Spires the day before the Foreclosure Sale, which led to the filing of bankruptcy by Justin Spires an attempt to stop the sale. All of this establishes that Defendant Justin Spires had personal knowledge that the action was ongoing and failed to take action.

More importantly, Defendants cannot show a meritorious defense. The present case is an action for the foreclosure of property secured by a Note and Mortgage. Under the terms of the contract and South Carolina law, Plaintiff is entitled to the foreclosure of its secured collateral upon the default of the Defendants. Neither the contract nor South Carolina law grants Defendants the right to reinstate the contract.

In the present case, the Affidavit of the Representative of Plaintiff reflects that the Defendants are past due for the March 30, 2019 payment through February 12, 2020 payment and that there was due and owing \$63,791.90 on the subject account at the time the first Order of Judgment of Foreclosure and Sale.

Defendant's only defense to an action for Foreclosure would be that the payments required under the contract have been made and Plaintiff's verified account is in error. Defendants have not and cannot meet this burden. The uncontradicted Affidavit of Plaintiff is that Defendants were more than 11 months in default of payments at the time of the first Order of Judgment of Foreclosure and Sale and Defendants have not made a payment since February 2019, over two years ago.

Additionally, the relief sought by Defendants would prejudice Plaintiff. As set forth in Plaintiff's uncontradicted affidavit, the account more than 11 months in default of payments at the time of the first Order of Judgment of Foreclosure and Sale and Defendants have not made a payment since February 2019, over two years ago and Defendants are in default. The secured collateral is real

property, which is subject to depreciation. Equally Plaintiff's secured collateral is at risk for damage and destruction. Plaintiff would be prejudiced by the grant of the motion for relief from default.

Service of Process was done in a manner compliant with S.C.R.C.P. 4 and Defendants cannot meet the facts for relief required by SCRCP 60 (b), therefore the motion should be denied.

Respectfully submitted,

CRAWFORD & VON KELLER, LLC

s/ Theodore von Keller

B. Lindsay Crawford, III

Theodore von Keller, SC Bar No. 5718

B. Lindsay Crawford, IV

Christopher B. Lusk

Post Office Box 394

Columbia, South Carolina 29202

(803) 790-2626

Attorney for Plaintiff

Columbia, South Carolina
June 2, 2021

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
C/A NO.: 2019-CP-40-5698

First Citizens Bank and Trust Company,
Plaintiff,

vs.

Justin Spires, Timothy Spires, Sr., et al.
Defendant(s).

Motion to Reconsider

TO TED Von Keller, OF CRAWFORD AND VON KELLER ATTORNEYS FOR PLAINTIFF:

Defendants Justin Spires and Timothy Spires, Sr., by and through their Attorney Shawn M. French, Sr. of the French Law Firm, LLC at 1476 Ben Sawyer Blvd, Ste. 3, Mt. Pleasant, SC 29464, hereby requests that pursuant to Rule 59(e) SCRPC and other rules, cases and statutes, that this court reconsider its Order Dated June 21, 2021 Denying the Motion to Set Aside the Entry of Default as well it's Order and Judgment of Foreclosure and Sale.

The Court Should have granted the motions of Justin Spires and Timothy Spires to Vacate the Sale, Judgment, and to Dismiss the Action against him.

It is undisputed that the alleged service on Mr. Timothy Spires was done by substitute service at an address where he had never lived. The documents were delivered to a guest, not a resident, of the property named Mitch Smith. Plaintiff makes the argument that this was the last known address for Mr. Timothy Spires so that should suffice as adequate service. Nowhere in the rules of civil procedure is this seen as adequate service to provide due process to Timothy Spires. The Order cites to cases talking about the ability of the affidavit of service to be amended to cure scrivener's errors or other technical errors. This argument has nothing to do with this case because no attempt has been made to amend or alter the affidavits. In this case, service was

delivered to an address where Timothy Spires has never lived. In fact it was delivered to the boyfriend of his ex-wife. This is not a technical issue. This cuts the heart out of what service of process is supposed to do by denying Timothy Spires notice of the pending suit.

It does the same thing by denying notice to Justin Spires. He was never served with the documents. They were handed to someone who was a guest of another resident, not to someone residing in the house.

The Order says that there is a presumption of service when the rules are followed, but the three affidavits filed by and on behalf of the defendants show that the rules were not followed, and that the presumption has been rebutted. The individual served stated in his affidavit that he told the process server he did not reside in the property and that Timothy Spires did not live there. Furthermore, lack of personal service is a defense in addition to the other defenses that will be repeated below.

There is Meritorious Defense

There are meritorious defenses. As stated by the Defendants, they have disputed the debt and been given inconsistent pay off numbers by the plaintiff. They are entitled to dispute the debt and it would make a difference if the Plaintiff was demanding the proper amounts from the Defendants.

At the hearing on the motions, the Plaintiff submitted an affidavit for the Records Custodian for the Plaintiff. In that, the records custodian mentioned that there had been a loan modification. This was the first mention of the loan modification by the Plaintiff in the record and a copy was never produced. This modification was an extension of the maturity date of the Note and Mortgage, but it also reduced the interest rate from 6.875% to 4.6%. An affidavit of

Justin Spires is attached to this motion with bank statements showing this interest rate. Despite this, the Plaintiff is still claiming the interest rate is 6.875% in all of its affidavits.

For these reasons and the other arguments already presented, the Motion to Vacate the Sale, Vacate the Judgment, and Dismiss this matter should be granted.

/s/Shawn M. French, Sr.
Shawn M. French
Attorney for Timothy Spires, Sr.
SC BAR No.: 75007
1476 Ben Sawyer Blvd, Ste. 3
Mt. Pleasant, SC 29464
843-606-6440

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph M. Strickland, Master in Equity

Case No. 2019-CP-40-5698

First Citizens Bank and Trust
Company, Inc,

Respondent,

v.

Justin K. Spires, Timothy J.
Spires, Sr. South Carolina
Department of Probation,
Parole and Pardon Services
and Warren B. Giese as
Solicitor,

Of who, Justin K. Spires and
Timothy J. Spires are the

Appellants.

NOTICE OF APPEAL

Justin K. Spires and Timothy J. Spires appeal the Order Denying their Motion to Vacate the Sale and for Relief from the Default Judgment dated June 21, 2021 as well as the Denial of the Motion to Reconsider and the Order dated September 21, 2021 in the above referenced case. Notice of both orders was received on the dates they were filed.

October 21, 2021

/s/Shawn M. French, Sr.
Shawn M. French, Sr.
1476 Ben Sawyer Blvd, Ste. 3
Mount Pleasant, SC 29464
(ph) 843-606-6440
shawn@thefrenchlawfirm.com
Attorney for Appellants

Other Counsel of Record:
Theodore von Keller
PO Box 4216
Columbia, SC 29240

AFFIDAVIT OF SERVICE



DOCKET NUMBER: 2019CP4005698

FILE NUMBER: 4000.0142

COURT OF COMMON PLEAS FOR RICHLAND COUNTY, SC

CASE STYLE:

PLAINTIFF FIRST-CITIZENS BANK & TRUST COMPANY; et seq.

vs.

DEFENDANT JUSTIN K. SPIRES

SERVICE OF PROCESS ON: JUSTIN K. SPIRES

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(x) (SUBSTITUTE) By leaving a copy at dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

PLACE OF SERVICE: 30 CARDINGTON COURT
COLUMBIA, SC 29209

Is the place of service the dwelling house or usual place of abode for the party being served? (x) Yes () No

DATE: 10/12/2019 TIME: 7:58 AM

TYPE OF DOCUMENTS: SUMMONS AND COMPLAINT, LIS PENDENS; NOTICE OF RIGHT TO FORECLOSURE INTERVENTION

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:

Name MITCH SMITH ; Relationship/Title CO-RESIDENT

Sex MALE ; Race WHITE ; Facial Hair NONE ; Hair Color BALD/NONE ;

Age(prox.) 41-45 ; Height(prox.) 5FT 4IN - 5FT 7IN ; Weight(prox.) 211 LBS - 230 LBS

MARITAL STATUS: (x) Single () Married () Separated () Unknown

MILITARY STATUS: PER MY INVESTIGATION, SAID PERSON
() WAS (x) WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE () UNKNOWN
MILITARY BRANCH, IF APPLICABLE:IS THE SUBJECT PROPERTY A MOBILE HOME? () YES (x) NO () MOBILE HOME VIN NOT VISIBLE
VIN #:

COMMENTS:

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: MARK WEAGHINGTON

Signature of Process Server / ProVest Case id # 5658952

Date

STATE OF SC

COUNTY OF Lexington

Sworn and subscribed before me this 15 day of October, in the year of 2019

Personally known to me or identified by the following document:

Type:

Number/Reference:

Notary Public for SOUTH CAROLINA

Notary Public (Legal Signature)

Commission Expiration 3-12-2023

WENDY LANIER

AFFIDAVIT OF SERVICE



DOCKET NUMBER: 2019CP4005698

FILE NUMBER: 4000.0142

COURT OF COMMON PLEAS FOR RICHLAND COUNTY, SC

CASE STYLE:

PLAINTIFF

FIRST-CITIZENS BANK & TRUST COMPANY; et seq.

vs.

DEFENDANT

JUSTIN K. SPIRES

SERVICE OF PROCESS ON:

TIMOTHY J. SPIRES, SR.

