

**RECEIVED**

**Jun 05 2023**

**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,

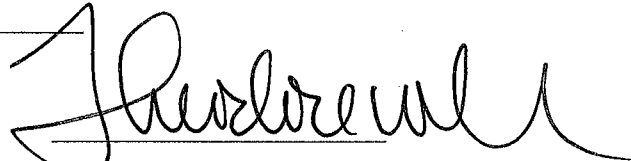
Of who, Justin K. Spires and  
Timothy J. Spires, Sr. are the

Appellants.

---

RESPONDENT'S MOTION TO DISMISS

---



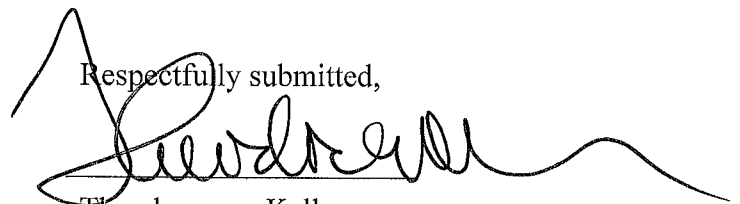
Theodore von Keller  
Crawford & von Keller, LLC  
1640 St. Julian Place  
Columbia, SC 29204  
(803) 790-2626  
Attorney for Respondent  
S.C. Bar # 5718

Pursuant to Rule 240(a) of the South Carolina Appellate Court Rules, Respondent First Citizens Bank and Trust Company, Inc. (“First Citizens”) moves to dismiss Appellants’ appeal on the following grounds:

1. First Citizens purchased the property that is the subject of this appeal (“the Property”) at a foreclosure sale held on December 7, 2020 (“the Sale”).
2. First Citizens received the Master’s Deed for the Property on January 13, 2021.
3. The Master’s Deed was executed and delivered pursuant to an Order of Foreclosure and Sale of a court of competent jurisdiction because the Appellants/Defendants were served, the Appellants/Defendants were in default, the attorneys of record were notified of the hearing, and the Appellants/Defendants were not in military service.
4. First Citizens is a bonafide purchaser of the Property because First Citizens paid value for the Property, acquired legal title or the best right to legal title of the Property, and the purchase was made with integrity and fair dealing, without notice of lien or defect.
5. First Citizens did not receive notice of a potential defect until after the Sale. The notice came in the form of affidavits entered on May 17, 2021 by the Appellants alleging improper service of process.
6. Under South Carolina law, affidavits entered after a foreclosure sale do not defeat a purchaser’s status as a bonafide purchaser.
7. Under South Carolina law, the execution and delivery of a deed for any property sold at a judicial sale . . . shall be deemed *res judicata* as to any and all bonafide purchasers for value without notice . . . .” S.C. Code Ann. § 15-39-870.
8. The doctrine of *res judicata* bars the within appeal because First Citizens is a bonafide purchaser for value without notice.

June 5, 2023

Respectfully submitted,



Theodore von Keller

Crawford & von Keller, LLC  
1640 St. Julian Place  
Columbia, SC 29204  
(803) 790-2626  
Attorney for Respondent  
S.C. Bar # 5718

RECEIVED

Jun 05 2023

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,

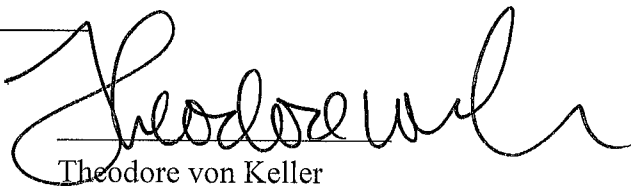
Of who, Justin K. Spires and  
Timothy J. Spires, Sr. are the

Appellants.

