

THE STATE OF SOUTH CAROLINA
In the Spreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Case No. 2022-001724

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

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

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

CORRECTED
PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

The South Carolina Supreme Court has jurisdiction to hear this petition under the South Carolina Code Ann. 14-4-320 and under South Carolina Code Ann. 18-1-30, as I am aggrieved by Wells Fargo claiming and receiving relief that it is not entitled to, in violation of my Substantive Due Process rights. This Petition is also pursuant to the South Carolina Rules of Appellate Procedure Rule, 242. This Petition contains, a first impression question, of law, a claim for lack of jurisdiction, standing and constitutional claims.

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CERTIFICATE OF COUNSEL/PETITIONER

Petitioner certifies that the Petition for rehearing was made and finally ruled on by the Court of Appeals in an Order dated November 8, 2022.

QUESTIONS PRESENTED

I. DID THE COURT OF APPEALS ERR IN NOT ADDRESSING THE ILLINOIS CASELAW AS A FIRST IMPRESSION QUESTION OF LAW? IF SO, DOES THE MORTGAGE SURVIVE THE DEATH OF THE MORTGAGOR?

II. DID THE COURT OF APPEALS OVERLOOK OR MISAPPREHEND WHETHER OR NOT SUMMARY JUDGMENT WAS PROPER?

III DID THE COURT OF APPEALS OVERLOOK OR MISAPPREHEND WHETHER OR NOT THE CIRCUIT COURT' LACK THE POWER TO GRANT THE RELIEF REQUESTED?

IV. DID THE COURT OF APPEALS OVERLOOK OR MISAPPREHEND THAT THE CIRCUIT COURT ERRED IN HOLDING THAT WELLS FARGO HAS STANDING?

V. DID THE COURT OF APPEALS OVERLOOK OR MISAPPREHEND THAT A VOID ORDER CAN BE ATTACKED AT ANY TIME

STATEMENT OF THE FACTS

My Mother Mrs. Ruth Witherspoon executed a Note and Mortgage in favor of NVR on March 28, 2012 to purchase the subject property. My Mother passed away on July 5, 2015. Wells Fargo instituted this action on December 22, 2017. The Complaint shows that Wells Fargo stipulated to my ownership of the subject property under 2 scenarios, 1) as one of the remaining

heirs of Mrs. Ruth Witherpoon and 2) as one of the remaining joint tenants, as the property was conveyed by Deed of NVR to Ruth Witherspoon, her heirs and assigns ... as joint tenants and not as tenants in common. (R.Complaint, p. 185, lines 19-23) (R. "Special Warranty", p. 92-93). When I filed my Sixth Amended Answer, I admitted to Wells Fargo's stipulated facts to my interests in the subject property. (R. Sixth AA, p. 34, line 22). I also, denied that Wells Fargo had any rights under the Note or Mortgage and denied liability for the payments. (R. Sixth AA, p. 33. lines 19-21). Wells Fargo moved for summary judgement refuted my claims, and did not provide any grounds, facts or statute showing that I am liable under the Note or Mortgage, nor were there any facts pleaded with a statute, showing how Wells Fargo would still be a secured creditor with rights to enforce the note and mortgage against me. Nevertheless at all times Mr. Gravely was a judge in the Circuit Court, while ruling under the color of the SCRCPC, Rule 8 and 56 when he issued his Order granting summary judgment in favor of Wells Fargo on August 7, 2019, finding that my Mother is still the owner of the subject property, (R. Order, p. 8 lines 6-8). The Record shows that the parties stipulated that my Mother is deceased of July 5, 2015. (R. Complaint and Answer paragraph 8) Mr. Gravely went on to grant the relief requested per Wells Fargo's prayer (R. Complaint, p.160.lines 16-17), ruling that Wells Fargo is a secured creditor (R. Order, p. 9, lines 14-15 and p. 4-5) and has standing under the Uniform Commercial Code to enforce the Note (R. Order, p 15, lines 6-7). Mr. Gravely went on to rule that the Circuit court has jurisdiction, due to proper venue and because Wells Fargo waived its right to seek a deficiency judgment under the SC Probate Code. Mr. Gravely, did this in the face of the South Carolina Probate Code Ann. 62-3- 803(a), which is a bar to Wells Fargo right of action, concerning the Promissory Note. Mr. Gravely violated his oath of office to be impartial, because his decisions are not based on the record. And because Mr. Gravely's rulings are not based on the record my