METHOD OF SERVICE:

A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(x) (SUBSTITUTE) By leaving a copy at dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

PLACE OF SERVICE:

30 CARDINGTON COURT
COLUMBIA, SC 29209Is the place of service the dwelling house or usual place of abode for the party being served? (x) Yes () No

DATE:

10/12/2019 TIME: 7:58 AM

TYPE OF DOCUMENTS:

SUMMONS AND COMPLAINT, LIS PENDENS; NOTICE OF RIGHT TO FORECLOSURE INTERVENTION

DESCRIPTION OF PARTY
RECEIVING DOCUMENTS:

The person receiving the documents is described as follows:

Name MITCH SMITH; Relationship/Title CO-RESIDENTSex MALE; Race WHITE; Facial Hair NONE; Hair Color BALD/NONE;Age(prox.) 41-45; Height(prox.) 5FT 4IN - 5FT 7IN; Weight(prox.) 211 LBS - 230 LBS

MARITAL STATUS:

(x) Single () Married () Separated () Unknown

MILITARY STATUS:

PER MY INVESTIGATION, SAID PERSON

() WAS (x) WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE () UNKNOWN
MILITARY BRANCH, IF APPLICABLE:IS THE SUBJECT PROPERTY A MOBILE HOME? () YES (x) NO () MOBILE HOME VIN NOT VISIBLE
VIN #:

COMMENTS:

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: MARK WEAGHTON

Signature of Process Server / ProVest Case id # 5658652

Date

STATE OF

COUNTY OF

Sworn and subscribed before me this

15

day of

October

in the year of

2019() Personally known to me or

identified by the following document:

Type:

Number/Reference:

Notary Public for SOUTH CAROLINA

Notary Public (Legal Signature)

Commission Expiration

3-12-2023MENDY LANIER

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company,
Inc.

Plaintiff,

-VS-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of
Probation, Parole and Pardon Services
and Warren B. Giese as Solicitor,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

AFFIDAVIT OF DEFAULT

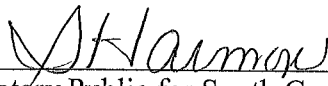
PERSONALLY appeared before me Theodore von Keller, B. Lindsay Crawford, III., Sara Hutchins, and B. Lindsay Crawford, IV, an attorney with Crawford & von Keller, LLC, who, first being duly sworn deposes and says: That s/he is the attorney for the Plaintiff above-named, that Defendants, were served with copies of the Lis Pendens, Summons and Complaint as is shown on the proof of service filed herein; that she has not received an Answer or other appearance from said Defendants, Justin K. Spears, Timothy J. Spires Sr, South Carolina Department of Probation, Parole and Pardon Services and Warren B. Giese as Solicitor; and that said Defendants are now in default.


B. Lindsay Crawford, III (SC Bar# 6510)
Theodore von Keller (SC Bar# 5718)
Sara C. Hutchins (SC Bar# 72879)
B. Lindsay Crawford, IV (SC Bar# 101707)
Email: court@crowfordvk.com

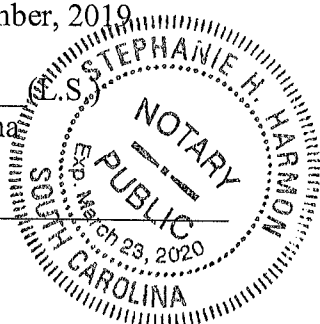
November 19, 2019

SWORN to and subscribed before me

This 19 day of November, 2019


Notary Public for South Carolina

My Commission Expires: _____



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company,
Inc.,

Plaintiff,

-vs-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of
Probation, Parole and Pardon Services
and Warren B. Giese as Solicitor,

Defendant(s)

4000.0142

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

**NOTICE OF HEARING AND
CERTIFICATE OF MAILING**

TO: THE DEFENDANTS NAMED ABOVE

YOU WILL PLEASE TAKE NOTICE that, by virtue of the Order of Reference issued in the above-entitled case, The Honorable Joseph M. Strickland, as Master In Equity for Richland County, has appointed 02/12/2020, at 9:30 am, in his/her offices at Richland County Judicial Center, 1701 Main Street, Courtroom 2-D, Columbia, South Carolina 29201 for a hearing on the merits of this case. It is anticipated that the Master In Equity will issue a final judgment following said hearing.

You are hereby notified that, in accordance with S.C. Code Ann. §14-11-110, the Plaintiff's attorney will submit at said hearing a record of hearing in support of the Plaintiff's Complaint herein in lieu of producing another live witness on behalf of the Plaintiff, the Plaintiff's attorney being available for examination.

I, the undersigned, B. Lindsay Crawford, III; Theodore von Keller; Sara Hutchins; B. Lindsay Crawford, IV, an attorney of Crawford & von Keller, LLC., attorneys for the Plaintiff do hereby certify that I served a copy of the Notice of Hearing, to the below-listed Defendant(s) this date, by personally depositing copies of same in a United States Postal Service mailbox, postage pre-paid, addressed as follows:

Justin K. Spires
30 Cardington Court
Columbia, SC 29209

Timothy J. Spires, Sr.
30 Cardington Court
Columbia, SC 29209

South Carolina Department of Probation,
Parole and Pardon Services
2221 Devine Street
Columbia, SC 29250

The Honorable Alan Wilson
South Carolina Attorney General
Dennis Office Building
1000 Assembly Street, Room 519
Columbia, SC 29211

Warren B. Giese as Solicitor
1315 Blanding Street
Columbia, SC 29201

___s/B. Lindsay Crawford, III___
B. Lindsay Crawford, III (SC Bar# 6510)
Theodore von Keller (SC Bar# 5718)
Sara C. Hutchins (SC Bar# 72879)
B. Lindsay Crawford, IV (SC Bar# 101707)
Email: court@crawfordvk.com

Columbia, South Carolina

January 21, 2020

NOTICE OF SALE
Case#2019-CP-40-05698
BY VIRTUE of a judgment heretofore granted in the case of First-Citizens Bank & Trust Company, Inc. vs. Justin K. Spires, Timothy J. Spires, Sr., South Carolina Department of Probation, Parole and Pardon Services and Warren B. Giese as Solicitor, I, Joseph M. Strickland Master In Equity for Richland County, will sell on April 6, 2020, at 12:00 Noon, at the Richland County Judicial Center, 1701 Main Street, Courtroom 2-D, Columbia, South Carolina, to the highest bidder:

All that certain piece, parcel, tract or lot of land, together with all improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown and delineated as Lot Number Thirty four (34), Block "V" on a plat of Waterbury, Phase 2, a/k/a East Pines, by Civil Engineering of Columbia, dated May 21, 1983, and recorded in the Register of Deeds Office for Richland County in Plat Book "Y, at page 529 and further shown on a plat prepared for William T. Bloom and Ruth S. Bloom, by Belter & Associates, Inc., dated May 21, 1983. Said property having such shapes, courses, distances, metes and bounds as shown upon said plat, reference being craved thereto as often as necessary for a more complete and accurate description; all measurements being a little more or less.

This being the same property heretofore conveyed to Justin Spires by Deed of Ruth S. Bloom recorded at the Register of Deeds Office for the County of Richland September 1, 2006 in Book R1224 at Page 3742.

TMS #: 19213-01-45
30 Cardington Court,
Columbia, SC 29209

SUBJECT TO RICHLAND COUNTY TAXES
TERMS OF SALE: The successful bidder, other than the Plaintiff, will deposit with the Master In Equity at conclusion of the bidding, five (5%) of his bid, in cash or equivalent, as evidence of good faith, the same to be applied to purchase price in case of compliance, but to be forfeited and applied first to Plaintiff's debt in the case of noncompliance. Should the last and highest bidder fail or refuse to make the required deposit at the time of the bid or comply with the other terms or the bid within twenty (20) days, then the Master In Equity may resell the property on the same terms and conditions on some subsequent Sales Day (at the risk of the for-

THE COLUMBIA STAR

COLUMBIA, SOUTH CAROLINA

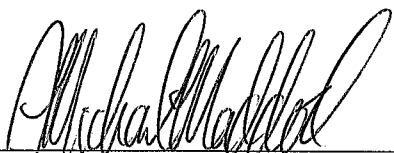
State of South Carolina
County of Richland

Personally appeared before me,
J. MICHAEL MADDOCK,
PUBLISHER OF THE COLUMBIA STAR,
who makes oath that the advertisement

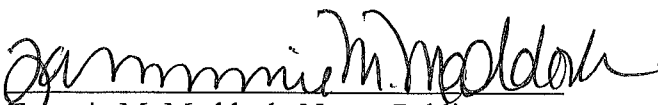
MASTER'S SALE
First-Citizens Bank & Trust Co., Inc.
vs. Justin K. Spires, et al.

a clipping of which is attached hereto, was printed in
THE COLUMBIA STAR, a weekly newspaper of general circulation
published in the City of Columbia, State and County aforesaid, in the issues of

March 20, 2020


J. Michael Maddock, Publisher

Sworn to before me on this
26th day of March, 2020.


Tammie M. Maddock, Notary Public
My commission expires June 27, 2026

mer highest bidder). Should the Plaintiff or one of its representatives fail to be present at the time of sale, the property is automatically withdrawn from said sale and sold at the next available sales day upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or any Supplemental Order. A personal or deficiency judgment having been demanded by the Plaintiff, the sale of the subject property will remain open for thirty (30) days pursuant to Section 15-720, Code of Laws, of South Carolina, 1976; provided, however, that the Court recognizes the option reserved by the Plaintiff to waive such deficiency judgment prior to the sale, and notice is given that the Plaintiff may waive in writing the deficiency judgment prior to the sale; and that should the Plaintiff elect to waive a deficiency judgment, without notice other than the announcement at the sale and notice in writing to the debtor defendant(s) that a deficiency judgment has been waived and that the sale will be final, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search well before the foreclosure sale date. The successful bidder will be required to pay interest on the amount of the bid from the date of sale to date of compliance with the bid at the rate of 6.875% per annum. Joseph M. Strickland Master In Equity for Richland County Theodore von Keller, Esquire B. Lindsay Crawford, III, Esquire Columbia, South Carolina Attorney for Plaintiff Email: court@crawford-vk.com

First Citizens

v.

