

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

SFP 28 2023

APPEAL FROM YORK COUNTY
Court of Common Pleas

SC Court of Appeals

Teasa K. Weaver, Master in Equity

Case No. 2019-CP-46-04302

Appellate Case No. 2023-000390

Ex Parte: Maritza Flores Alvarado, Appellant,

In re:

U.S. Bank National Association, as Trustee For Securitized Asset Backed Receivables LLC Trust
2006-NC1, Mortgage Pass-Through Certificates, Series 2006-NC1, Plaintiff,

v.

Aaron C. Wurdemann and Heather J. Wurdemann, Respondents.

RECORD ON APPEAL

Leonard R. Jordan, Jr.
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
Attorney for Appellant

Respondents:

Mr. Aaron C. Wurdemann
Mrs. Heather J. Wurdemann
972 Glasscock Road
Rock Hill, SC 29730
Columbia, SC 29201

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

CASE NO. 2019-CP-46-04302

U.S. Bank National Association, As Trustee
For Securitized Asset Backed Receivables
LLC Trust 2006-NC1, Mortgage Pass-
Through Certificates, Series 2006-NC1,

PLAINTIFF,

v.

Aaron C. Wurdemann and Heather J.
Wurdemann,

DEFENDANT(S).

**ORDER TO DISBURSE
SURPLUS FUNDS**

This matter came before me for a hearing to determine disbursement of surplus funds in the amount of \$50,539.05 that resulted from a sale of mortgaged property located at 211 Leisure Lane, Catawba, South Carolina with Tax Map No. 690-00-00-015 ("property"). Present at the hearing: the Defendants, Aaron Wurdemann and Heather J. Wurdemann; and Maritza Flores ("Flores"), with her counsel Leonard Jordan.

FINDINGS OF FACT

By order on February 28, 2020, Plaintiff was granted a judgment of foreclosure and sale, and the property was ordered to be sold at public auction. The Defendants are the mortgagors, but the property is not their primary residence.

Shortly after judgment, Dennis Lepka, an agent of Robinhood Investments, LLC ("Robinhood"), approached the Defendants and claimed he could help them sell the property and avoid a foreclosure sale. Lepka assured the Defendants that he had potential buyers and could sale the property for a profit. The Defendants agreed to have Lepka assist them.¹

Lepka convinced the Defendants it would help the process if they transferred their interests in the property to Robinhood. So, the Defendants conveyed their interests in the property to Robinhood by deed dated July 1, 2020 and recorded on July 30, 2020 in Record Book 18459 at page 30 ("Robinhood Deed"). I take judicial notice of this deed. The Defendants received no consideration for the transfer. This is confirmed by the deed's accompanying affidavit.

¹ The Defendants testified that they executed a written agreement with Lepka. They were granted additional time after the hearing to submit a copy of the agreement to the Court, but failed to do so.

Within one month of recording the Robinhood Deed, Flores entered into a lease with option to purchase ("Lease") with Robinhood regarding the property. Flores paid \$45,000.00 to Robinhood as a down payment, and agreed to pay \$1200.00 per month, for 60 months, starting November 1, 2020. Robinhood failed to include the Defendants' mortgage in the section entitled "Further Encumbrances". No one on behalf of Robinhood informed the Defendants about the Lease, and the Defendants did not receive any funds paid by Flores to Robinhood.

The property was sold at public auction on April 4, 2022. A report of sale was filed on May 9, 2022 showing the receipts and disbursements made and that surplus funds remained. Due notice of surplus was served as shown in the certificate(s) of service. Following service of the notice of surplus, claims were filed by Lepka and Flores. Lepka filed a claim on behalf of Robinhood as an employee. The claim was not verified or supported by affidavit. Flores' claim was verified, timely filed, and included the required information. The Defendants timely inquired about filing a claim, but were instructed by court staff that as the mortgagors, no formal claim was required by the court.

Though she is not a party to the action, Flores argues her claim is valid by assignment. Rule 71(c), SCRCP states that "[a]ny party to the action, or any person who had a lien on the mortgaged premises at the time of the sale, upon filing ... a claim of entitlement to the surplus fund, may have a hearing to determine such entitlement." This entitlement extends to a party's assignee. *See BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 731 S.E.2d 547 (2012). In order for Flores to have acquired a right to surplus by assignment, the Defendants must be found to have assigned their rights to Robinhood. Considering the facts of this case, I disagree.

Robinhood sought out the Defendants knowing the property was scheduled to be sold at public auction. Instead of providing help, Robinhood acted solely for its own benefit. It convinced the Defendants to transfer their interests for no consideration, and thereafter entered into a lease with Flores, which it derived a substantial benefit by keeping all the funds to itself. *See Aaron v. Mahl*, 381 S.C. 585, 674 S.E.2d 482 (2009) (A party may not recover in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of an opposing party.).

Flores also argues that she is entitled to surplus because she lost the benefit of her contract with Robinhood. Though Flores may not have actually been aware of the foreclosure proceeding, or how to conduct a title search, she was placed on notice by the filing of Lis Pendens prior to her execution of the Lease.

I find and conclude that Robinhood has no entitlement to surplus. The claim itself was not verified or in affidavit form, and no one appeared on behalf of the LLC at the hearing to offer proof

of its claim. *See* Rule 71(c), SCRC. As discussed previously, equity precludes any recovery by Robinhood.

THEREFORE, IT IS ORDERED that surplus funds of \$50,539.05 be disbursed to the Defendants.

Judge's Signature Page to Follow



York Common Pleas

Case Caption: U S Bank National Association Trustee , plaintiff, et al VS Aaron C Wurdemann , defendant, et al
Case Number: 2019CP4604302
Type: Master/Order Surplus Funds

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2022-11-15 11:29:09 page 4 of 4

ELECTRONICALLY FILED - 2022 Nov 15 11:48 AM - YORK - COMMON PLEAS - CASE#2019CP4604302

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4604302

U S Bank National Association Trustee et al
PLAINTIFF(S)

Aaron C Wurdemann et al
DEFENDANT(S)

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
- 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 DENYING MOTION TO RECONSIDER

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/02/2023 .

Heather J Wurdemann
Aaron C Wurdemann

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

This matter came before me on March 2, 2023, upon motion by Maritza Alvarado, pursuant to Rule 59(e), SCRPC, asking the Court to alter or amend its order disbursing surplus funds. Present at the hearing: Leonard Jordan on behalf of Ms. Alvarado; the Wurdemanns appeared pro se.

"[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when [she] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

Upon reviewing the record presented, and considering the memoranda and arguments of the parties, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the ruling rendered in the prior order.

THEREFORE, IT IS ORDERED that the motion be denied.