---

RESPONDENT'S MEMORANUDUM OF  
AUTHORITIES IN SUPPORT OF ITS  
MOTION TO DISMISS

---



Theodore von Keller

Crawford & von Keller, LLC  
1640 St. Julian Place  
Columbia, SC 29204  
(803) 790-2626  
Attorney for Respondent  
S.C. Bar # 5718

TABLE OF CONTENTS

Table of Authorities ..... i

Facts ..... 1

Argument

    1.    THE WITHIN APPEAL SHOULD BE DISMISSED BECAUSE FIRST  
          CITIZENS BANK AND TRUST INC. IS A BONAFIDE PURCHASER AND  
          APPELLANTS’ CLAIMS ARE THEREFORE BARRED BY THE  
          DOCTRINE OF *RES JUDICATA*.....3

Conclusion .....5

TABLE OF AUTHORITIES

CASES

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000).....5

Robinson v. Estate of Harris, 478 S.C. 140, 662 S.E.2d 420 (Ct. App. 2008).....5

STATUTES

S.C. Code Ann. §15-39-870.....5

RULES OF CIVIL PROCEDURE

Rule 4(d)(1), SCRCP .....7

Rule 60(b), SCRCP .....10

RULES OF APPELLATE PRACTICE

Rule 208(b), SCRAP.....5  
Rule 220(c), SCRAP.....5

## FACTS

On August 31, 2006, Justin K. Spires and Timothy J. Spires, Sr. executed and delivered to First Citizens Bank and Trust Company a promissory note by which they promised to pay to First Citizens Bank and Trust Company the sum of \$99,998.00, together with interest at the rate of 6.875% per annum. (R. p. 42, ¶ 6). To secure payment of the debt, Justin K. Spires executed and delivered a mortgage of land more simply identified as 30 Cardington Court Columbia, SC 29209. (R. p. 43, ¶ 7).

In 2019, First Citizens declared Justin Spires in default and declared the entire balance of indebtedness due and payable. (R. p. 43, ¶12 ). On August 23, 2019, the balance due was \$57,355.9 plus interest, late charges, costs of the foreclosure action and attorney's fees. (R. p. 43, line 25-p. 44, ¶ 12).

On October 9, 2019, First Citizens filed a Summons and Complaint seeking to foreclose on the mortgage. First Citizens hired a process server to serve Justin Spires and Timothy Spires. The process server served the Summons on October 12, 2019. (R. p. 109; R. p. 110) The process server served the Summons and Complaint at the record address of 30 Cardington Court on Mitch Smith who informed the process server that he was a co-resident of Justin Spires and Timothy Spires at their residence. (R. p. 109; R. p. 110). The sworn Affidavits of Service of Justin Spires and Timothy Spires stated that Mitch Smith had informed the process server that he was a co-resident of Justin Spires and Timothy Spires at their residence and that he, Mitch Smith, was of suitable age and discretion. (R. p. 109; R. p. 110).

Justin Spires and Timothy Spires failed to file an Answer in response to the Summons and Complaint. First Citizens filed an Affidavit of Default on November 20, 2019 and an Entry of Default was entered. (R. p. 111). On January 21, 2020, Appellants received a Notice of Hearing, notifying them of the forthcoming foreclosure hearing. (R. p. 112-113).

On February 17, 2020, the Master in Equity issued an Order and Judgment of Foreclosure and Sale concluding that Justin Spires and Timothy Spires owed \$66,710.96 to First Citizens, First Citizens was entitled to foreclosure, and First Citizens was entitled to a deficiency judgment after the sale. (R. p. 5-18, ¶ 21-25). A Notice of Sale was published on March 20, 2020. (R. p. 114).

A foreclosure sale was scheduled for April 6, 2020 but was cancelled due to COVID-19 and rescheduled for July 6, 2020. (R. p. 32, lines 16-17). On June 16, 2020, the Order of Judgment and Notice of Sale were mailed to Appellants record address. (R. p. 34, line 5). Notice of Sale was also published on June 19, 26, and July 3, 2020. (R. p. 152). On July 3, 2020, a telephone call took place between First Citizens and Justin Spires in which Justin Spires was made aware of the foreclosure. (R. p. 34, lines 5-6, 10-14). Unknown to First Citizens, Justin Spires filed bankruptcy on July 6, 2020 to stop the sale. (R. p. 129, ¶ 9). The foreclosure sale was held on July 6, 2020. (R. p. 32, line 22). On July 9, First Citizens became aware that Justin Spires had filed for bankruptcy on July 6, 2020 and thereafter vacated the July 6, 2020 foreclosure sale by Order filed July 9, 2020. (R. p. 95-100). On August 4, 2020, Justin Spires' bankruptcy was dismissed. (R. p. 132,

¶15).