Affidavit

Justin Spires, et al

Personally Appeared Before me the undersigned Justin Spires, who upon being duly sworn, states under penalty of perjury the following facts:

- ① My interest rate on my loan with First Citizens was 4.6% after 2016.
- ② ~~My~~ My Dad, Tim Spires, did not sign any documents at that time, to my best memory
- ③ I do not have copies of those documents and it was only after reading the Affidavit of First Citizens representative Tracy Hymant I found this issue.
- ④ I am ~~attaching~~ attaching statements from First Citizens showing this.
- ⑤ I repeat that the amount claimed due is not accurate and the Plaintiff has demanded an amount it is not entitled to.

Further Affiant Says Nothing.

Sworn to before this 1st day of July, Justin Spires
2021

Shawn Hunch

Notary Public for SC

My Commission Expires 12/12/2025



First Citizens Bank

Central Bank Operations - DAC02
P.O. Box 27131
Raleigh, NC 27611-7131

Direct Billing Inquiries To:

1.866.676.7456



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IL



**JUSTIN K SPIRES
TIMOTHY J SPIRES SR
30 CARDINGTON COURT
COLUMBIA, SC 29209**

**Payment Due Date
01/30/2021**

**Amount Due
\$976.37**

Statement Date: 01/15/2021

Account Number:

9738

Account Information		Explanation of Amount Due	
Outstanding Principal	0.00	Principal	0.00
Interest Rate	4.600%	Interest	0.00
		Regular Payment Amount	0.00
		Total Fees and Charges	865.44
		Past Due Payment	10.93
Loan Expense	10,547.99	Total Amount Due	996.37
Past Payments Breakdown			
Description		Paid Since Last Statement	Paid Year to Date
Principal		57,355.96	0.00
Interest		4,094.41	0.00
Fees and Charges		0.00	0.00
Total		61,450.37	0.00
Transactions Since Last Statement			
Eff Date	Post Date	Description	Charges Payments
12/18	01/15	Interest Payment Interest 1,029.56	-1,029.56

Page 1 of 2

Name: JUSTIN K SPIRES

DETACH AND RETURN THIS STUB WITH YOUR PAYMENT.

Account Number
Amount Due 976.37
Due Date 01/30/2021

ALS-IL 500801000 ALS-IL

\$

Amount Enclosed

FIRST CITIZENS BANK
PO BOX 63068
CHARLOTTE NC 28263-3068



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Record on Appeal116

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ICHLAND - CCMONPLES - CASE#2019CP4008698

Statement Date: 01/15/2021

Account Number:

9738

Transactions Since Last Statement

Eff Date	Post Date	Description	Charges	Payments
12/18	01/15	Principal Payment <i>Principal 49,510.80</i>		-49,510.80
12/18	01/15	Principal Payment <i>Principal 7,845.16</i>		-7,845.16
12/18	01/15	Interest Payment <i>Interest 3,064.85</i>		-3,064.85

Your loan documents may obligate you to reimburse us for certain loan-related expenses we incur in the administration and collection of your loan. The total amount of loan-related expenses we have processed to date on your behalf may be listed above as "Loan Expense." We have excluded these expenses in calculating the "Total Amount Due" as stated in this billing statement. We will send you a separate "Special Billing Statement for Loan-Related Expenses" itemizing each of these expenses with instructions on how to remit payment. Your loan will not be considered "paid in full" until all of the sums you owe us (including, any "Loan Expense") have been paid in full.

Payoff Information

For current payoff amount please contact us at 1.888.323.4732.

Information and Error Resolution

For error resolution and/or borrower information requests, write us at PO Box 26592, Raleigh NC 27611, include your name, account number and describe the error or request. You must use this address to ensure we can respond to you.

Housing Counselor Information

If you would like counseling or assistance, you can contact the following: U.S. Department of Housing and Urban Development (HUD): For a list of homeownership counselors or counseling organizations in your area go to <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or call 800.569.4287.



First Citizens Bank

Central Bank Operations - DAC02
P.O. Box 27131
Raleigh, NC 27611-7131

Direct Billing Inquiries To:

1.866.676.7456



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ALS
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**JUSTIN K SPIRES
TIMOTHY J SPIRES SR
30 CARDINGTON COURT
COLUMBIA, SC 29209**

**Good Through
12/30/2020**

**Amount Due to
reinstate loan
\$14,369.90**

If payment is received after
01/11/2021, a \$36.06 late fee
will be charged.

Statement Date: 12/15/2020

Account Number

9738

Account Information		Explanation of Amount Due	
Outstanding Principal	57,355.96	Regular Payment Amount	721.11
Interest Rate	4.600%	Total Fees and Charges	36.06
		Past Due Payment	3,064.74
		Loan Expense	10,547.99
		Total Amount Due to reinstate loan (good through 12/30/2020)	14,369.90
Loan Expense	10,547.99	Accelerated Amount Due (good through 12/30/2020)	72,887.38

Explanation of Amount Due, cont.

You are in default on your loan for failure to make timely payments. Because of the delinquency, your account has been accelerated and may be scheduled for foreclosure. The accelerated amount due is \$72,887.38. However, the amount disclosed is not a payoff amount.

Failure to bring your loan current may result in the loss of your home. You may reinstate your loan and avoid foreclosure by paying the reinstatement amount of \$14,369.90 on or before 12/30/2020 to bring your loan current. If you do not reinstate your loan by 12/30/2020, another monthly payment will become due, and you will need to contact us for an updated reinstatement amount. Interest, fees, and/or charges may continue to accrue on your loan.

Past Payments Breakdown

Description	Paid Since Last Statement	Paid Year to Date
Principal	0.00	0.00
Interest	0.00	0.00
Fees and Charges	0.00	0.00
Total	0.00	0.00

Page 1 of 4

Name: JUSTIN K SPIRES

DETACH AND RETURN THIS STUB WITH YOUR PAYMENT.

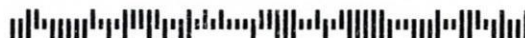
Account Number
Amount Due to reinstate 14,369.90
Due Date 12/30/2020
\$36.06 late fee will be charged after 01/11/2021

ALS-IL 500801000 ALS-IL

\$

Amount Enclosed

FIRST CITIZENS BANK
PO BOX 63068
CHARLOTTE NC 28263-3068



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Record on Appeal118

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Transactions Since Last Statement

Eff Date	Post Date	Description	Charges	Payments
11/18	11/18	Property Tax Expense	1,088.40	
12/10	12/10	Late Fee	36.06	

Your loan documents may obligate you to reimburse us for certain loan-related expenses we incur in the administration and collection of your loan. The total amount of loan-related expenses we have processed to date on your behalf is listed above as "Loan Expense." We have included these loan-related expenses in calculating the "Total Amount Due" as stated in this billing statement. We will send you a separate "Special Billing Statement for Loan-Related Expenses" itemizing each of these loan-related expenses with instructions on how to remit payment. Your loan will not be considered "paid in full" until all of the sums you owe us (including any loan-related expenses) have been paid in full.

**** Delinquency Information ****

You are late on your mortgage payments. Failure to bring your loan current may result in fees and foreclosure - the loss of your home.

As of 12/15/2020, you are 108 days delinquent on your mortgage loan.

Total Amount Due: \$72,887.38

If You Are Experiencing Financial Difficulty: See the Housing Counselor Information section of this statement.

Recent Account History

Payment Due	08/30/2020	Unpaid balance of:	793.33
Payment Due	09/30/2020	Unpaid balance of:	757.17
Payment Due	10/30/2020	Unpaid balance of:	757.17
Payment Due	11/30/2020	Unpaid balance of:	757.17

Total Reinstatement Amount Due as of 12/15/2020: \$14,369.90

Your account is seriously past due even though we have made several request for payment. Please remit payment immediately.

CREDIT REPORTING NOTIFICATION:

We may report information about your account or accounts to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

DELINQUENT HOMEOWNERSHIP COUNSELING NOTICE**Availability of Homeownership Counseling Offered by Creditor**

Our financial institution does not currently offer any homeownership counseling.

Special Notice to Eligible Mortgage Applicants under 12 U.S.C.A. § 1701x(c)(4)

If you are an eligible mortgage applicant under 12 U.S.C.A. § 1701x(c)(4), the completion of a counseling program is required for insurance pursuant to section 203 of the National Housing Act (12 U.S.C.A. § 1709).

Availability of Homeownership Counseling Provided by Nonprofit Organizations

Homeownership counseling provided by nonprofit organizations approved by the Secretary of Housing and Urban Development and experienced in the provision of homeownership counseling is available. A list of nonprofit organizations (updated annually) may be obtained by calling the following toll-free telephone number: 800.569.4287.

**UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SERVICEMEMBERS CIVIL RELIEF ACT NOTICE**

Legal Rights and Protections Under the SCRA

Servicemembers on "active duty" or "active service," or a spouse or dependent of such a servicemember may be entitled to certain legal protections and debt relief pursuant to the Servicemembers Civil Relief Act (50 USC App. §§ 3901-4043) (SCRA).

Who May Be Entitled to Legal Protections Under the SCRA?

- Regular members of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps and Coast Guard).
- Reserve and National Guard personnel who have been activated and are on Federal active duty.
- National Guard personnel under a call or order to active duty for more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.
- Active service members of the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration.
- Certain United States citizens serving with the armed forces of a nation with which the United States is allied in the prosecution of a war or military action.

What Legal Protections Are Servicemembers Entitled to Under the SCRA?

- The SCRA states that a debt incurred by a servicemember, or servicemember and spouse jointly, prior to entering military service shall not bear interest at a rate above 6 % during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage, or during the period of military service in the case of any other obligation or liability.
- The SCRA states that in a legal action to enforce a debt against real estate that is filed during, or within one year after the servicemember's military service, a court may stop the proceedings for a period of time, or adjust the debt. In addition, the sale, foreclosure, or seizure of real estate shall not be valid if it occurs during, or within one year after the servicemember's military service unless the creditor has obtained a valid court order approving the sale, foreclosure, or seizure of the real estate.
- The SCRA contains many other protections besides those applicable to home loans.