York Common Pleas

Case Caption: U S Bank National Association Trustee , plaintiff, et al VS Aaron C Wurdemann , defendant, et al
Case Number: 2019CP4604302
Type: Order/Electronic Form 4

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2023-03-02 16:30:13 page 3 of 3

DERIVATION - This being the identical property conveyed unto the Grantors herein by Deed of Aaron C. Wurdemann And Heather J. Wurdemann dated June 12th, 2001 and recorded in the office of the RMC for York County in Record Book 03673 at Page 00061

GRANTEE'S ADDRESS: 858 N Cherry Road, Rock Hill, SC 29733

TMS: 690-00-00-015

This conveyance is made subject to current assessments, reservations in patents and all easements, rights of way, encumbrances, liens, conventants, conditions, restrictions, obligations, and liabilities as may appear of record, on the recorded plat(s), or on the premises. The Grantor warrants the title against all persons whomsoever

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anyway incident or appertaining.

AND GRANTOR DOES hereby promise, for themselves and Grantor's heirs, executors, administrators, successors, assigns, and representatives, to warrant and forever defend the above premises unto the Grantee, Grantee's heirs and assigns, against the Grantor and Grantor's heirs, successors, assigns, and representatives and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

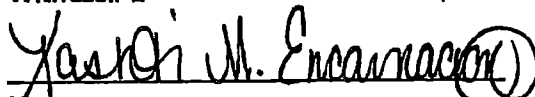
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his / her heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned has executed this deed, this 1st, day of July, 2020

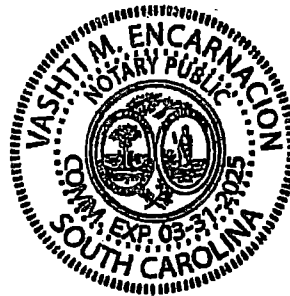
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



Witness# 1

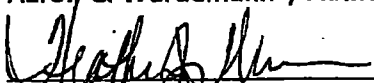


Notary





Aaron C. Wurdemann / Authorized Signor



Heather J. Wurdemann / Authorized Signor

STATE OF SOUTH CAROLINA

)

Probate

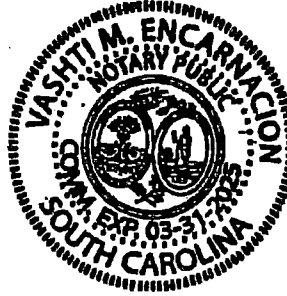
COUNTY OF YORK

)

Personally appeared before me the undersigned Vashti M Encarnacion made oath that he / she saw the above-named Grantor sign, seal and as Grantor's act and deed, deliver the within Deed for the uses and purposes therein mentioned, and that he/she with the other witness whose signature appears above witnessed the execution thereof.

SWORN BEFORE ME THIS 1st, DAY OF July , 2020

Vashti M. Encarnacion
Notary Public, State of South Carolina



March 31, 2025
My commissions Expires:

[Signature]
Witness

[Signature]
Aaron C. Wurdemann / Authorized Signor

[Signature]
Heather J. Wurdemann / Authorized Signor

AGREEMENT WITH OPTION TO PURCHASE REAL ESTATE (hereinafter referred to as the Lease/Option is made this 20th day of and between the following parties: MARISA FLORES AVILA (hereinafter referred to as the Tenant/Buyer); and RELIANCE INVESTORS LLC (hereinafter referred to as the Landlord/Seller).

The parties hereby agree as follows:

1. **DESCRIPTION** The Landlord/Seller agrees to lease and the Tenant/Buyer agrees to rent the real property and the improvements thereon located at 211 VERMONT AVE CANTON ST. ANTONIO more fully described as follows:

LOT 134 GENERAL HOME RAY TINE LOC AREA 00017 FORT \$150,000 ON
FOR V.P. 598 BAYVIEW ST. BURLINGAME CALIF \$45,000 CASH AND
RAVENS DR. 56 5105,000

2. **TERM** The Lease/Option shall be for a period of 60 months commencing on August 20, 20 and ending on 8/20/26. The term will be automatically extended for N/A periods of N/A months unless the Tenant/Buyer gives notice to the Landlord/Seller of its intent to terminate this Lease/Option, by mailing such notice to the last provided address of the Landlord/Seller, or until such time as Tenant/Buyer exercise its option to purchase the property. Liability for payment will not extend beyond notice to terminate this agreement.

3. **POSSESSION** Possession shall be delivered by keys and physical possession given to the Tenant/Buyer on 8/20/20.

4. **RENT** Tenant/Buyer agrees to pay the lender of Landlord/Seller's current mortgage or trust deed, the sum of \$1,700 per month with the first payment beginning 9/15/20 as rent for the Property, for the term of this lease/option and during any extension thereof. All rental payments shall be due and payable in advance of the first day of each month. An amount equal to \$ N/A for each month in which rent was paid, shall be credited to the Tenant/Buyer and applied to the purchase price of the Property in the event that the Tenant/Buyer exercises its option to purchase.

5. **OPTION TO PURCHASE** The Tenant/Buyer, as part of the consideration herein, is hereby granted by the Landlord/Seller a purchase option, and privilege of purchasing the Property at any time during the term of this lease/option.

6. **DEFAULT** Should Tenant/Buyer default on this agreement, Landlord/Seller shall keep all monies paid by Tenant/Buyer.

7. **COVENANTS, BURDEN AND BUYER** Commencing with entering the term of this agreement, including extensions, the Tenant/Buyer shall be bound by all covenants and agrees as follows:

8. **UTILITIES** Tenant/Buyer will pay all utility charges and bills, including but not limited to Water, sewer, gas, oil, and electric and telephone, as well as charges against the Property.

9. **UNLAWFUL USE** The Tenant/Buyer will not use the Property for any unlawful purpose and that the Tenant/Buyer will conform to all applicable laws, ordinances, regulations, requirements and orders of all Federal, State and Local agencies and authorities, courts, departments, bureaus, boards or officials, respecting the use of the Property; and

10. **RETURN OF PROPERTY** Tenant/Buyer will surrender and deliver up the Property, at the end of the term or any extensions thereof, in good order and condition as the same now exists, reasonable use and wear and tear excepted.

11. **INSURANCE** The Landlord/Seller hereby covenants and agrees as follows:
a. The Landlord/Seller shall obtain and maintain fire and extended coverage insurance on the Property in the amount of \$1,000,000. The Tenant/Buyer shall be named as an additional insured or loss payee on the policy, which shall be provided to the Tenant/Buyer.

12. **ENTIRE AGREEMENT** This agreement of the Property without any interference or interruption.

(9) **COST OF IMPROVEMENTS:** In the event the Tenant/Buyer exercises the option to purchase set forth in paragraph 4 above, and through no fault of the Tenant/Buyer, the Landlord/Seller fails to convey said Property to Tenant/buyer in accordance with the terms of this Lease/Option, the Tenant/Buyer, in addition to any other rights which Tenant/Buyer may have in law or equity for the enforcement of Tenant/Buyer's option to purchase, shall be entitled to reimbursement for the cost of all repairs, maintenance, and improvements.