On November 20, 2020, the Master in Equity signed a new Judgment for Foreclosure and Sale. (R. p. 32, lines 27-29). On December 7, 2020, a Notice of Sale and Judgment were mailed to Appellants. (R. p. 34, lines 7-8). The Notice of Sale was published on November 20, 27, and December 4, 2020. (R. p. 149). First Citizens was the successful high bidder when the sale was completed on January 7, 2021 and a Master in Equity's Deed was issued on January 14, 2021. (R. p. 32, line 30).

On January 25, 2021, Respondent obtained a Notice to Vacate, seeking to eject Appellants from the subject property. (R. p. 33, lines 1-3). The subsequent Rule to Show Cause was posted on the subject property on February 24, 2021. (R. p. 33, lines 2-3).

On May 17, 2021, Justin Spires and Timothy Spires each filed Motions for Relief and Motions to Vacate the Sale. (R. p. 95-100). Justin Spires, Timothy Spires, and Mitch Smith supplied affidavits in support of the Motions. (R. p. 130-38). At the June 21, 2021 hearing on Appellant's Motions, the Master in Equity denied Appellants' Motions. (R. p. 32-35). On July 1, 2021, Justin Spires and Timothy Spires filed a Motion to Reconsider; the Master in Equity denied this Motion on September 21, 2021. (R. p. 37-39).

Appellants filed a Notice of Appeal on November 3, 2021 appealing the Order Denying their Motion to Vacate the Sale and for Relief from the Default Judgment dated June 21, 2021. (R. p. 108). The appeal is pending.

## ARGUMENT

### I. THE WITHIN APPEAL SHOULD BE DISMISSED BECAUSE FIRST CITIZENS BANK AND TRUST INC. IS A BONAFIDE PURCHASER AND APPELLANTS' CLAIMS ARE THEREFORE BARRED BY THE DOCTRINE OF *RES JUDICATA*.

The Court of Appeals should grant this Motion to Dismiss because Respondent First Citizens has shown that it was entitled to the protection of South Carolina Code §15-39-870 as a Bonafide Purchaser and that, therefore, Appellants' appeal is barred by the doctrine of *res judicata*.

In the Initial Brief of the Respondent, First Citizens asserted South Carolina Code §15-39-870 as an additional sustaining ground pursuant to South Carolina Appellate Court Rules 208(b) and 220(c) and *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) (“a respondent . . . may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.”).

Appellants' appeal should fail because Respondent First Citizens is a bona fide purchaser for value at the foreclosure sale and is entitled to the protection of South Carolina Code §15-39-870. Respondent was the successful bidder at the December 7, 2020 foreclosure sale and, as holder of the Masters deed, is a bona fide purchaser for value without notice, thus barring any attack on the foreclosure sale under the doctrines of *res judicata* and collateral estoppel. S.C. Code §15-39-870 states:

“Upon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction the proceedings under which such sale is made shall be deemed *res judicata* as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court.”

South Carolina recognizes a long-standing public policy of “protecting good faith purchasers and upholding the finality of a judicial sale.” *Robinson v. Estate of Harris*, 378 S.C. 140, 144, 662 S.E.2d 420, 422 (2008). To effectuate this policy, the Supreme Court of South Carolina has stated , “a purchaser in good faith at a judicial sale is not affected by irregularities in the proceedings or even error in the judgment under which the sale is made; but is required at his peril only to make inquiry as to the jurisdiction of the court which ordered the sale, and whether all proper parties were before the court when the order was made.” *Id.* at 145. The Supreme Court’s reference to “the jurisdiction of the court which ordered the sale” refers to the statutory requirement that the court is one of “competent jurisdiction” to execute and deliver a deed for property sold at a judicial sale. Further, the Supreme Court in *Robinson* held that affidavits contesting service of process

filed after the sale of the foreclosed property could not undermine the protections of a bona fide purchaser. *Id.* at 146.

For a party to qualify for the protections of §15-39-870, it must show (1) the deed was executed and delivered pursuant to the order of foreclosure and sale of a court of competent jurisdiction and (2) the party is a bonafide purchaser for value without notice. *Id.* at 145-46. All of these protections apply here.