How Does a Servicemember or Dependent Request Relief Under the SCRA?

- In order to request relief under the SCRA from loans with interest rates above 6% a servicemember or spouse must provide a written request to the lender, together with a copy of the servicemember's military orders, at: First Citizens Bank, PO Box 26592, Raleigh, NC 27611; attention SCRA. Contact Information: 1.888.323.4732.
- There is no requirement under the SCRA, however, for a servicemember to provide a written notice or a copy of a servicemember's military orders to the lender in connection with a foreclosure or other debt enforcement action against real estate. Under these circumstances, lenders should inquire about the military status of a person by searching the Department of Defense's Defense Manpower Data Center's website, contacting the servicemember, and examining their files for indicia of military service. Although there is no requirement for servicemembers to alert the lender of their military status in these situations, it still is a good idea for the servicemember to do so.

How Does a Servicemember or Dependent Obtain Information About the SCRA?

- Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. A military legal assistance office locator for all branches of the Armed Forces is available at <http://legalassistance.law.af.mil/content/locator.php>
- "Military OneSource" is the U. S. Department of Defense's information resource. If you are listed as entitled to legal protections under the SCRA (see above), please go to www.militaryonesource.mil/legal or call 1.800.342.9647 (toll free from the United States) to find out more information. Dialing instructions for areas outside the United States are provided on the website.

form HUD-92070
(6/2017)



First Citizens Bank

Central Bank Operations - DAC02
P.O. Box 27131
Raleigh, NC 27611-7131



JUSTIN K SPIRES
TIMOTHY J SPIRES SR
30 CARDINGTON COURT
COLUMBIA, SC 29209

Statement Date: 12/15/2020

Account Number:

9738

Payoff Information

For current payoff amount please contact us at 1.888.323.4732. Please note there is no prepayment penalty.

Information and Error Resolution

For error resolution and/or borrower information requests, write us at PO Box 26592, Raleigh NC 27611, include your name, account number and describe the error or request. You must use this address to ensure we can respond to you.

Housing Counselor Information

If you would like counseling or assistance, you can contact the following: U.S. Department of Housing and Urban Development (HUD). For a list of homeownership counselors or counseling organizations in your area go to <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or call 800.569.4287.

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Central Bank Operations - DAC02
P.O. Box 27131
Raleigh, NC 27611-7131

Direct Billing Inquiries To:

1.866.676.7456



POST MATURITY STATEMENT

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JUSTIN K SPIRES
TIMOTHY J SPIRES SR
30 CARDINGTON COURT
COLUMBIA, SC 29209

Payment Due Date
10/01/2016

Amount Due
\$69,859.28

If payment is received after
10/11/2016, a \$19.57 late fee
will be charged.

Statement Date: 09/16/2016

Account Number:

738

Account Information		Explanation of Amount Due	
Outstanding Principal	69,250.29	Principal	0.00
Interest Rate	6.875%	Interest	31.31
		Post Maturity Amount	31.31
		Total Fees and Charges	0.00
		Past Due Payment	69,477.97
		Total Amount Due	69,859.28
Past Payments Breakdown			
Description	Paid Since Last Statement		Paid Year to Date
Principal	0.00		2,655.08
Interest	0.00		3,422.88
Fees and Charges	0.00		160.84
Total	0.00		6,238.80
Transactions Since Last Statement			
Eff Date	Post Date	Description	Charges Payments
No Transaction Activity			

Page 1 of 2

Name: JUSTIN K SPIRES

DETACH AND RETURN THIS STUB WITH YOUR PAYMENT.

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ALS-IL

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Account Number 738
Amount Due 69,859.28
Due Date 10/01/2016

\$19.57 late fee will be charged after 10/11/2016

Amount Enclosed

FIRST CITIZENS BANK
PO BOX 63068
CHARLOTTE NC 28263-3068



POST MATURITY STATEMENT

Record on Appeal122

Statement Date: 09/16/2016

Account Number:

This First Citizens loan is past maturity. Your account is due and payable in full. For the current payoff amount, please call us at 1.888.323.4732. Please contact your lender or local First Citizens branch if you have questions about this loan or future financing needs.
Thank you for your business.

ATTENTION: The address for your loan payment changed.

If you mail in your payment or your payment is being automatically drafted, no action is needed on your part.

If payments for this loan are being made via an online banking application or an accounts payable system, the address used for payments will need to be updated. It is important to note that the old payment address will no longer be valid. **To ensure the fastest receipt and processing of your payments, please begin using the new payment address.**

First Citizens Bank
PO Box 63068
Charlotte, NC 28263-3068

Payoff Information

For current payoff amount please contact us at 1.888.323.4732.

Information and Error Resolution

For error resolution and/or borrower information requests, write us at PO Box 26592, Raleigh NC 27611, include your name, account number and describe the error or request. You must use this address to ensure we can respond to you.

Housing Counselor Information

If you would like counseling or assistance, you can contact the following: U.S. Department of Housing and Urban Development (HUD). For a list of homeownership counselors or counseling organizations in your area go to <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or call 800.569.4287.



Central Bank Operations - DAC02
P.O. Box 27131
Raleigh, NC 27611-7131

Direct Billing Inquiries To:

1.888.323.4732



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ALS
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JUSTIN K SPIRES
TIMOTHY J SPIRES SR
30 CARDINGTON COURT
COLUMBIA, SC 29209

Payment Due Date
12/30/2016

Amount Due
\$0.00

Statement Date: 12/29/2016

Account Number: 9738

Account Summary

Previous Balance	68,999.16	Closing Date of Billing Cycle	12/29/2016
Total Advances	0.00	Days In The Billing Cycle Period	30
Total Payments/Credits (-)	721.11	Credit Line	0.00
Total Fees	0.00	Available Credit	0.00
Total Interest	258.78	Minimum Payment Due	0.00
New Balance	68,536.83	Due Date	12/30/2016

Transactions Since Last Statement

Eff Date	Post Date	Description	Amount
12/07	12/07	Payment Interest 260.12 Principal 460.99	721.11

Interest Charged

Eff Date	Post Date	Description	Amount
12/29	12/29	Interest Charge	258.78
Total Interest For This Period			258.78

Page 1 of 3

Name: JUSTIN K SPIRES

DETACH AND RETURN THIS STUB WITH YOUR PAYMENT.

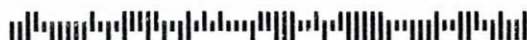
Account Number 38
Payment Amount Due 0.00
Total Past Due 0.00
Minimum Payment Due 0.00
Due Date 12/30/2016

ALS-LOC 500801000 ALS-LOC

\$

Amount Enclosed

FIRST CITIZENS BANK
PO BOX 63068
CHARLOTTE NC 28263-3068



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Record on Appeal124

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Interest Calculation				
Plan Type	Annual Percentage Rate (APR)	Days Rate In Effect	Daily Periodic Rate	Average Daily Balance (Subject to Interest Rate)
Fixed	4.600%	30	0.01260274%	68,446.0
Totals Year-To-Date				
Total Fees Charged in 2016				827.88
Total Interest Charged in 2016				4,427.1

ELECTRONICALLY FILED - 2021 Jul 01 10:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4005698



JUSTIN K SPIRES
TIMOTHY J SPIRES SR
30 CARDINGTON COURT
COLUMBIA, SC 29209

9738

Interest Charge. The term "Interest Charge" on your statement has the same meaning as the term "Finance Charge" that may appear in your revolving line of credit documents.

00000001 00000002 0002 0002 FC/ETCL ST123016031323 STNFO6X901 00000001

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company, Inc.

Plaintiff

-VS-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of Probation,
Parole and Pardon Services and Warren B.
Giese as Solicitor,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

AFFIDAVIT OF TRACY HINNANT

PERSONALLY APPEARED BEFORE ME, Tracy Hinnant, who, being duly sworn, states as follows:

1. That I am a Legal Representative of First-Citizens Bank & Trust Company and am authorized to make this Affidavit.
2. That I am familiar with the account of the Defendant.
3. That on or about August 31, 2006 Justin K. Spires and Timothy J Spires Sr. entered into a promissory note with First Citizens Bank and Trust Company Inc. by which they promised to pay the sum of \$99,998.00 together with interest thereon at the rate of 6.875% per annum. A copy of the promissory note is attached hereto as Exhibit A.
4. That the promissory note was secured by a mortgage from Justin K. Spires dated August 31, 2006. A copy of the mortgage is attached hereto as Exhibit B.
5. That under the terms of the promissory note, the defendants agreed to pay the loan in 119 regular payments of \$760.18 and 1 last payment estimated at \$87,292.16. The first payment was due on October 1, 2006 and the final payment was due on September 1, 2016 and was for all principal and accrued interest not yet paid.
6. By its express terms the loan matured on September 1, 2016 and was due and payable in full.
7. That on October 7, 2016 Justin K. Spires entered into a Note Modification Agreement extending the maturity date to October 7, 2023.
8. That attached hereto as Exhibit C is the affidavit of verified statement of account that I prepared that was filed with the court on February 4, 2020 and which reflects that the unpaid principal balance as of February 12, 2020 was \$57,355.96 , with accrued interest as of February 12, 2020 in the amount of \$2,016.73; along with late charges in the amount of \$504.84 and corporate advances in the amount of \$3,914.37; bringing the total debt secured by the note and mortgage including interest as of February 12, 2021 to \$63,791.90.