(10) **FURTHER ENCUMBRANCES:** The Landlord/Seller hereby warrants the total of the leases, options, mortgages, liens and any other encumbrances against the Property, whether of public record or not, are as follows:

- (a) A first mortgage in favor of N/A in the approximate amount of \$ N/A
- (b) Current taxes for JAN 2021 IS 2021 in the amount of \$ 845 due on 01/01/21
- (c) Other items (Specify)

The landlord/Seller shall not lease to any other third party, nor to assign, sell, option, transfer, pledge, or otherwise to convey any or all rights or interests had by Landlord/Seller in the Property or in this Lease/Option, nor to further encumber the Property nor allow the same to occur. Violation of this paragraph shall be considered a material breach of this Lease/Option. The Landlord/Seller further agrees to keep all mortgages, liens, taxes, or other encumbrances on the property, current and in good standing. Tenant/buyer shall have the right to make payment on same in the event that Landlord/Seller becomes delinquent or otherwise defaults on such payments, and subtract the amount of the payments from the balance due Landlord/Seller at closing of the sale of the property.

(11) **RIGHT OF ASSIGNMENT:** The Tenant/Buyer may sublet the Property, and/or assign, sell, transfer, pledge, or otherwise convey any or all rights or interest which the Tenant/Buyer may have in the Property or in this Lease/Option. Any such assignments will release original Tenant/Buyer from any and liability and substitute assignee in his/her or its place.

(12) **MAINTENANCE AND REPAIRS:** The Tenant/Buyer accepts the Property "AS-IS" on the date of execution of this Lease/Option except for terms listed in paragraph 14. As of the effective date, the Tenant/Buyer shall be responsible for all maintenance and repair upon said Property, both interior and exterior. The Tenant/Buyer shall have the right to make such repairs, maintenance, and improvements as Tenant/Buyer shall deem necessary, proper, or desirable. The Tenant/Buyer shall pay the cost of all such improvements, except that any electric, plumbing, heating or cooling systems that is not in workable condition at the inception of this Lease/Option will be repaired by the Landlord/Seller at its expense within sixty (60) days' notice from Tenant/Buyer. If the Landlord/Seller refuses to make such repairs, Tenant/Buyer will have option of either voiding this agreement by written notice to the Landlord/Seller or making such repairs and (a) receiving a reimbursement from the next monthly payment or, (b) receiving a credit against the purchase price plus interest at 10% per annum from date of payment.

(13) **BINDING AGREEMENTS:** The parties hereto agree that this Lease/Option comprises the entire agreement of the parties and supersedes all prior written or oral agreements, representations, warranties, negotiations, or understandings. This Lease/Option may not be amended except in a writing executed by all the parties herein. The parties further represent and warrant that they have not relied on any representations, warranties or statements as an inducement to the entering this Lease/Option other than what is expressly written herein. This Lease/Option shall be binding upon the parties, their heirs, executors, administrators, personal representatives, successors, or assigns.

(14) **SPECIAL PROVISIONS:**

(a) When Landlord/Seller will complete the following by 1/1/21 or this Lease/Option will become null and void and all monies paid by Tenant/Buyer will be immediately refunded by Landlord/Seller or, at Tenant/Buyer's Option, Tenant/Buyer may accept the Lease/Option and completed the items listed below, and the cost of same will be recovered as provided for in paragraph 12.

(b) **PROPERTY SEARCH:** will be ordered immediately by the Tenant/Buyer. This cost will be done by the Landlord/Seller. If discovered the Landlord/Seller has unmarketable title in which case the Landlord/Seller

will reimburse Tenant/Buyer to cost of the search. If the title is unmarketable the Tenant/Buyer will then have the option to void this agreement or proceed as agreed herewith.

OPTION PURCHASE TERMS

(15) **PRICE AND TERMS:** The Tenant/Buyer agrees to pay for said Property in the sum of \$ 450,000 less any sums for which the Tenant/Buyer is entitled to claim as reimbursement or offset in accordance with this Lease/Option, the net sum to be paid in cash, certified check, or cashier's check at closing.

(16) **INCLUDED IN THIS PURCHASE:** The Property shall also include all land, together with all improvements thereon, all appurtenant rights, privileges, easements, buildings, fixtures, heating, electrical, plumbing, air conditioning fixtures and facilities, window shades, venetian blinds, awnings, curtain rods, screens, storm windows and doors, affixed mirrors, wall-to-wall carpeting, built-in kitchen appliances, bathroom fixtures, radio and television aeriels, landscaping and shrubbery, water softeners, garage door openers and operating devices, and all utility or storage buildings or sheds, range and refrigerator. The Property shall also include the following items:

(17) **TITLE:** The Landlord/Seller shall convey marketable title to the Property with the above described inclusions, by General Warranty Deed free, clear, and unencumbered except existing mortgages, restrictions and easements of record shown in paragraph 10.

(18) **CLOSING:** The Deed shall be delivered and the purchase money shall be paid at a time and place of Tenant/Buyer's choice, no later than 60 days after notifications to the Landlord/Seller of the Tenant/Buyer's exercise of the option.

(19) **COST AND PROVISIONS:** The following items shall be prorated the Landlord/Seller and the Tenant/Buyer as of date of closing. (a) All Real estate taxes and assessments; (b) Interest on encumbrances assumed or taken over by Tenant/Buyer with both parties having responsibility for such items as follows:

Landlord/Seller will pay:

1064 closing cost

Tenant/Buyer will pay:

(20) **INSURANCE:** While this Lease/Option is in effect, the Landlord/Seller shall maintain fire and extended coverage upon the Property, and immediately convert the owner occupied (if applicable) policy to a non-owner occupied policy. In the event of the entire or partial loss, damage or destruction of the Property, the Tenant/Buyer may at its Option (a) proceed with the closing and accept the insurance proceeds for said damage. Or (b) declare this Lease/Option null and void, releasing both parties from and obligations hereunder, except for the return or reimbursable expenses previously paid by the Tenant/Buyer which amounts shall be responsible for obtaining fire and extended coverage insurance on the Property effective on the closing date.

(21) **LEGAL:** In the event that any legal proceeding is brought to enforce any right or obligation under this Lease/Option, the parties each agree to waive their right to a jury trial. In addition, the prevailing party shall recover its reasonable court cost and attorney fees from the non-prevailing party.

IN WITNESS WHEREOF

The parties hereto, have set their hands to this Lease/Option on 27th day of August 2020

WITNESS

[Signature]
Landlord/Seller

Landlord/Seller

Buyer/Tenant

Maritza Flores

Buyer/Tenant

VIPULKUMAR O. TRIVEDI
NOTARY PUBLIC
Mecklenburg County
North Carolina

[Signature]
23 AUG 2020
1320

STATE OF SOUTH CAROLINA

COUNTY OF YORK

U.S. Bank National Association, as Trustee for
Securitized Asset Backed Receivables LLC
Trust 2006-NC1, Mortgage Pass-Through
Certificates, Series 2006-NC1,

PLAINTIFF,

VS.