First, the deed was executed and delivered to First Citizens, the successful bidder, pursuant to the Master in Equity's February 17, 2020 Order of Foreclosure and Sale. The Master in Equity is a court of competent jurisdiction by virtue of SCRPC Rules 53 and 71 and the Order of Reference filed November 21, 2019. Therefore, the deed was executed and delivered pursuant to the Order of Foreclosure and Sale of a court of competent jurisdiction.

Second, First Citizens is a bonafide purchaser for value without notice. To establish its status as a bonafide purchaser, a party must show (1) it actually paid the purchase price of the property; (2) it acquired legal title to the property or the best right to legal title to the property; and (3) a bonafide purchase. *Id.* at 146. A bonafide purchase is one made in good faith and with integrity of dealing, without notice of a lien or defect. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006). The party seeking bonafide purchaser status must show all three elements occurred before it had notice of a title defect or other adverse claim. *Robinson*, at 146. If defects or adverse claims are raised in affidavits entered into the record after the foreclosure sale, those affidavits cannot undermine the statutory protection of a bonafide purchaser. *Id.*

Here, First Citizens' purchase of the property at the foreclosure sale satisfies the elements to establish it as a bonafide purchaser. First Citizens paid the purchase price and subsequently acquired legal title. First Citizens' purchase was a bonafide purchase; First Citizens bought the property at the foreclosure sale in a good faith attempt to recover the value of the loan made to Justin Spires and Timothy Spires. Finally, these elements were established prior to Justin Spire's and Timothy Spire's adverse claims, which were asserted only after the sale.

The facts of this case parallel those in *Robinson*. In *Robinson*, the appellants' property was purchased at a foreclosure sale. *Robinson*, at 143. Affidavits of Service were filed alleging proper substituted service of the appellants through their son. *Id.* The appellants brought an action to quiet title and set aside the foreclosure sale. *Id.* The respondent moved for summary judgment under the theory that he was a bonafide purchaser. *Id.* Following the respondent's motion, the appellants submitted an affidavit in which the appellants' son asserted that he was not the person served and that the appellants were incompetent. *Id.* The South Carolina Court of Appeals upheld the judicial sale relying on the rules stated above. *Id.* at 147.

First, the Appellate Court found that an Order of Foreclosure and Judicial Sale established that the deed was executed and delivered pursuant to the order of foreclosure and sale of a court of competent jurisdiction because the Order stated (1) the Defendants were served; (2) the Defendants were in default; (3) the attorneys of record were notified of the hearing; and (4) Defendants were not in military service. *Id.* at 145. Here, the Master in Equity's Order of Foreclosure and Sale parallels that in *Robinson* and establishes that the deed was executed and delivered pursuant to the order of foreclosure and sale of a court of competent jurisdiction.

Second, the *Robinson* court applied the elements of a bonafide purchase and found that the purchaser was a bonafide purchaser. *Id.* at 146-47. The *Robinson* court found that, as in this case, the purchaser paid value for the property and acquired legal title or the best right to legal title of the property. *Id.* at 146. The *Robinson* appellants asserted that the purchaser could not establish the third element – a bonafide purchase, i.e. a purchase made with integrity and fair dealing, without notice of a lien or defect – because appellants were not properly served. *Id.* The *Robinson* appellants, like the Appellants in this case, filed affidavits after the foreclosure sale, which were not matters of record at the time of the foreclosure sale. *Id.* The *Robinson* court held that affidavits that were not part of the record at the time of the foreclosure sale could not be used to deny a purchaser its status as a bonafide purchaser. *Id.*

Here, Justin Spires, Timothy Spires and Mitch Smith, like the Appellants in *Robinson*, entered affidavits into the record contesting service of process on May 17, 2021, well after the foreclosure sale. These affidavits, like those in *Robinson*, allege improper service. However, under the authority of *Robinson*, because these affidavits were not matters of record at the time of the foreclosure sale, they cannot be used to deny First Citizens its status as a bonafide purchaser.

Because First Citizens meets the requirements of §15-39-870, any challenge to the foreclosure sale is barred by *res judicata* and collateral estoppel. Here, Justin Spires and Timothy Spires' appeal seeks to vacate the foreclosure sale by alleging the Court had no jurisdiction to order the sale. Because Justin Spires and Timothy Spires's claims arise under the foreclosure sale, they are barred by *res judicata*. Here, Justin Spires, Timothy Spires and Mitch Smith entered affidavits into the record after the foreclosure sale. These affidavits, like those in *Robinson*, allege improper service. However, because these affidavits were not matters of record at the time of the foreclosure sale, they cannot be used to deny First Citizens' status as a bonafide purchaser. Under the authority of §15-39-870, this Court must affirm the Master in Equity and uphold the judicial sale.