9. That on July 3, 2020, First-Citizens received a telephone call from Justin Spires who was aware of the order of foreclosure and upcoming sale on July 6, 2020 and requested permission to reinstate the loan, which was denied. Justin Spires thereafter filed bankruptcy on July 6, 2020 to prevent the foreclosure sale. A copy of the notice of filing bankruptcy is attached hereto as Exhibit D.

FURTHER AFFIANT SAYETH NAUGHT.

Tracy Hinnant

Tracy Hinnant

Legal Representative

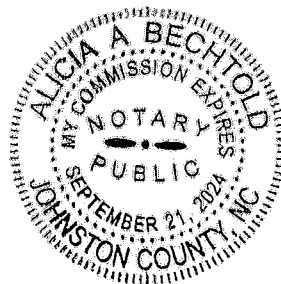
First-Citizens Bank & Trust Company

Sworn and subscribed before me

This 19th day of May, 2021

Alicia A. Bechtold
Notary Public for the State of:

My Commission Expires: September 21, 2024



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

First Citizens Bank and Trust Company,

Plaintiffs,

v.

Justin Spires, Timothy Spires, Sr., et al.;

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2019-CP-40-05698

Affidavit of Justin Spires

PERSONALLY appeared before me the undersigned, Justin K. Spires, who, upon first being duly sworn, states under penalty of perjury the following facts:

1. I, Justin K Spires, reside at 30 Cardington Ct, Columbia SC 29209.
2. I was not at my house on October 12, 2019 at 8:00am.
3. I was never told that any documents had been delivered there and did not receive them.
4. Mitch, my mother's boyfriend, did not reside there although he did visit.
5. My father, Timothy Spires, Sr. have never lived at my house.
6. On my 23th birthday September 1, 2006, I closed on the purchase of my home for \$110,000. On that same day, I paid \$10000 in cash and signed the paperwork for a mortgage loan with First Citizens Bank in the amount of \$99,998. The loan was for a term 10 years. At the time I was hesitant about the short length of the loan & especially the \$67,242 balloon payment due at the end of the 10-year term. This was my first major large-sum purchase. I had a very healthy credit rating that I had built by financing smaller items over time. However, my loan handler was a trusted friend of my family as well as my father's personal & business banker. He assured me the balloon payment was "not a big deal" & "just a formality" because I would be able to refinance the loan in 10 years. I chose to trust in the bank my family had preferred to use for years. Also, as a single father, I had always handled my finances responsibly.

7. Then as the months went by, I began to see how unreasonable the terms of the loan were. It was also discouraging to receive the tax document every year & see how little was actually applied to the principle compared to the interest. However, I reminded myself of my family's history with the bank along with the fact in 2008, I financed a new car purchase with them at the same interest rate for \$10000.

8. I kept paying it hoping I would be able to get better terms when I refinanced the loan.

9. In 2016, I applied to refinance my loan without a cosigner. I turned everything in but was told my application was denied. Then I started receiving statements at a slightly lower interest rate. I did not want to look a gift horse in the mouth but I was stressing over how the bank would handle it. I just kept making my payments, which I was now having automatically taken directly from my account. First Citizens Bank had always been my bank so I trusted that I was in good hands.

10. In 2019, my family went through a string of hardships. My uncle who I was very close with passed away after a short but intense fight with an aggressive infection. Less than 3 weeks later, my brother attempted suicide. Then my dad fell off of a moving truck while we were packing up stuff to move to a new shop. His injuries were so bad he had to see a neurologist. Since my brother & uncle were the only other employees of our family business besides my dad & myself. Since Dad was injured, it was now up to me to finish packing up our business. I was still working to move us to the new shop until one day when bringing a load of equipment to the new shop, I noticed changes in the terrain. It turned out the shop was built on an old landfill & was unstable & prone to sinkholes. Now I had to start looking for a new & affordable shop and move everything to storage until we found one. Before I was able to find a new location, my dad told me he wasn't going to be able to return to work meaning the job I'd had for 16 years & our family business was now gone.

11. On the last night of moving everything out of the shop, I was struck by a hit & run driver sending me to the hospital.

12. As a single father, I had also been doing my best helping my 15-year old daughter process the emotions she was going through with what had happened to her uncle & great uncle. I already felt like I was being overwhelmed emotionally & mentally but with the

accident and dealing with the physical pain after, I can't even explain how much I just wanted to give up. I had already lost months of income starting from when we stopped taking customers & packing up the shop & now I was in so much pain & feeling more depressed & frustrated. I started falling behind on my bills & contacted my bank to explain my situation. I thought I would be able to get back on my feet.

13. When I received my tax return in 2020, I called the bank to make sure how much I would have to pay to bring my loan current. I was told \$22,000. I thought that had to be a mistake since I received statements every month & the largest (minimum) amount due was \$10,000. Then the lady told me my house was in the foreclosure process. I had no idea because I had not received anything saying this. I asked her what I needed to do and she said she couldn't give me advice except call a lawyer.

14. I did some research & called a bankruptcy lawyer on July 3, 2020.

15. I told the attorney that I was still unemployed but he said that wasn't a problem. But after filing the bankruptcy case, he kept telling me that I didn't have enough paperwork or was missing some. I repeatedly told them I had no job so could not produce proof of steady income. On July 21, I received an email saying I only had 10 more days to produce the documentation. Although I had just started a new job, I had only been there a couple days & had no paycheck stubs to produce. On July 31, I received another email from the law firm saying it was going to cost me \$1300 more than what I had already given them to refile my case and continue to represent me which I didn't have. I started to feel frustrated but kept going to work and trying to get the money to pay the lawyer before the deadline. On August 4, I received three separate emails from the lawyer's office: one saying they needed my proof of income in the form of 2 paycheck stubs. Another saying my bankruptcy case was being dismissed, & a another saying they were requesting more time. Before I could even get my second paycheck in order to have the 2 paycheck stubs, I got the last email saying they no longer represented me due to my noncompliance. I was angry and really frustrated because I repeatedly told them I didn't have a job when they started the case & during & also told them when I would have a 2nd paycheck stub they had asked for and now I was out the money I paid and had no lawyer or bankruptcy case. The only thing I knew to do was keep working & save money to get another lawyer. So that's exactly what I did. Next thing I know I got a letter in the mail

saying they had set up a meeting with my creditors the next morning. I was under the impression they were no longer my attorneys & I had no bankruptcy case. Since I got the letter the night before & was still so new at my job I missed the meeting because I couldn't take time off without notice. But I called the law firm and they told me since I missed the meeting that morning & didn't call til the day of, they no longer represented me & couldn't help me. Although I tried explaining I only received the letter the evening before!

16. I lost hope at this time because I felt it was only a matter of time before I lost everything. It was around this time my dad was also diagnosed with coronavirus & since I was still new at my job that I couldn't even take the time off to help him. I just felt so helpless & like such a failure because although I had worked so hard, I was about to lose my house. I felt a long way away from being that proud young man I was who had worked so hard & saved up \$10000 for a down payment. Because how many 23 year-olds can say they were able to buy their own house. And I was about to lose mine & my daughter's only home.

17. In December, I received the check from the car accident I was in. Since the bank had been sending me statements every month, I took the December one to the bank with the check to pay the amount it said was due to reinstate the loan. I was told by the agent they couldn't accept it unless I paid the entire amount of the loan that was due although the statement said the offer was good through 12/31/2020. The bank refused to accept a reinstatement and was demanding the entire balance of the loan.

18. Since my account was closed I asked if I was able to open an account to deposit the check. She said she couldn't open me one in person but I could go online and open it with a \$25 deposit, then come in & they would deposit the check. Then maybe when the bank was able to see I had the money I could pay the amount due to reinstate the loan & save my house.

19. I opened the account online & went back into the bank with a copy of the confirmation email, but they said they had no record of an account in my name although I had the confirmation & the new account number. Every month since they send me emails saying I have an account statement available online but the bank has denied that I have an account with them.

20. Soon after, my girlfriend was looking into my loan documents & asking me questions about issues she had found. She started to get really concerned & kept telling me I needed to find a foreclosure defense lawyer not a bankruptcy lawyer. Every lawyer we called, even though they advertised as foreclosure defense said they only handled bankruptcies, couldn't help because there was already someone from their office who worked with First Citizens or I should have called them sooner and they couldn't help me. I was really getting depressed and discouraged by now. The last thing I ever wanted to have to look my daughter or my mother (who was also living with me by then) in the eye & tell them we were all homeless. Our house is the only home my daughter has ever known. But we didn't give up and kept contacting people trying to get help.

21. We even called the attorney I used in the bankruptcy. He even mentioned in an email to my girlfriend that if it was too late for bankruptcy, he could look into filing a motion to dismiss the foreclosure after my girlfriend told him what she had found. Then when she told him it was my case, he said he could not help us and referred her to someone else. She was really upset after looking into who he referred us to because he wasn't even a foreclosure, bankruptcy or property lawyer & he had terrible reviews. I

22. In February, I got a notice on my door for a hearing later that month. It was very confusing because the summons part said "as a result of this hearing a foreclosure sale could be ordered as soon as allowed by law after the foreclosure hearing". But behind that was a petition for writ of assistance. I was told that was a request for the sheriff to help the bank with eviction. Even the attorneys that I talked to before the hearing said they couldn't tell if it was for the sale or for eviction. We were told to go to the hearing and if it was for the sale to call back for help. I was so scared by now and still no one would help me. I thought it had to be because they wanted to put it up for sale because I was never told they were putting it up for sale before and I never saw a notice anywhere about it.