Aaron C. Wurdemann and Heather J.
Wurdemann,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP-46-04302

NOTICE OF SURPLUS FUNDS

PLEASE TAKE NOTICE that the property subject to this action was sold at public auction and resulted in **surplus funds of \$50,539.05**.

Any party to the action, or any person who had a lien on the mortgaged premises at the time of the sale, may file a claim of entitlement to the surplus funds and may have a hearing to determine such entitlement.

All claims must be verified or supported by affidavit and filed with the York County Clerk of Court within 45 days from the date of the filing of the Master's Report of Sale and Disbursement. **If your claim is not filed within the said 45-day period, your claim shall be considered abandoned and waived as to such surplus.**

Please refer to Rule 71(c) of the South Carolina Rules of Civil Procedure for further information regarding filing a claim.

JUDGE'S SIGNATURE PAGE TO FOLLOW



York Common Pleas

Case Caption: U S Bank National Association Trustee , plaintiff, et al VS Aaron C Wurdemann , defendant, et al
Case Number: 2019CP4604302
Type: Master/Notice Surplus Funds

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2022-05-09 13:48:06 page 2 of 2

ELECTRONICALLY FILED - 2022 May 09 1:56 PM - YORK - COMMON PLEAS - CASE#2019CP4604302

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2019-CP-46-04302

U.S. Bank National Association, as Trustee)
For Securitized Asset Backed Receivables)
LLC Trust 2006-NC1, Mortgage Pass-)
Through Certificates, Series 2006-NC1,)

Plaintiff,)

v.)

Aaron C. Wurdemann and Heather J.)
Wurdemann,)

Defendants.)

**CLAIM TO SURPLUS FUNDS
BY MARITZA FLORES ALVARADO
Pursuant to Rule 71(c) SCRCF**

Maritza Flores Alvarado (“Claimant”) hereby makes a claim to surplus funds based upon the Lease Agreement With Option to Purchase Real Estate dated August 27, 2020, a copy of which is attached hereto as Exhibit “A.” She entered into the said Agreement with Robinhood Investments, LLC, which was the owner of record of the subject real property (211 Leisure Lane, Catawba, South Carolina) at the time of the foreclosure sale on April 4, 2022. Attention is called to the Quitclaim Deed from Aaron C. Wurdemann and Henther J. Wurdemann to Robinhood Investments, LLC dated July 1, 2020, and recorded in the Office of the Clerk of Court for York County on July 30, 2020, in Book RB 18459 at page 30, a copy of which is attached hereto as Exhibit “B.”

As the Option to Purchase was effectively discharged by the foreclosure sale, the Claimant has lost the benefit of her contract with the immediate former owner, including without limitation the Option Fee of \$45,000.00 (cash) paid by the Claimant to Robinhood Investments, LLC. Claimant hereby claims any and all of the Surplus Funds which would, but for her claim, be the property of the owner, in fee simple, of the subject property prior to the foreclosure sale.

Columbia, South Carolina
June 8, 2022

s/Leonard R. Jordan, Jr.
Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com

Attorney for Maritza Flores Alvarado

EXHIBIT "A"

above, and through no fault of the Tenant/Buyer, the Landlord/Seller fails to convey said Property to Tenant/Buyer in accordance with the terms of this Lease/Option, the Tenant/Buyer, in addition to any other rights which Tenant/Buyer may have in law or equity for the enforcement of Tenant/Buyer's option to purchase, shall be entitled to reimbursement for the cost of all repairs, maintenance, and improvements.

FURTHER ENCUMBRANCES: The Landlord/Seller hereby warrants the total of the Leases, options, mortgages, liens and any other encumbrances against the Property, whether of public record or not, are as follows:

- (a) A first mortgage in favor of N/A in the approximate amount of \$ N/A
- (b) Current taxes for JANUARY 15 2021 in the amount of \$ 295 deduction of 01
- (c) Other items (Specify)

The Landlord/Seller shall not lease to any other third party, nor to assign, sell, option, transfer, pledge, or otherwise to convey any or all rights or interests had by Landlord/Seller in the Property or in this Lease/Option, nor to further encumber the Property nor allow the same to occur. Violation of this paragraph shall be considered a material breach of this Lease/Option. The Landlord/Seller further agrees to keep all mortgages, liens, taxes, or other encumbrances on the property current and in good standing. Tenant/Buyer shall have the right to make payment on same in the event that Landlord/Seller becomes delinquent or otherwise defaults on such payments, and subtract the amount of the payments from the balance due Landlord/Seller at closing of the sale of the property.

1) RIGHT OF ASSIGNMENT: The Tenant/Buyer may sublet the Property, and/or assign, sell, transfer, pledge, or otherwise convey any or all rights or interests which the Tenant/Buyer may have in the Property or in this Lease/Option. Any such assignments will release original Tenant/Buyer from any and all liability and substitute assignee in his/her or its place.

2) MAINTENANCE AND REPAIRS: The Tenant/Buyer accepts the Property "AS-IS" on the date of execution of this Lease/Option except for terms listed in paragraph 14. As of the effective date, the Tenant/Buyer shall be responsible for all maintenance and repair upon said Property, both interior and exterior. The Tenant/Buyer shall have the right to make such repairs, maintenance, and improvements as Tenant/Buyer shall deem necessary, proper, or desirable. Tenant/Buyer shall pay the cost of all such improvements, except that any electric, plumbing, heating or cooling systems that is not in workable condition at the inception of this Lease/Option will be repaired by the Landlord/Seller at its expense within sixty (60) days' notice from Tenant/Buyer. If the Landlord/Seller refuses to make such repairs, Tenant/Buyer will have option of either voiding this agreement by written notice to the Landlord/Seller or making such repairs and (a) receiving reimbursement from the next monthly payment or (b) receiving a credit against the purchase price plus interest at 10% per annum from date of payment.

3) BINDING AGREEMENTS: The parties hereto agree that this Lease/Option comprises the entire agreement of the parties and supersedes all prior written or oral agreements, representations, warranties, negotiations, or understandings. This Lease/Option may not be amended except in a writing executed by all the parties hereto. The parties further represent and warrant that they have not relied on any representations, warranties or statements as an inducement to entering this Lease/Option other than what is expressly written herein. This Lease/Option shall be binding upon the parties, their heirs, executors, administrators, personal representatives, successors, or assigns.

4) SPECIAL PROVISIONS:
The Landlord/Seller will complete the following by write or this Lease/Option will become null and void and all monies paid by Tenant/Buyer will be immediately refunded by Landlord/Seller or at Tenant/Buyer's option. Tenant/Buyer may accept the Lease/Option and completed the items listed below, and the cost of same will be covered as provided for in paragraph 12.
Buyer. This cost will be done by the
the in which case

will reimburse Tenant/Buyer to cost of the search. If the title is unmarketable the Tenant/Buyer will then have the option to void this agreement or proceed as agreed herewith.