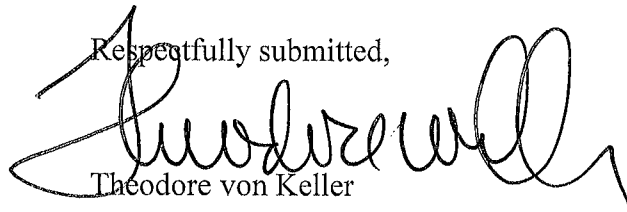
## CONCLUSION

This appeal must be dismissed because First Citizens is a bonafide purchaser entitled to protection under S.C. Code §15-39-870. Thus, Appellants' appeal is barred by

*res judicata* and the within appeal is without merit.

June 5, 2023

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Theodore von Keller', written over the typed name.

Theodore von Keller

Crawford & von Keller, LLC

1640 St. Julian Place

Columbia, SC 29204

(803) 790-2626

Attorney for Respondent

S.C. Bar # 5718

RECEIVED

Jun 05 2023

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, Sr. are the

Appellants.

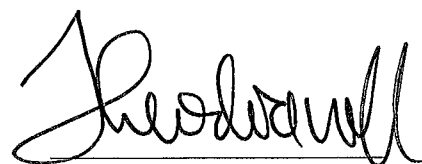
---

Proof of Service

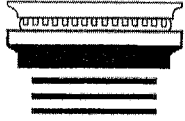
---

I certify that I have served the Respondent's Motion to Dismiss, Respondent's Memorandum of Authorities in Support of Its Motion to Dismiss and Proof of Service by depositing a copy of it in the United States Mail, postage prepaid, addressed to Appellants' attorney of record listed below.

Shawn M. French  
1476 Ben Sawyer Blvd, Ste. 3  
Mount Pleasant, SC 29464



Theodore von Keller  
SC Bar NO. 5718



CRAWFORD & VON KELLER, LLC

RECEIVED

Jun 05 2023

SC Court of Appeals

SOUTH CAROLINA  
B. Lindsay Crawford, III \*  
Theodore von Keller  
B. Lindsay Crawford, IV\*\*\*

NORTH CAROLINA  
Benjamin A. Barco\*\*

Charley S. FitzSimons  
Jason M. Hunter

Lawrence W. Johnson, Jr.\* - Special Counsel

\* Certified Specialist in Bankruptcy  
and Debtor-Creditor Law in SC

\*\* Admitted in North Carolina, Tennessee, and Texas  
\*\*\* Admitted in South Carolina and North Carolina

June 5, 2023

**Email: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)**

**RE:** Justin K. Spires, Timothy J. Spires, Sr., South Carolina Department of Probation, Parole and Pardon Services, and Warren B. Giese as Solicitor  
**Of Whom Justin K. Spires and Timothy J. Spires, Sr. are the Appellants vs. First Citizens Bank and Trust Company, LLC, Respondent**  
Appellant Case No. 2021-001219  
Case No. 2019-CP-40-05698  
Our Case No. 4000-0142

Dear Sir or Madam:

Enclosed please find one bound copy of Respondent's Motion to Dismiss, Respondent's Memorandum of Authorities in Support of Its Motion to Dismiss and Proof of Service in the above referenced matter.

The \$50.00 filing fee will be mailed to your office via regular mail.

Please contact me with any questions.

Sincerely,

Crawford & von Keller, LLC

Theodore von Keller

/tdd

cc: Shawn M. French, Sr.  
1476 Ben Sawyer Blvd, Suite 3  
Mt. Pleasant, SC 29464

WE ARE A DEBT COLLECTOR. THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

P.O. Box 4216, Columbia, SC 29240 • 1640 St. Julian Place, SC 29204 • 803-790-2626 • Facsimile 803-790-1277  
1017 Ashes Drive, Suite 106, Wilmington, NC 28405 • 910-363-1637 • Facsimile 910-363-1652