Substantive Due Process right to a fair process has been violated, which has lead to an unjust deprivation of my protected liberty intersts as one of the remaining heirs of Mrs. Mrs. Ruth Witherspoon and as one of the remaining joint tenants of the subject property.

ARGUMENTS

I. DID THE COURT OF APPEALS ERR IN NOT ADDRESSING THE ILLINOIS CASELAW AS A FIRST IMPRESSION QUESTION OF LAW? IF SO, DOES THE MORTGAGE SURVIVE THE DEATH OF THE MORTGAGOR?

A. This case presents a first impression, question of law as to whether or not the mortgage survives the death of the mortgagor, because the lower Court held that my Mother, Mrs. Ruth Witherspsoon, whom has been deceased since July 5, 2015 is still the owner of the subject property (R. Order, p. 8, lines 6-8). The case law is as follows - The Illinois Supreme Court held II “while John Harms was alive, the mortgage existed as a lien on his interest in the joint tenancy”. “Upon his death, his interest ceased to exist and along with it the lien of the mortgage” See *Harms v. Sprague* 105 Ill. 2d 215 (1984) 473 N. E. 2d 930. Alternatively for the clarification of the South Carolina Code Ann. 29-3-10, provides in relevant part: “No mortgagee shall be entitled to main-tain any possessory action for the real estate mortgaged, even after the time allotted for the payment of the money secured by mortgage is elapsed, but the mortgagor shall be deemed the owner of the land and the mortgagee as owner of the money lent...”.

B. I (Att. PRFH, p. 11, lines 8-12) to the Court of Appeals the above caselaw of the Supreme Court of Illinois, because Illinois is a lien theory state like south carolina where by the mortgage is considered to be a lien. Under the Illinois Compilation of laws (810 ILCS 5/9-203)e2(g), "Lien securing right to payment". "The attachment of a security interest in a right to payment or

performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien". Under the **South Carolina Code Ann. 29-3-330(1)** "Mortgage" means a lien against real property that is granted to secure the payment of money;". Also the statute, under the **South Carolina Code Ann. 29-3-10**, provides in relevant part: "No mortgagee shall be entitled to maintain any possessory action for the real estate mortgaged, even after the time allotted for the payment of the money secured by mortgage is elapsed, but the mortgagor shall be deemed the owner of the land and the mortgagee as owner of the money lent...".

II. DID THE COURT OF APPEALS OVERLOOK OR MISAPPREHEND WHETHER JUDGMENT WAS PROPER?

A. The Court of Appeals held in addressing Hodges second argument (erred in granting summary judgment) - We find that this issue, when viewed in light most favorable, is without merit, because she failed to show any genuine issue of material fact existed..." (Attachment(a/k/a Att. COA Dec., p. 5 2nd p)

B. The Plaintiff has the burden and I am not required to come forward, until the Plaintiff meets his burden, per the South Carolina Rules of Civil Procedure, Rule 56(e), which provides in relevant part: Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading,

C. As the court of appeals further stated in its decision "Summary Judgment is proper when "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. (Att. COA Dec., p. 5, lines) The issues in this case are overlapping and I did point out to the Court of Appeals an issue that raises standing. I pointed out that I am a defendant in this case and that the documents being used to foreclose are not signed by me. (Att. PRFH, p. 5, lines 16-19)

D. "A fundamental prerequisite to institute an action is the requirement that the plaintiff have standing. See, *Blandon v. Coleman*, 285 S. C. 472, 330 S.E. 2d 298(1985). standing," which consists of three elements: (1)the plaintiff must have suffered an "injury in fact;" (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely, as opposed to merely speculative, that the injury will "redressed by a favorable decision." *Sea Pines Ass'n for Prot. of Wildlife, Inc.*, 345 S.C. at 601, 550 S.E.2d at 291 (internal citations omitted) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)).