OPTION PURCHASE TERMS

(15) **PRICE AND TERMS:** The Tenant/Buyer agrees to pay for said Property in the sum of \$ 250,000. The sum for which the Tenant/Buyer is entitled to claim as reimbursement or offset in accordance with this Lease/Option shall be paid in cash, certified check, or cashier's check at closing.

(16) **INCLUDED IN THIS PURCHASE:** The Property shall also include all lands, rights, with all improvements thereon, appurtenant rights, privileges, easements, buildings, fixtures, heating, electrical, plumbing, air conditioning, fixtures, facilities, window shades, venetian blinds, awnings, curtains and screens, storm windows and doors, affixed masonry wall-in-wall cupboards, built-in kitchen appliances, bathroom fixtures, radio and television acrials, landscaping and shrubbery, water softeners, garage door openers and operating devices, and all utility or storage buildings or sheds, range and refrigerator. The Property shall also include the following items:

(17) **TITLE:** The Landlord/Seller shall convey marketable title to the Property with the above described inclusions, by General Warranty Deed free, clear, and unencumbered except existing mortgages, restrictions and encumbrances of record shown in paragraph 16.

(18) **CLOSING:** The Deed shall be delivered and the purchase money shall be paid at a time and place of Tenant/Buyer's choice, no later than 60 days after execution to the Landlord/Seller of the Tenant/Buyer's exercise of the option.

(19) **COST AND PROVISIONS:** The following items shall be provided the Landlord/Seller and the Tenant/Buyer as of date of closing: (a) All Real estate taxes and assessments; (b) Interest on encumbrances assumed or taken over by Tenant/Buyer with both parties having responsibility for such items as follow:

Landlord/Seller will pay _____ Tenant/Buyer will pay _____
100% interest on _____

(20) **INSURANCE:** While this Lease/Option is in effect, the Landlord/Seller shall maintain fire and extended coverage upon the Property, and immediately convert the owner occupied (if applicable) policy to a non-owner occupied policy. In the event of the entire or partial loss, damage or destruction of the Property, the Tenant/Buyer may at its Option (a) proceed with the closing and accept the insurance proceeds for said damage. Or (b) declare this Lease/Option null and void, releasing both parties from all obligations hereunder, except for the claim or reimbursable expenses previously paid by the Tenant/Buyer, which amounts shall be responsible for obtaining fire and extended coverage insurance on the Property effective on the closing date.

(21) **LEGAL:** In the event that any legal proceeding is brought to enforce any right or obligation under this Lease/Option, the parties each agree to waive their right to a jury trial. In addition, the prevailing party shall recover its reasonable court cost and attorney fees from the non-prevailing party.

IN WITNESS WHEREOF, the parties hereto have set their hands to this Lease/Option on 25 day of AUGUST, 2020

WITNESS

[Signature]
Landlord/Seller

[Signature]
Buyer/Tenant
Walter Flor

MARCELO VARGAS TRINIDAD
NOTARY PUBLIC

EXHIBIT "B"

DERIVATION - This being the identical property conveyed unto the Grantors herein by Deed of Aaron C. Wurdemann And Heather J. Wurdemann dated June 12th, 2001 and recorded in the office of the RMC for York County in Record Book 03673 at Page 00061

GRANTEE'S ADDRESS: 858 N Cherry Road, Rock Hill, SC 29733

TMS: 690-00-00-015

This conveyance is made subject to current assessments, reservations in patents and all easements, rights of way, encumbrances, liens, conventants, conditions, restrictions, obligations, and liabilities as may appear of record, on the recorded plat(s), or on the premises. The Grantor warrants the title against all persons whomsoever

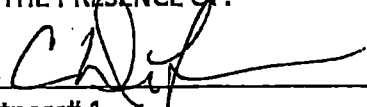
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anyway incident or appertaining.

AND GRANTOR DOES hereby promise, for themselves and Grantor's heirs, executors, administrators, successors, assigns, and representatives, to warrant and forever defend the above premises unto the Grantee, Grantee's heirs and assigns, against the Grantor and Grantor's heirs, successors, assigns, and representatives and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.


TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his / her heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned has executed this deed, this 1st, day of July , 2020

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:




Witness# 1

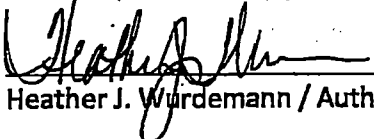


Notary





Aaron C. Wurdemann / Authorized Signor



Heather J. Wurdemann / Authorized Signor

STATE OF SOUTH CAROLINA

)

Probate

COUNTY OF YORK

)

Personally appeared before me the undersigned Vashti M Encarnacion made oath that he / she saw the above-named Grantor sign, seal and as Grantor's act and deed, deliver the within Deed for the uses and purposes therein mentioned, and that he/she with the other witness whose signature appears above witnessed the execution thereof.

SWORN BEFORE ME THIS 1st, DAY OF July, 2020

Vashti M. Encarnacion
Notary Public, State of South Carolina



March 31, 2025
My commissions Expires:

[Signature]
Witness

[Signature]
Aaron C. Wurdemann / Authorized Signor

[Signature]
Heather J. Wurdemann / Authorized Signor

ELECTRONICALLY FILED - 2022 Jun 17 3:07 PM - YORK - COMMON PLEAS - CASE#2019CP4604302

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2019-CP-46-04302

U.S. Bank National Association, as Trustee)
For Securitized Asset Backed Receivables)
LLC Trust 2006-NC1, Mortgage Pass-)
Through Certificates, Series 2006-NC1,)
)
Plaintiff,)

**NOTICE OF MOTION AND MOTION
TO RECONSIDER ORDER
TO DISBURSE SURPLUS FUNDS**

v.)

Aaron C. Wurdemann and Heather J.)
Wurdemann,)
)
Defendants.)

TO: THE HONORABLE TEASA K. WEAVER, MASTER IN EQUITY FOR YORK COUNTY, AND DEFENDANTS, AARON C. WURDEMANN AND HEATHER J. WURDEMANN:

YOU WILL PLEASE TAKE NOTICE that Maritza Flores Alvarado, by and through her undersigned attorney, will move before the Honorable Teasa K. Weaver, Master in Equity for York County, at such time as is convenient to the Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider said Judge’s Order to Disburse Surplus Funds, which was filed in the Office of the Clerk of Court for York County on November 15, 2022, and to address the following points:

1. The Judge erred in concluding that the Defendants did not assign their rights in the subject real property to Robinhood Investments, LLC.
2. The Judge erred in failing to conclude that the Defendants voluntarily transferred the subject real property by deed, which was recorded, and that, therefore, in equity, they conveyed-away any and all of their interests in the property.
3. The Judge erred in failing to conclude that the recording of said deed constituted

constructive notice to all parties interested in the subject real property that the Defendants had relinquished their ownership interest in the property.