23. I at least thought I would be able to give my side or ask questions about how my loan was handled or the concerns I had had so the court could even see if I owed that much money. But the only thing the lawyers had ever told me was filing bankruptcy. Amy explained to me that the purpose of foreclosure was so I could give my side of it. So I called in for the hearing & Amy sat with me. The day of the hearing they

rescheduled it for March. We kept calling around and going online for help but kept getting nowhere. In March we called in for the hearing & when the judge got everyone on the phone, I asked what the hearing was for. I was surprised when the Master Of Equity said it was for eviction. It was like I couldn't speak or breathe. They set an eviction date & I am not sure if I was even spoke after that. I lost our home. I couldn't believe it was over and I had no idea until a few months earlier. I was upset and angry because in the whole time I was asking for help, my attorney never once even mentioned that I could have had the chance to defend myself. I was only told I had to file bankruptcy.

24. I don't understand how all of this stuff was happening & I never got anything in the mail. Then Amy & I called my dad because the judgment would affect his credit too. He told her he didn't even know he was part of the foreclosure because they were supposed to take his name off a long time ago and he never got anything in the mail about it. She started looking at the public documents & saw that Mitch also accepted his notice and they sent all of his information to the wrong address. And although it said they had mailed certain things to my house, I didn't receive anything until February 2021 that was posted to the door.

25. I know they broke their own terms from my loan & although then I didn't know what the regulation laws are, I have learned that they broke a lot of them. The bank was charging fees they aren't showing because somehow the principal balance is only going down by \$2000 when they were paid almost \$8000.

26. I didn't even know how long my loan was supposed to be for after they denied me to refinance then changed my interest rate. They never told me if I would still have a balloon payment or what it would be. I feel like I was suddenly thrown into the middle of a baseball game with blinders over my eyes, told by the coach all I needed to play was an oven mitt for a glove. Then at the end I'm told I lost the World Series. But it's even worse because I have to tell my daughter I failed and we have nowhere to live because I haven't found anyone to rent to someone who's credit is ruined with a foreclosure? In a time when so many things can be unpredictable, we want her to know some things can remain constant & hard work does pay off, and when you believe you are right in something & do the due diligence and try to follow the law to prove it, it is possible for the truth to win, even if you're David to the Goliath. If only I knew 6 months ago what I know now.

FURTHER AFFIANT SAYETH NAUGHT!

May 13 2021



SWORN to before this 13th day of May, 2021

Carla S. Jordan
NOTARY PUBLIC FOR SOUTH CAROLINA
NAME:

My commission Expires: 10/03/2029



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

First Citizens Bank & Trust Company,

Plaintiffs,

v.

Justin Spires, Timothy Spires, Sr., et al.;

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2019-CP-40-05698

Affidavit of Thomas Mitchell Smith

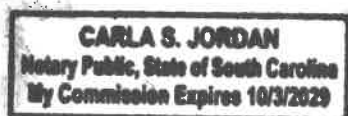
PERSONALLY appeared before me the undersigned, Thomas Mitchell Smith, who, upon first being duly sworn, states under penalty of perjury the following facts:

1. I am a resident of Richland County, SC and resided at 3520 Leesburg Road until January 2020.
2. My
3. On October 12, 2019 I was visiting my girlfriend (Justin's mother) who resides at 30 Cardington when someone came to the door just before 8am. I did not live at that address and was only visiting.
4. I answered the door to find a gentleman attempting to serve Justin and Timothy Spires with a court summons. Timothy Spires, Sr. is Justin's father.
5. I told him that Tim did not live at that address.
6. I did not live at that address either and I was not asked if I did.
7. I left 30 Cardington shortly thereafter and I was unaware until just a few days ago that Justin and Tim did not get the papers I was handed.

May 14 2021

SWORN to before this 14 day of May, 2021

Carla S. Jordan
 NOTARY PUBLIC FOR SOUTH CAROLINA
 NAME:

My commission Expires: 10/03/2029

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

First Citizens Bank and Trust Company,

Plaintiffs,

v.

Justin Spires, Timothy Spires, Sr., et al.;

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2019-CP-40-05698

Affidavit of Timothy Spires, Sr.

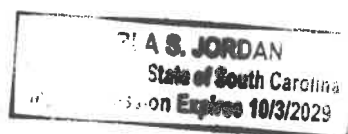
PERSONALLY appeared before me the undersigned, Timothy Spires, Sr., who, upon first being duly sworn, states under penalty of perjury the following facts:

1. I am a resident of Richland County, SC and resided at 3822 Screaming Eagle Road Ext., Eastover SC 29044. A copy of my drivers license is attached to this Affidavit.
2. I have lived there consistently for 30 years. I was living there in 2006 when I co-signed the loan for my son, Justin Spires.
3. The Plaintiff has been aware of this address since 2006 as I was living here then as well.
4. I still have business with First Citizens and still receive correspondence from them at my home in Eastover.
5. I have never received any notice or pleadings or any sort of in reference to this matter.
6. I have never been served with the summons and complaint in this matter.
7. I was unaware of any proceeding or action until my son, Justin, told me what was happening in May of 2021.

May 14 2021SWORN to before this 14 day of May, 2021Carla D. Jordan

NOTARY PUBLIC FOR SOUTH CAROLINA

NAME:

My commission Expires: 10/03/2029

AFFIDAVIT OF SERVICE

DOCKET NUMBER: 2019CP4005698

FILE NUMBER: 4000.0142

COURT OF COMMON PLEAS FOR RICHLAND COUNTY, SCPLAINTIFF FIRST-CITIZENS BANK & TRUST COMPANY, INC.

vs.

DEFENDANT JUSTIN K. SPIRES, et al.SERVICE OF PROCESS ON: JUSTIN K. SPIRES, TIMOTHY J. SPIRES SR. OR OCCUPANT

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(X) (POSTED)

ADDRESS: 30 cardington court
columbia, SC 29209

Is the place of service the dwelling house or usual place of abode for the party being served? (X) YES () NO

DATE: 2/24/2021 TIME: 11:04 AMTYPE OF DOCUMENTS: CERTIFICATION OF COMPLIANCE WITH THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT, NOTICE OF HEARING AND CERTIFICATE OF MAILING, PETITION FOR WRIT OF ASSISTANCE, RULE TO SHOW CAUSE

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:

COMMENTS: 02/24/2021 11:04:00 AM - N/K/A REFUSED; WHITE MALE OPEN THE DOOR I ASK HIM IF HE LIVES HERE AND ASK HIS NAME AND HE CLOSED THE DOOR

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not party to nor interested in this action.

NAME: CECIL LANIER

Signature of Process Server / ProVest Case ID: 6006279

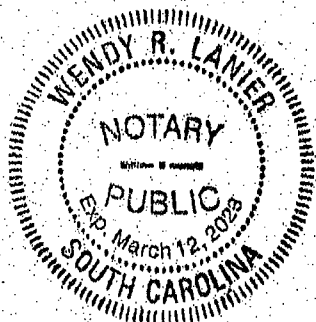
Date

STATE OF SC
COUNTY OF RichlandSworn to and subscribed before me this 26 day of February, in the year of 2021
☒ Personally known by me, or ☐ identified by the following document:Type: [Signature] Number/Reference: _____
Notary Public for SOUTH CAROLINA

Notary Public (Legal Signature)

Printed Name: _____

Commission Expiration: _____



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company,
Inc.,

Plaintiff,

-vs-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of
Probation, Parole and Pardon Services
and Warren B. Giese as Solicitor,

Defendant(s)

4000.0142

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

**NOTICE OF HEARING AND
CERTIFICATE OF MAILING**

(By Video/Telephone Conference)

TO: THE DEFENDANTS NAMED ABOVE

A foreclosure hearing has been set in the above-referenced matter for 03/19/21, at 10:00 am before the Honorable Joseph M. Strickland, as Master In Equity for Richland, for the purpose of taking testimony, findings of facts and conclusions of law and to enter final judgment therein without further order of the court. This hearing will be held using remote communication technology to avoid the need for a physical appearance by any party, witness, or counsel, as provided for in South Carolina Supreme Court Administrative Order 2020-0430-02 (RE: Statewide Evictions and Foreclosures) and South Carolina Supreme Court Administrative Order 2020-04-22-01 (RE: Operation of the Trial Courts During the Coronavirus Emergency). The hearing will be conducted by the Master-in-Equity Judge via the Court's Cisco Webex video conference system, which has both audio and video capabilities. To join the video conference, please go to www.webex.com and click JOIN in the upper right hand corner of the screen. The MEETING NUMBER (access code) is [REDACTED] and the MEETING PASSWORD is [REDACTED]. If you are unable to access a computer, smartphone, or tablet, or wish to join only via telephone, please call [REDACTED] and utilize the MEETING PHONE NUMBER [REDACTED] followed by the MEETING PASSWORD when prompted. If you need assistance joining (using either the audio or video method), please call our offices at (803) 790-2626.

If you do not have either audio and video capabilities, please contact our office (803-790-2626) within 24 hours of the scheduled hearing date and time referenced above.

If you plan to join or attend this hearing, we would respectfully appreciate your sending an email to court@crowfordvk.com or leaving a message for the undersigned at (803) 790-2626. (This is for purposes of notifying you in the event that the hearing is canceled.) Pursuant to S.C. Code Ann. S 14-11110 (as amended) and/or applicable case law, the Plaintiffs attorney intends to submit written testimony on behalf of the Plaintiff at the hearing on Plaintiffs behalf.

As a result of the hearing, a foreclosure sale could be ordered as soon as allowed by law after the foreclosure hearing.

Records in the possession of the undersigned as of this date reflect only the above parties and the above Defendant's counsel (if any). Please contact the undersigned immediately if any counsel has filed an appearance and their name is not reflected above as a recipient of this Notice.

According to the business records of Plaintiff, which have been made available to its Counsel and upon information and belief, neither Plaintiff nor its counsel is aware of any party to this action currently being in active bankruptcy and under the protection of the United States Bankruptcy Court ("USBK"). In addition, Counsel for Plaintiff has caused and/or has conducted a search of the PACER website for which Counsel, upon information and belief, reports no party, who executed the Note and/or Mortgage, and) to the best of his/her knowledge, is currently eligible for protection of the USBK. If any party has any information or record of a defendant currently being under the bankruptcy protections, it is requested that you notify counsel for Plaintiff immediately. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage, or is currently under the active protection of the bankruptcy courts.

Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

I, the undersigned, B. Lindsay Crawford, III, Theodore von Keller, B. Lindsay Crawford, IV or Christopher B. Lusk, an attorney of Crawford & von Keller, LLC., attorneys for the Plaintiff do hereby certify that I served a copy of the Notice of Hearing, to the below-listed Defendant(s) this date, by personally depositing copies of same in a United States Postal Service mailbox, postage pre-paid, addressed as follows:

Justin K. Spires
30 Cardington Court
Columbia, SC 29209

Timothy J. Spires, Sr.
30 Cardington Court
Columbia, SC 29209

South Carolina Department of Probation,
Parole and Pardon Services
2221 Devine Street

Columbia, SC 29250

The Honorable Alan Wilson
South Carolina Attorney General
Dennis Office Building
1000 Assembly Street, Room 519
Columbia, SC 29211

Warren B. Giese as Solicitor
1315 Blanding Street
Columbia, SC 29201

___s/B. Lindsay Crawford, III___
B. Lindsay Crawford, III (SC Bar# 6510)
Theodore von Keller (SC Bar# 5718)
B. Lindsay Crawford, IV (SC Bar# 101707)
Christopher B. Lusk (SC Bar# 103221)
Crawford & von Keller, LLC.
PO Box 4216
1640 St. Julian Place (29204)
Columbia, SC 29240
Phone: 803-790-2626
Email: court@crawfordvk.com

Columbia, South Carolina

March 1, 2021\

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company,
Inc.,

Plaintiff,

-vs-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of
Probation, Parole and Pardon Services
and Warren B. Giese as Solicitor,

Defendant(s)

4000.0142

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

**NOTICE OF HEARING AND
CERTIFICATE OF MAILING**

(By Telephone Conference)

TO: THE DEFENDANTS NAMED ABOVE

A foreclosure hearing has been set in the above-referenced matter for 03/19/21 at 10:00 am before the Honorable Joseph M. Strickland, as Master In Equity for Richland, for the purpose of taking testimony, findings of facts and conclusions of law and to enter final judgment therein without further order of the court. This hearing will be held using remote communication technology to avoid the need for a physical appearance by any party, witness, or counsel, as provided for in South Carolina Supreme Court Administrative Order 2020-04-30-02 (RE: Statewide Evictions and Foreclosures) and South Carolina Supreme Court Administrative Order 2020-04-22-01 (RE: Operation of the Trial Courts During the Coronavirus Emergency). The hearing will be conducted by the Master-in-Equity Judge via teleconference: Phone Number: 803-576-1903. If you need assistance joining the teleconference hearing, please contact the Master-in-Equity Court at 803-576-1905 – Fristella Cornelius or 803-576-1901 – Deloris Ellison or the undersigned Plaintiff's law firm at 803-790-2626.

In-Person attendance is not allowed at this time per South Carolina Supreme Court Order 2021-01-06-01.

Additionally, if you plan to join this hearing, we would respectfully appreciate your sending an email to court@crawfordvk.com or leaving a message for the undersigned at 803-790-2626. (This is for purposes of notifying you in the event that the hearing is canceled.) Pursuant to S.C. Code Ann. § 14-11-110 (as amended) and/or applicable case law, the Plaintiff's attorney intends to submit written testimony on behalf of the Plaintiff at the hearing on Plaintiff's behalf.

As a result of the hearing, a foreclosure sale could be ordered as soon as allowed by law after the foreclosure hearing.

Records in the possession of the undersigned as of this date reflect only the above parties and the above Defendant's counsel (if any). Please contact the undersigned immediately if any counsel has filed an appearance and their name is not reflected above as a recipient of this Notice.

According to the business records of Plaintiff, which have been made available to its Counsel and upon information and belief, neither Plaintiff nor its counsel is aware of any party to this action currently being in active bankruptcy and under the protection of the United States Bankruptcy Court ("USBK"). In addition, Counsel for Plaintiff has caused and/or has conducted a search of the PACER website for which Counsel, upon information and belief, reports no party, who executed the Note and/or Mortgage, and) to the best of his/her knowledge, is currently eligible for protection of the USBK. If any party has any information or record of a defendant currently being under the bankruptcy protections, it is requested that you notify counsel for Plaintiff immediately. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage, or is currently under the active protection of the bankruptcy courts.

Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

I, the undersigned, B. Lindsay Crawford, III, Theodore von Keller, B. Lindsay Crawford, IV or Christopher B. Lusk, an attorney of Crawford & von Keller, LLC., attorneys for the Plaintiff do hereby certify that I served a copy of the Notice of Hearing, to the below-listed Defendant(s) this date, by personally depositing copies of same in a United States Postal Service mailbox, postage pre-paid, addressed as follows:

Justin K. Spires
30 Cardington Court
Columbia, SC 29209

Timothy J. Spires, Sr.
30 Cardington Court
Columbia, SC 29209

South Carolina Department of Probation,
Parole and Pardon Services
2221 Devine Street
Columbia, SC 29250

The Honorable Alan Wilson
South Carolina Attorney General
Dennis Office Building
1000 Assembly Street, Room 519
Columbia, SC 29211

Warren B. Giese as Solicitor
1315 Blanding Street
Columbia, SC 29201

___s/B. Lindsay Crawford, IV___
B. Lindsay Crawford, III (SC Bar# 6510)
Theodore von Keller (SC Bar# 5718)
B. Lindsay Crawford, IV (SC Bar# 101707)
Christopher B. Lusk (SC Bar# 103221)
Crawford & von Keller, LLC.
PO Box 4216
1640 St. Julian Place (29204)
Columbia, SC 29240
Phone: 803-790-2626
Email: court@crawfordvk.com

Columbia, South Carolina

February 26, 2021

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company,
Inc.,

Plaintiff,

-vs-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of
Probation, Parole and Pardon Services
and Warren B. Giese as Solicitor,

Defendant(s)

4000.0142

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

**NOTICE OF HEARING AND
CERTIFICATE OF MAILING**

(By Telephone Conference)

TO: THE DEFENDANTS NAMED ABOVE

A foreclosure hearing has been set in the above-referenced matter for 02/26/21 at 10:00 am before the Honorable Joseph M. Strickland, as Master In Equity for Richland, for the purpose of taking testimony, findings of facts and conclusions of law and to enter final judgment therein without further order of the court. This hearing will be held using remote communication technology to avoid the need for a physical appearance by any party, witness, or counsel, as provided for in South Carolina Supreme Court Administrative Order 2020-04-30-02 (RE: Statewide Evictions and Foreclosures) and South Carolina Supreme Court Administrative Order 2020-04-22-01 (RE: Operation of the Trial Courts During the Coronavirus Emergency). The hearing will be conducted by the Master-in-Equity Judge via teleconference: Phone Number: 803-576-1903. If you need assistance joining the teleconference hearing, please contact the Master-in-Equity Court at 803-576-1905 – Fristella Cornelius or 803-576-1901 – Deloris Ellison or the undersigned Plaintiff's law firm at 803-790-2626.

In-Person attendance is not allowed at this time per South Carolina Supreme Court Order 2021-01-06-01.

Additionally, if you plan to join this hearing, we would respectfully appreciate your sending an email to court@crawfordvk.com or leaving a message for the undersigned at 803-790-2626. (This is for purposes of notifying you in the event that the hearing is canceled.) Pursuant to S.C. Code Ann. § 14-11-110 (as amended) and/or applicable case law, the Plaintiff's attorney intends to submit written testimony on behalf of the Plaintiff at the hearing on Plaintiff's behalf.

As a result of the hearing, a foreclosure sale could be ordered as soon as allowed by law after the foreclosure hearing.

Records in the possession of the undersigned as of this date reflect only the above parties and the above Defendant's counsel (if any). Please contact the undersigned immediately if any counsel has filed an appearance and their name is not reflected above as a recipient of this Notice.

According to the business records of Plaintiff, which have been made available to its Counsel and upon information and belief, neither Plaintiff nor its counsel is aware of any party to this action currently being in active bankruptcy and under the protection of the United States Bankruptcy Court ("USBK"). In addition, Counsel for Plaintiff has caused and/or has conducted a search of the PACER website for which Counsel, upon information and belief, reports no party, who executed the Note and/or Mortgage, and) to the best of his/her knowledge, is currently eligible for protection of the USBK. If any party has any information or record of a defendant currently being under the bankruptcy protections, it is requested that you notify counsel for Plaintiff immediately. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage, or is currently under the active protection of the bankruptcy courts.

Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

I, the undersigned, B. Lindsay Crawford, III, Theodore von Keller, B. Lindsay Crawford, IV or Christopher B. Lusk, an attorney of Crawford & von Keller, LLC., attorneys for the Plaintiff do hereby certify that I served a copy of the Notice of Hearing, to the below-listed Defendant(s) this date, by personally depositing copies of same in a United States Postal Service mailbox, postage pre-paid, addressed as follows:

Justin K. Spires
30 Cardington Court
Columbia, SC 29209

Timothy J. Spires, Sr.
30 Cardington Court
Columbia, SC 29209

South Carolina Department of Probation,
Parole and Pardon Services
2221 Devine Street
Columbia, SC 29250

The Honorable Alan Wilson
South Carolina Attorney General
Dennis Office Building
1000 Assembly Street, Room 519
Columbia, SC 29211

Warren B. Giese as Solicitor
1315 Blanding Street
Columbia, SC 29201

___s/B. Lindsay Crawford, IV___
B. Lindsay Crawford, III (SC Bar# 6510)
Theodore von Keller (SC Bar# 5718)
B. Lindsay Crawford, IV (SC Bar# 101707)
Christopher B. Lusk (SC Bar# 103221)
Crawford & von Keller, LLC.
PO Box 4216
1640 St. Julian Place (29204)
Columbia, SC 29240
Phone: 803-790-2626
Email: court@crawfordvk.com

Columbia, South Carolina

February 8, 2021

THE COLUMBIA STAR

COLUMBIA, SOUTH CAROLINA

State of South Carolina
County of Richland

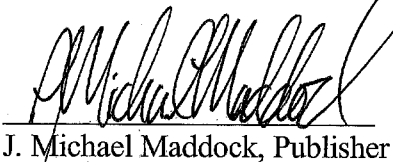
Personally appeared before me,
J. MICHAEL MADDOCK,
PUBLISHER OF THE COLUMBIA STAR,
who makes oath that the advertisement

MASTER'S SALE

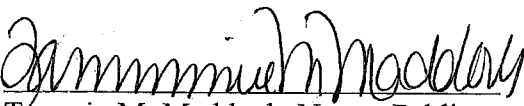
First Citizens Bank & Trust Co., Inc.
vs. Justin K. Spires, et al.

a clipping of which is attached hereto, was printed in
THE COLUMBIA STAR, a weekly newspaper of
general circulation published in the City of Columbia,
State and County afore said, in the issues of

November 20, 27, and December 4, 2020


J. Michael Maddock, Publisher

Sworn to before me on this
4th day of December, 2020.


Tammie M. Maddock, Notary Public
My commission expires June 27, 2026

NOTICE OF SALE CASE NO.

2019-CP-40-05698

BY VIRTUE of a judgment heretofore granted in the case of First-Citizens Bank & Trust Company, Inc. vs. Justin K. Spires, Timothy J. Spires, Sr., South Carolina Department of Probation, Parole and Pardon Services and Warren B. Giese as Solicitor, I, Joseph M. Strickland Master In Equity for Richland County, will sell on December 7, 2020, at 12:00 Noon, at the Richland County Judicial Center, 1701 Main Street, Courtroom 2-D, Columbia, South Carolina, to the highest bidder.

All that certain piece, parcel, tract or lot of land, together with all improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown and delineated as Lot Number Thirty four (34), Block "V" on a plat of Waterbury, Phase 2, a/k/a East Pines, by Civil Engineering of Columbia, dated May 21, 1983, and recorded in the Register of Deeds Office for Richland County in Plat Book "Y" at page 529 and further shown on a plat prepared for William T. Bloom and Ruth S. Bloom, by Belter & Associates, Inc. dated May 21, 1983, said property having such shapes, courses, distances, metes and bounds as shown upon said plat, reference being craved thereto as often as necessary for a more complete and accurate description; all measurements being a little more or less.

This being the same property heretofore conveyed to Justin Spires by Deed of Ruth S. Bloom recorded at the Register of Deeds Office for the County of Richland September 1, 2006 in Book R1224 at Page 3742.

TMS # 19213-01-45.

30 Cardington Court,
Columbia, SC 29209

SUBJECT TO RICHLAND COUNTY TAXES

TERMS OF SALE: The successful bidder, other than the Plaintiff, will deposit with the Master In Equity at conclusion of the bidding, five (5%) of his bid, in cash or equivalent, as evidence of good faith, the same to be applied to purchase price in case of compliance, but to be forfeited and applied first to costs and then to Plaintiff's debt in the case of noncompliance. Should the last and highest bidder fail or refuse to make the required deposit at the time of the bid or comply

with the other terms or the bid within twenty (20) days, then the Master In Equity may resell the property on the same terms and conditions on some subsequent Sales Day (at the risk of the former highest bidder).

Should the Plaintiff, or one of its representatives, fail to be present at the time of sale, the property is automatically withdrawn from said sale and sold at the next available sales day upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or any Supplemental Order.

A personal or deficiency judgment having been demanded by the Plaintiff, the sale of the subject property will remain open for thirty (30) days pursuant to Section 15-39-720, Code of Laws of South Carolina, 1976; provided, however, that the Court recognizes the option reserved by the Plaintiff to waive such deficiency judgment prior to the sale, and notice is given that the Plaintiff may waive in writing the deficiency judgment prior to the sale; and that should the Plaintiff elect to waive a deficiency judgment, without notice other than the announcement at the sale and notice in writing to the debtor/defendant(s) that a deficiency judgment has been waived and that the sale will be final, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search well before the foreclosure sale date.

NOTICE: ANYONE THAT ATTENDS WILL BE EXPECTED TO SOCIALLY DISTANCE.

The successful bidder will be required to pay interest on the amount of the bid from the date of sale to date of compliance with the bid at the rate of 6.875% per annum.

Joseph M. Strickland
Master In Equity for Richland County
Theodore von Keller,
Esquire

B. Lindsay Crawford, III,
Esquire

B. Lindsay Crawford, IV,
Esquire

Christopher B. Lusk,
Esquire

Columbia, South Carolina
Attorney for Plaintiff

Email: court@crawford-vk.com

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company,
Inc.

Plaintiff,

-VS-

Justin K. Spires, Timothy J. Spires, Sr.,
South Carolina Department of
Probation, Parole and Pardon Services
and Warren B. Giese as Solicitor,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, B. Lindsay Crawford, III, Theodore von Keller, B. Lindsay Crawford, IV or Christopher B. Lusk, an attorney of Crawford & von Keller, LLC., attorneys for the Plaintiff do hereby certify that I served a copy of the Order and Judgment of Foreclosure and Sale and Notice of Sale, to the below-listed Defendant(s) this date, by personally depositing copies of same in a United States Postal Service mailbox, postage pre-paid, addressed as follows:

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S/ B. Lindsay Crawford, III

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Theodore von Keller (SC Bar# 5718)
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Crawford & von Keller, LLC.
PO Box 4216
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Columbia, SC 29240
Phone: 803-790-2626
Email: court@crawfordvk.com

Columbia, South Carolina

November 20, 2020

P.O. Box 4216, Columbia, SC 29240 • 1640 St. Julian Place, SC 29204 • 803-790-2626 • Facsimile 803-790-1277

NOTICE OF SALE
CASE NO.
2019-CP-40-05698
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All that certain piece, parcel, tract or lot of land, together with all improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown and delineated as Lot Number Thirty four (34), Block "V" on a plat of Waterbury, Phase 2, a/k/a East Pines, by Civil Engineering of Columbia, dated May 21, 1983, and recorded in the Register of Deeds Office for Richland County in Plat-Book "Y", at page 529 and further shown on a plat prepared for William T. Bloom and Ruth S. Bloom, by Belter & Associates, Inc., dated May 21, 1983. Said property having such shapes, courses, distances, metes and bounds as shown upon said plat, reference being craved thereto as often as necessary for a more complete and accurate description; all measurements being a little more or less.
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Master In Equity for Richland County
Theodore von Keller, Esquire
B. Lindsay Crawford, III, Esquire
Columbia, South Carolina
Attorney for Plaintiff
Email: court@erawford-vk.com

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THE COLUMBIA STAR

COLUMBIA, SOUTH CAROLINA

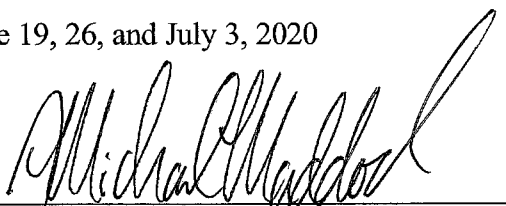
State of South Carolina
County of Richland

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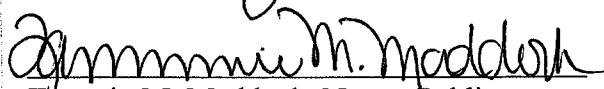
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said, in the issues of

June 19, 26, and July 3, 2020


J. Michael Maddock, Publisher

Sworn to before me on this
3rd day of July, 2020.


Tammie M. Maddock, Notary Public
My commission expires June 27, 2026

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

First-Citizens Bank & Trust Company,
Inc.

Plaintiff,

-VS-

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South Carolina Department of
Probation, Parole and Pardon Services
and Warren B. Giese as Solicitor,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-40-05698

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South Carolina Department of Probation,
Parole and Pardon Services
2221 Devine Street
Columbia, SC 29250

The Honorable Alan Wilson
South Carolina Attorney General
Dennis Office Building
1000 Assembly Street, Room 519
Columbia, SC 29211

ELECTRONICALLY FILED - 2020 Jun 19 11:54 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4005698

Warren B. Giese as Solicitor
1315 Blanding Street
Columbia, SC 29201

s/B. Lindsay Crawford, III
B. Lindsay Crawford, III (SC Bar# 6510)
Theodore von Keller (SC Bar# 5718)
B. Lindsay Crawford, IV (SC Bar# 101707)
Christopher B. Lusk (SC Bar# 103221)
Email: court@crawfordvk.com

Columbia, South Carolina

June 18, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph M. Strickland, Master in Equity

Appellate Case No. 2021-001219

First Citizens Bank and Trust
Company, Inc,

Respondent,

v.

Justin K. Spires, Timothy J.
Spires, Sr. South Carolina
Department of Probation,
Parole and Pardon Services
and Warren B. Giese as
Solicitor,

Of who, Justin K. Spires and
Timothy J. Spires are the

Appellants.

Certificate of Counsel

I, Shawn M. French, Sr., Counsel for the Appellant in this matter certify that the Record on Appeal contains all material proposed to be included by any parties and not any other material.

/s/Shawn M. French, Sr.
Shawn M. French, Sr.
1476 Ben Sawyer Blvd, Ste. 3
Mount Pleasant, SC 29464
(ph) 843-606-6440
(fax) 888-850-0948
shawn@thefrenchlawfirm.com
Attorney for Appellant

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Oct 31 2022

SC Court of Appeals