E. "A plaintiff must have standing to institute an action", see *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). A party seeking to establish standing carries the burden of demonstrating each element. *Id.* (citing *Lujan*, 504 U.S. at 561, 112 S.Ct. 2130).

F. This Honorable court has held that Summary Judgment should not be granted even when there is no dispute as to the evidentiary facts if there is a dispute as to the conclusions to be drawn from those facts. See *Murphy v. Hagan*, 75 S.C. 334, 271 S.E. (2d) 311 (1980). So, it appears that Summary Judgment was not appropriate because the evidence, appears to raise an

issue of material fact, as to whether or not Wells Fargo had standing. Since Mr. Gravely proceeded with summary judgment with the genuine issue of material fact, showing in the record, he violated my Substantive Due Process rights to fair procedures, which are under the South Carolina Constitution Article 1 section 3 and United States Constitution XIVTH Amendment, which contributed to the unjust deprivation of the protected liberty interests under the South Carolina Probate Code Ann. 62-3-803(a) and 27-7-40(a)(ii), which are fully addressed below.

III DID THE COURT OF APPEALS OVERLOOK OR MISAPPREHEND WHETHER OR NOT THE CIRCUIT COURT LACKED THE POWER TO GRANT THE RELIEF REQUESTED?

A. The Court of Appeals in addressing Hodges Eighth Argument, (Subject Matter Jurisdiction) held as follows: "... a secured creditor, such as Wells Fargo, in this action, is not required to file a claim against a decedent's estate if the secured creditor is solely seeking to foreclose the mortgage...". See "S. C.62-3-104... ". (2022) "(stating the probate code "has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security, except as to any deficiency judgment...". "Wells Fargo waived its right to seek a deficiency judgment against Hodges' Mother's estate in the complaint. Therefore the Circuit court properly found it had subject matter jurisdiction in this case. (R COA p. p. 6 paragraph 3)

B. As shown above only the last two sentences of South Carolina Probate Code Ann. 62-3-104 is being utilized as the source of the Circuit court's jurisdiction. And in the petition for rehearing I attacked the Circuit court use of the last sentence to establish jurisdiction and to just simply deem Wells Fargo to be a secured creditor. The entire statute reads as follows: .

"No claim may be filed against the estate of a decedent and no proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative, except as provided in Section 62-3-804(1)(b). After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article [Sections 62-3-101 et seq.]. After

distribution, a creditor whose claim has not been barred may recover from the distributees as provided in Section 62-3-1004 or from a former personal representative individually liable as provided in Section 62-3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein."

In looking at the entire statute, line 6, appears to call for a determination, as to whether or not the Creditor's claim has been barred.

C. This Honorable has held that the Claims barring statute is under the South Carolina Probate Code Ann. 62-3-803(a), which provides in relevant part: (a) "All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, the decedent's heirs and devisees, and non probate transferees of the decedent, unless presented within the earlier of the following dates: (1) one year after the decedent's death".

D. This appears to apply to the Note and I pointed out to the Court of Appeals that it had previously held " ("Whenever, in law or equity, a lien is created or declared there are two things prominently concerned, namely, an obligation and a *res* or *rem* to which or upon which that obligation fastens itself."); See Carolina Attractions, Inc. v. Courtney, 337 S.E.2d 244 (S.C. Ct. App. 1985). So, without the promissory note, it is an error in law/ established precedent, for the Circuit court to deem Wells Fargo to be a secured creditor, that is not subject to the probate code or for the to hold that Wells Fargo has a valid lien.(Att. PFR, p.10, lines 16-23)

E. Additionally, it is an error in law for the Circuit to not follow the established procedures for statutory construction. At all times Mr. Gravely has been a judge in the circuit court, ruling

under the color of the South Carolina Rules of Civil procedure Rule 56, when he failed to follow the safeguard procedures of statutory interpretation, in violation of my substantive Due Process rights under both the South Carolina Constitution Article 1 section 3 and United States Constitution XIVTH Amendment, before subjecting me to an unjust deprivation of my protected liberty interest to have the subject vest in my name as one of the remaining joint tenants without having to fight an unsubstantiated claim.