4. The Judge erred in concluding that Claimant, Maritza Flores Alvarado, should be charged with constructive notice of the foreclosure proceeding when the Defendants, who were named as parties in the foreclosure proceeding, were absolved of their actual knowledge of said proceeding, which continued for 18+ months after they conveyed their interest in the property to Robinhood Investments, LLC.

5. The Judge erred in concluding that the Defendants received no consideration for the transfer by deed of the subject real property when she previously found that Dennis Lepka, an agent for the Grantee, Robinhood Investments, LLC, assured (promised) the Defendants that the property would be sold and the foreclosure sale would be avoided.

6. The Judge erred in failing to conclude that the Defendants' stated expectation was to receive "up to \$10,000.00" upon the sale of the subject real property by Robinhood Investments, LLC and that a receipt of \$50,539.05 would be an unexpected and undeserved windfall to the Defendants.

7. The Judge erred in failing to conclude that the Defendants' deed to Robinhood Investments, LLC, which was regular and valid on its face, raised a presumption of validity.

8. The Judge erred in failing to conclude that the Defendants, the parties attacking the validity of a deed, had the burden to prove that their deed to Robinhood Investments, LLC was not valid and enforceable and that the Defendants failed to satisfy such burden of proof.

9. The Judge erred in failing to conclude that the Defendants' deed to Robinhood Investments, LLC was, according to the deed, drawn by the Defendants, against whom ambiguities and any claim of illegitimacy should be construed.

10. The Judge erred in accepting the Defendants' explanation of their agreement with Robinhood Investments, LLC when the Defendants alleged that there was an executed, written agreement between the said parties, which the Defendants failed to produce even after being given additional time after the hearing to produce such agreement.

11. The Judge erred in failing to conclude that, in light of the failure of the Defendants, without an excuse, to produce the written agreement, such agreement would be presumed to be adverse to the Defendants' testimony.

12. The Judge erred in failing to conclude that the Defendants failed to exercise due diligence (including monitoring the actions of Robinhood Investments, LLC in marketing the subject real property) after July 30, 2020 (the recording date of the deed), when the Defendants' residence was a mere 3.1 miles away from the subject real property, especially when the Defendants were aware that their mortgage was still in foreclosure.

13. The Judge erred in failing to conclude that the subject real property, which was rented to Maritza Flores Alvarado on or about August 27, 2020, and was occupied by her family as their residence (until August 2022), would, at all relevant times, reflect or reveal that the property was not being marketed for sale.

14. The Judge erred in failing to conclude that the Defendants simply did nothing to protect their expectations with regard to the subject real property, assuming that they had any expectations, for a period of 18+ months.

15. The Judge erred in failing to conclude that the Defendants' limited expectation (up to \$10,000.00, as testified by the Defendants) would not justify a higher recovery when the sole person to file a legitimate Claim (Maritza Flores Alvarado) is out-of-pocket over \$45,000.00 paid to Robinhood Investments, LLC, the record owner of the property by virtue of a deed voluntarily

granted by the Defendants, as a consequence of being defrauded by Robinhood Investments, LLC.

16. The Judge erred in failing to conclude that the Defendants failed to file a timely Claim for the surplus funds and in concluding that her staff gave legal advice to the Defendants that they were not required to file a formal Claim, which advice was improper.

17. The Judge erred in effectively concluding that the Defendants did not need to file a Claim when Rule 71(c), SCRCP, provides, in relevant part, “[i]f a claim is not filed within the said forty-five (45) day period, the same shall be considered abandoned and waived as to such surplus. . . [and] [i]n the event no claims are filed against the surplus funds, the fund shall be paid over to the mortgagor or lienor entitled to the fund.” (emphasis added)

s/Leonard R. Jordan, Jr.

Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com

Columbia, South Carolina
November 23, 2022

Attorney for Maritza Flores Alvarado

RECEIVED

Mar 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Master in Equity

Case No. 2019-CP-46-04302

U.S. Bank National Association, as Trustee For Securitized Asset Backed Receivables LLC Trust
2006-NC1, Mortgage Pass-Through Certificates, Series 2006-NC1, Plaintiff.

Maritza Flores Alvarado, Appellant,


v.

Aaron C. Wurdemann and Heather J. Wurdemann, Respondents.

NOTICE OF APPEAL

Appellant, Maritza Flores Alvarado, appeals the Order to Disburse Funds, filed on November 15, 2022, and the Order Denying Motion to Reconsider, filed on March 2, 2023. Copies of the said Orders along with Motion to Reconsider Order to Disburse Surplus Funds, filed on November 23, 2022, are attached hereto.

March 8, 2023



Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Appellant

RECEIVED

Mar 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Master in Equity

Case No. 2019-CP-46-04302

U.S. Bank National Association, as Trustee For Securitized Asset Backed Receivables LLC Trust
2006-NC1, Mortgage Pass-Through Certificates, Series 2006-NC1, Plaintiff.

Maritza Flores Alvarado, Appellant,

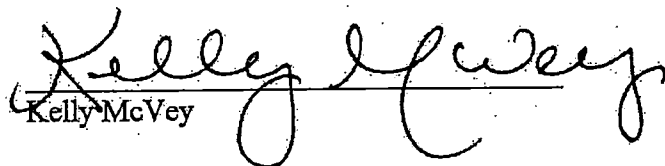
v.

Aaron C. Wurdemann and Heather J. Wurdemann, Respondents.

CERTIFICATE OF MAILING

I, Kelly McVey, of Jordan Law Firm, attorney for Appellant, Maritza Flores Alvarado,
hereby certify that I have, this 8th day of March, 2023, served the Notice of Appeal upon
Respondents by mailing a copy thereof to them at the address indicated below:

Mr. Aaron C. Wurdemann
Mrs. Heather J. Wurdemann
972 Glasscock Road
Rock Hill, SC 29730


Kelly McVey

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF YORK) 2019-CP-46-04302

U.S. Bank National Association)
as Trustee For Securitized)
Asset Backed Receivables LLC)
Trust 2006-NC1, Mortgage Pass-)
Through Certificates, Series)
2006-NC1,)

Plaintiff,)

v.)

Aaron C. Wurdemann and Heather)
J. Wurdemann,)

Defendants.)