F. My protected liberty interest is under the South Carolina Code 27-7-40(a)(ii), which provides in relevant part: “ In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship”.

G. Additionally, the same due process violations under the Constitutions, mentioned above also lead to a an unjust deprivation of of my protected liberty interest as one of my Mother's remaining heirs, under the South Carolina Probate Code Ann. 62-3-803(a), as fully addressed above, to be free from stale creditor claims concerning my Mother's estate.

H. Subject matter jurisdiction is a matter of law and must be exercised in a lawful manner and Wells Fargo's claim of having a Note and Mortgage executed by my Mother makes it entitled to have the Circuit court declare that it has a valid lien and can take a property away from me as a Defendant, in my individual capacity, whom acquired the property by operation of law, is not a lawful claim because, it does not meet the requirements of lien set forth in Carolina attracts and I did not sign the documents. I pointed out to the Court of Appeals that under the South Carolina Uniform Commercial Code Ann. 36-3-401 provides in relevant part: "A person is not liable on

an instrument unless (i) the person signs the instrument",) (Att.FRH, p. 5, lines 18-19).

I. In my petition for review I attacked the Circuit Court statutory interpretation of only using the South Carolina Uniform Commercial Code Ann.36-3-401 to determine enforceability of the Note and not utilizing the related statutes of 3603-104.

J. The South Carolina Supreme Court has held "Specifically, '[j]urisdiction is composed of three elements: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) the court's power to render the particular judgment requested.' "" *Id.* (quoting *Indep. Sch. Dist. No. 1 of Okla. County v. Scott*, 15 P.3d 1244, 1248 (Okla. Civ. App. 2000))." See also *Beach First Nat'l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194, 205, 754 S.E.2d 875, 881 (2014).

K. The Supreme Court of Oklahoma held "In *LaBellman v. Gleason and Sandes, Inc.*, Okla., 418 P. 2d 949 (1966), this court set forth the standard for declaring a judgment void: The court rendering the judgment must lack either (1) jurisdiction of the parties; (2) jurisdiction of the general subject matter; or (3) jurisdiction of the particular matter which the judgment professes to decide." So, it appears that the Circuit lacks the power to grant the relief requested.

L. Additionally, the Mortgage, document itself, shows that "Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrowers interests in the Property under the terms of this Security Instrument; (b) and is not personally obligated to pay the sums secured by this Security instrument; (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent". (R. Mortgage, p. 86, paragraph 12 lines 3-8).

M. While the Court of Appeals has held that the Circuit court has viewed all evidence in the light

most favorable to Hodges. I respectfully state that this evidence appears to demonstrate that the Circuit did not view all evidence in favor of Hodges. And because the Circuit court did not follow the safeguard procedures contained in the South Carolina Rules of Civil Procedure, rule 56, by viewing all evidence in the light most favorable to the non moving party, my Substantive Due Process rights under the Constitutions, as stated above have been violated and have contributed to the unjust deprivation of my said protected liberty interests, shown above and if Judge Gravely had not have been the judge, I believe that this case would have had a different outcome.

IV. DID THE COURT OF APPEALS OVERLOOK OR MISAPPREHEND THAT THE CIRCUIT COURT ERRED IN HOLDING THAT WELLS FARGO HAS STANDING?

A. The Court of Appeals in addressing Hodges second argument, held: (p. 4 para4)

"We hold the Circuit court heard and correctly determined that Wells Fargo has standing because Wells Fargo, is in possession of the original note, which is supported by the record". See S. C. Code Ann. 36-3-301(Supp.2021) (R. COA decision, p. 4 last sentence

B. Under the South Carolina Probate Code Ann. 62-3-803(a) which provides in relevant part: (a)

"All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or un liquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, the decedent's heirs and devisees, and non probate transferees of the decedent, unless presented within the earlier of the following dates: (1) one year after the decedent's death".

C. Per this Honorable Court unless the statute is complied with, the creditor's claim is barred." (citation omitted)); *see also Phillips v. Quick*, 399 S.C. 226, 230, 731 S.E.2d 327, 329 (Ct. App.

2012) (contrasting the nonclaim statute with a statute of limitations and recognizing that "[u]nless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created" (quoting *Estate of Decker v. Farm Credit Servs. of Mid-Am., ACA*, 684 N.E.2d 1137, 1138-39 (Ind. 1997))). See also *Beach First Nat'l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194, 205, 754 S.E.2d 875, 881 (2014).

D. Wells Fargo clearly demonstrated that it was also pursuing the Note in this action and the Note cannot be pursued in this action, as clarified in the above statute all claims of decedent must be presented within the presentation of claims period.

E. I pointed out to the Court of Appeals that I am not liable for the Note, under the South Carolina Uniform Commercial Code provides in relevant part: "A person is not liable on an instrument unless (i) the person signs the instrument",) (App. FRH, p. 5, lines 18-19). This is also a protected liberty interest, to be free from being held liable for documents that I did not sign.

F. It appears that the Circuit failed to follow the procedures for statutory interpretation as shown above, by reviewing all related statutes and because the Circuit failed to follow the established safeguard procedures, my Substantive Due Process right to fair procedures before being subject to a deprivation of my protected liberty interests, under the Constitution Article 1 section 3 and United States Constitution XIVTH Amendment.

V. DID THE COURT OF APPEALS OVERLOOK OR MISAPPREHEND THAT A VOID ORDER CAN BE ATTACKED AT ANY TIME?

A. Court of Appeals addressing Hodges third arugment: (Due Process Rights)

“A void order is one rendered in the absence of proper due process or jurisdiction. *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002). As shown above the Circuit court appears to be void for the lack of due process and lack of jurisdiction (the power to grant the relief requested).

V. DID THE COURT OF APPEALS OVERLOOK OR MISAPPREHEND THAT A VOID ORDER CAN BE ATTACKED AT ANY TIME?

A. Third Issue; 3) Violation of due process rights. The record shows no indication this argument was raised to and ruled upon by the Circuit court; therefore it is not properly before this court. (R. COA decision, p. 5 paragraph 3.

B. It is well settled that a court's ruling is ripe for review and the due process violations cited to are based on the court's rulings.

CONCLUSION

For the reasons stated, Petitioner respectfully requests this Honorable Court grant a Writ of Certiorari, because justice has not been done in this case. Mr. Gravely ruled that my Mother, whom has been deceased since July 5, 2015 is still the owner of the subject property, because he is conspiring with Wells Fargo's attorney's to take away my home and the evidence of this is in the record; as a document entitled "Certificate Of Non Owner Occupancy Due To Death Of Mortgagor" (a/k/a) "Certificate". I am familiar with the term non owner occupancy, as I am a former Wells Fargo mortgage underwriter and the term is used to show that the owner does not occupy the subject property as their primary residence. It is significant here because it is an implication that my Mother is still the owner and appears to be the agreement between Wells Fargo and its attorneys and Mr. Gravely, as Mr. Gravely ruled that my Mother is still the owner of the subject property. I suspected a conspiracy but did not realize that it had actually happened

until I came across a ruling "the Mortgagor shall be deemed the owner of the land and the mortgagee as owner of the money lent". And then I came across the Illinois Supreme Court ruling, which explains the mortgaging joint tenants property interest and I compared it to Mr. Gravely's ruling, which is "The loan in question was entered into on March 28, 2012 between Defendant's mother, Ruth Witherspoon and NVR Mortgage Finance, Inc." Mr. Gravely simply associated my mother with being the Mortgagor. (R. Oder, p. 8, lines 6-8). While the Plaintiff's attorney is required to certify that everyone that has interest in the property has been notified of the action, in this case it appears that the "Certificate" is being used to fabricate a non-existent property interest. This Honorable court has held that a fabrication of evidence by an attorney is extrinsic fraud upon the Court. See *Chewning*. And this Honorable Court recognized that other jurisdictions have held it is fraud upon the court when an attorney proceeds with a case knowing that a defendant has a complete defense. See *Chewning*. I am praying for justice in this matter.