TRANSCRIPT OF RECORDED HEARING



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com

APPEARANCES

Leonard R. Jordan, Jr., Esquire
Jordan Law Firm, LLC
211 Veterans Road, Suite D
Columbia, South Carolina 29209
Attorney for Ms. Alvardo

ALSO PRESENT:

Walter Keith Martens, Esquire
Mr. Aaron Wurdemann
Mrs. Heather Wurdemann

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CALL TO ORDER:

1
2 **THE COURT:** Okay. This is case number 2019-CP-46-
3 4302, U.S. Bank versus Aaron and Heather
4 Wurdemann. This is a hearing regarding surplus
5 funds in the amount of \$50,539.05. Judgement
6 was entered in this foreclosure case on
7 February 28th, 2020, and the property sold
8 thereafter on April 4th of 2022. After notice
9 of surplus funds had been sent, there were a
10 couple of claims. There were a couple of
11 claims made or filed. One claim was filed on
12 behalf Robinhood Investments, LLC. I don't see
13 anyone here on behalf of Robinhood Investments.
14 Anyone here on behalf of Robinhood Investments?
15 A claim was also filed by Ms. -- and if I get
16 this wrong, Maritza Alvarado, on behalf -- and
17 Mr. Leonard Jordan is here on her behalf,
18 representing her today. Also present today is
19 Aaron and Heather Wurdemann. And, Mr. Jordan,
20 you may precede.

CLAIMANT'S POSITION:

21
22 **MR. JORDAN:** Thank you, Your Honor. I have Ms.
23 Alvarado here with me today. And she doesn't
24 speak English. Maybe a few words but that's
25 about it. But I think -- I think I have been



1 able to communicate with her this -- this
2 afternoon with a very impressive telephone app,
3 or cell phone app that translates things
4 remarkably. But in any event, as you
5 mentioned, Judge, there are two claims filed.
6 One by Rainbow [sic] Investments, LLC and one
7 by my client. No claim, that I'm aware of has
8 been filed by the Wurdemanns who are here
9 today.

10 **THE COURT:** Well, I'll note for the record that we
11 instructed the Wurdemanns that they did not
12 need to file a claim as mortgagors, from the
13 way that I read the rule, if there are lien
14 holders that are claiming ---

15 **MR. JORDAN:** Right, right.

16 **THE COURT:** -- that the filing is important and
17 priority is important in that respect but the
18 mortgagor does not have to file a claim.

19 **MR. JORDAN:** But, Judge ---

20 **THE COURT:** At least according to my reading of the
21 rule. But I just wanted to make that clear for
22 the record.

23 **MR. JORDAN:** They -- they were, as I understand it,
24 the original mortgagors on the loan that was
25 foreclosed. But then, as indicated on the



1 attachment to the Robinhood Investments claim,
2 the Wurdemanns deeded their interest in this
3 property, which is 2.62 acres in Catawba
4 Township, they deeded this property to Rainbow
5 [sic] -- or excuse me, not rainbow -- Robinhood
6 Investments, LLC on July 1st, 2020, okay? And
7 I'll -- I'll hand up a copy of the deed so you
8 won't have to piddle through the claim, but
9 that was -- that was part of the claim by ---

10 **THE COURT:** Hold on one minute, Mr. Jordan. Do you
11 wish to see the deed or do you ---

12 **MRS. WURDEMANN:** Please, because we had a whole
13 fiasco with Robinhood ---

14 **MR. WURDEMANN:** With Robinhood Investments.

15 **MRS. WURDEMANN:** --- Investments.

16 **MR. WURDEMANN:** And not living up to what he says
17 he's gonna do.

18 **MRS. WURDEMANN:** His end, yeah.

19 **MR. JORDAN:** Do you have an objection to this being
20 put into evidence?

21 **MR. WURDEMANN:** No, that's -- I mean, I do -- I
22 mean, that's something that -- he didn't live
23 up to any of the agreement that we made.

24 **THE COURT:** And I -- I want to get to that with both
25 of you, but no objection to ---



1 MR. WURDEMANN: No 'cause ---

2 THE COURT: --- me accepting this into evidence for
3 this hearing?

4 MR. WURDEMANN: No, that's fine.

5 THE COURT: Entered without objection.

6 (Defendant's Exhibit Number 1 was entered into the
7 record.)

8 MR. JORDAN: Next, Your Honor, we have a contract.
9 It's a lease agreement with option to purchase
10 real estate that was executed by Robinhood
11 Investments, LLC and my client on August the
12 27th, of 2020, which was approximately two
13 months after that deed was issued. And I'll
14 show that to the Wurdemanns.

15 MR. WURDEMANN: I have no clue ---

16 MRS. WURDEMANN: We don't know anything about that.

17 MR. JORDAN: Okay. Well this was the contract with
18 my client that was -- was negotiated by Mr. --
19 by the principal, a fellow named Dennis S.
20 Lepka on behalf of Robinhood Investments, LLC.

21 THE COURT: And no objection, Mr. Wurdemann?

22 MRS. WURDEMANN: We've not seen it so, no.

23 MR. WURDEMANN: Yeah, we haven't seen any of that.

24 THE COURT: No objection. So it's Defendant's 2
25 entered without objection.



1 (Defendant's Exhibit Number 2 was entered into the
2 record.)

3 MR. JORDAN: Thank you, Your Honor. Now, the
4 important thing in that particular document is
5 that, of course, the foreclosure had been
6 pending for a good while when this had been --
7 when this was filed. And I'm sure everybody,
8 including the Wurdemanns knew that this -- when
9 they transferred the title that this
10 foreclosure was pending out there and that it
11 would ultimately have to be dealt with. And
12 the purchaser, Robinhood, LLC, was, I think,
13 charged -- this would be the understanding I
14 would have from their deed, that he was charged
15 with the obligation of retiring that particular
16 mortgage that was being foreclosed. But not
17 withstanding whatever obligation he had, the
18 mortgage loan itself went to foreclosure, got
19 a judgement of foreclosure issued and
20 ultimately the property was sold in April of
21 2022. The -- in the mean time though, my
22 client took possession of the -- of the house
23 as a tenant with an option, that was that
24 agreement we just offered into evidence. So
25 she was occupying the property, not only paying



1 rent, which is a minor part of the whole
2 scenario, but she paid a total of \$45,000
3 dollars to Robinhood Investments in cash as an
4 option fee to purchase this property down the
5 road. They had an option to purchase the
6 property for a purchase price of \$150,000
7 dollars, as stated in that agreement. And the
8 agreement did not -- did not specify a time
9 frame other than the same time frame that the
10 lease ran, which was for five years. So when
11 the property was sold at the foreclosure sale,
12 that option obviously was discharged along with
13 any other liens that were affecting the
14 property at that stage. So my client, Ms.
15 Alvarado, she has basically been defrauded out
16 of \$45,000 dollars, and in addition, she's paid
17 for a period of time from approximately
18 November of 2020 until before the foreclosure
19 sale, approximately 17 months, she's paid
20 \$1,200 dollars in rent also on the belief that
21 she would ultimately buy this property based on
22 that option. So again, out of pocket for
23 \$45,000 dollars. Also out of pocket rent
24 totaling over \$20,000 dollars that she paid in
25 a house that she would not otherwise have