Respectfully submitted,

Michelle Hodges

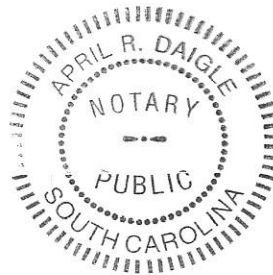
Michelle Hodges, Pro Se Petitioner 1/5/2023

PO Box 95

Mauldin, SC 29662

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State of South Carolina
County of Greenville



Subscribed and sworn(or affirmed) before me
this 5 day of January, 2023.

April R. Daigle
SC Notary Public

8-25-2032
Commission Expiration

RECEIVED

Sep 02 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Appellate Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

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

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

ACTUAL/CORRECTED

PETITION FOR REHEARING OF APPELLANT
AND REQUEST FOR EN BANC REHEARING

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PETITION FOR REHEARING/REHEARING EN BANC

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

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

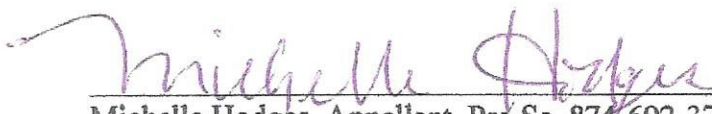
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the South Carolina Court of Appeals has overlooked that possible statutes that would entitle to Wells Fargo to relief are missing and apparently do not exist.

Factual background

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

Respectfully submitted,


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POINTS AND AUTHORITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

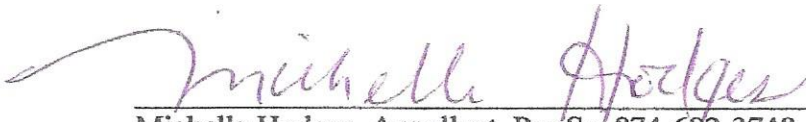
CONCLUSION

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



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

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Appellate Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

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

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

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


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

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

Mr. S. Sterling Laney, III, Esquire
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Mr. Matthew Todd Carroll, Esquire
Mr. Bryant S. Caldwell, Esquire
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

Wells Fargo Bank, N.A., Respondent,

v.

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

Of Whom Michelle Hodges, Individually, is the
Appellant.

Appellate Case No. 2019-001565

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

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

AFFIRMED

Michelle Hodges, of Simpsonville, pro se.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AFFIRMED.²

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

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

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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November 08, 2022

Michelle Hodges
6 Young Harris Drive
Simpsonville SC 29661

Re: Wells Fargo Bank, N.A. v. Michelle Hodges
Appellate Case No. 2019-001565

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. *See* Rule 219, SCACR.

Very truly yours,


CLERK

cc: Shelton Sterling Laney, III, Esquire
Bryant Sparks Caldwell, Esquire
Matthew Todd Carroll, Esquire

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The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

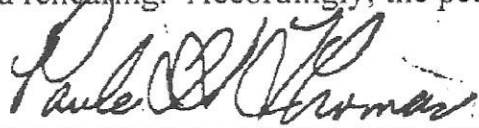
Michelle Hodges, Individually and as the Personal Representative of the Estate of Ladson Witherspoon; Stanley Witherspoon; SC Housing Corp.; and Twin Creeks Homeowners Association, Inc., Defendants,

Of Whom Michelle Hodges, Individually, is the Appellant.

Appellate Case No. 2019-001565

ORDER

On September 1, 2022, Appellant filed a petition for rehearing. On September 9, 2022, Appellant filed a motion to correct the petition for rehearing as well as the proposed corrected petition. We grant Appellant's motion to correct. After careful consideration of the corrected petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.


_____ J.

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Columbia, South Carolina

cc:

Michelle Hodges

Shelton Sterling Laney, III, Esquire

Bryant Sparks Caldwell, Esquire

Matthew Todd Carroll, Esquire

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