1 rented because the incentive was that you could
2 buy it for a very attractive price. The price
3 \$150,000. You compare that to what -- what the
4 purchase price was at the -- at the sale and I
5 think that figure was \$173,000 dollars. So the
6 claim of Ms. Alvarado is that she stands in the
7 shoes of Robinhood, Robinhood Investments, LLC,
8 which was the fee simple owner of this property
9 immediately prior to the foreclosure sale. He
10 owned -- it owned the property from July 1 of
11 2020 until the sale. And he filed a claim as
12 owner, he wanted the surplus funds. Now I have
13 spoken to his lawyer, lawyer's name is Shawn
14 French and he called me a week or so ago and
15 indicated that they were withdrawing their
16 claim but that hasn't happened yet. But he's
17 not here so, I would take from that that
18 they're not prosecuting their claim. But --
19 but in any event, my client is in the -- is in
20 the position -- the same position that
21 Robinhood Investments would be in because they
22 -- they ultimately were under contract to
23 purchase this property and they paid \$45,000
24 dollars in cash to Robinhood Investments. And,
25 of course, they have no means that I'm aware



1 of, to get that money back. And so we're
2 seeking the Court's assistance through the
3 surplus funds to pay them back the \$45,000
4 dollars plus a small portion of the rent that
5 they paid. So that's -- that's this Claimant's
6 case.

7 **THE COURT:** Now, Mr. Jordan, the Rule 71 states that
8 -- let me find it, I just want to make sure --
9 that any party to the action or any person who
10 had a lien on the mortgage premises at the time
11 of sale may file a claim of entitlement.
12 Neither Robinhood nor your client were a party
13 to the action, so how were they a person who
14 had a lien on the mortgage premises.

15 **MR. JORDAN:** Well, let me say for -- for as far as
16 Robinhood is concerned, they would have been a
17 party if the Plaintiff's attorney had basically
18 been more diligent to see who -- who owned the
19 property. They got a judgment issued back in
20 2021 I think it was, and then just sat on it.
21 And the sale was effectively about 18 months
22 later.

23 **THE COURT:** Well the judgment was issued before the
24 property was transferred by the Wurdemanns so
25 I don't ...



1 MR. JORDAN: Well, I mean, again ---

2 THE COURT: Robinhood wasn't a necessary party at
3 that time.

4 MR. JORDAN: You know, they -- the Wurdemanns had
5 deeded their interest to, you know, to the
6 property. So whatever interest they might have
7 had, they were named parties. Whatever
8 interest in the property, it wasn't a lien, it
9 wasn't, you know, they were the fee simple
10 owners when the foreclosure suit started. They
11 were the fee simple owners when -- when they
12 issued a deed to Robinhood. So Robinhood's
13 standing in their shoes. We're standing in
14 Robinhood's shoes. So that's where we are
15 there. And of course, you know, we're not a
16 lien holder but we had a -- an encumbrance on
17 this property that was absolutely tied to the
18 property. It's not that -- not like a gen- --
19 like a general judgment lien or something like
20 that. This was specifically tied to this
21 property. So, you know, again, you know, if
22 anybody's entitled to the -- to the benefit of
23 the surplus funds, it would be my client, who
24 has put down \$45,000 against this property to
25 buy it under the contract.



1 DEFENDANTS' POSITION:

2 **THE COURT:** Mr. Aaron or Heather Wurdemann, I'd like
3 to hear from both of you, but which one would
4 like to go first?

5 **MRS. WURDEMANN:** I'll go first.

6 **THE COURT:** Okay. If you could please raise your
7 right hand. Do you swear or affirm that the
8 testimony you give today will be the truth, the
9 whole truth, and nothing but the truth, so help
10 you God?

11 **MRS. WURDEMANN:** Yes, ma'am.

12 MRS. WURDEMANN - TESTIMONY:

13 **MRS. WURDEMANN:** When Dennis Lepka -- Lepka
14 contacted us in the beginning he just showed up
15 at our house and he said that, you know, he was
16 interested about the property that we had at
17 211 Leisure Lane. And we told him -- because
18 my grandparents had that house, that's how we
19 acquired it. John Paul Jack (ph) was my
20 grandfather. So my grandmother sold it to us
21 in 2000 I believe, or 2001. She moved in with
22 my parents and we had the house for quite a
23 while. After I had my son and after everything
24 started going on with Covid, we just couldn't
25 afford to make the payments because we had re-



1 -- what is it called?

2 **THE COURT:** Well just talk to me and I'll let Mr.
3 Wurdemann ---

4 **MRS. WURDEMANM:** Okay, I couldn't -- refi-ed it. We
5 refinanced the house because we needed a new
6 air condition unit and we needed some new
7 roofing and stuff done on the house. So when
8 our payments went up and everything happened,
9 we couldn't afford to pay the payments. So we
10 initially had people renting it from us that
11 were friends of the family. And they upheld
12 their end for a while. And then we had a
13 couple of more friends that rented it and they
14 started falling behind on the payments as well.
15 Well when Dennis approached us about it, he
16 said, hey, we can help you get out of this
17 house, I have a lot of investment buyers.
18 They're looking for property in the Carolinas.
19 And he went in the whole spill about, you're
20 close to the Charlotte Metro area, it won't be
21 a problem to get rid of the house. So that's
22 what we did. We went off of his -- his saying
23 that, you know, if you give me the chance, the
24 house will be without -- out of your name
25 within six months.



1 THE COURT: Did you know Mr. Lepka before this?

2 MRS. WURDEMANN: No, we did not.

3 THE COURT: He approached you?

4 MRS. WURDEMANN: He come to our house, yes.

5 THE COURT: Okay.

6 MRS. WURDEMANN: Because he said he had did a record
7 search.

8 THE COURT: And you didn't live -- you didn't live
9 at the subject property?

10 MRS. WURDEMANN: No, ma'am.

11 THE COURT: This was just a rental property at the
12 time for you?

13 MRS. WURDEMANN: Yes, ma'am.

14 THE COURT: Okay.

15 MRS. WURDEMANN: And he never followed through on
16 anything. We would call him, we would leave
17 messages. Everything that we tried to get in
18 touch with him through, he was ignoring us.
19 When he did finally call -- and it was a couple
20 of months later, he said that he had somebody
21 over there that was working on the house, they
22 were inside working on the house, they were
23 gonna sell it. That he had an interested
24 buyer. He said ---

25 THE COURT: This -- was this before or after you



1 transferred the property?

2 **MRS. WURDEMANN:** This was ---

3 **THE COURT:** Before or after the deed?

4 **MRS. WURDEMANN:** --- before.

5 **THE COURT:** Okay. This was right before. I believe
6 it was right before because he said that he was
7 looking for people that would come in because
8 I told him, you know, we were up front, it
9 needs some work done. And he said, well, we're
10 not -- you know, that's something we can take
11 care of. But we never heard anything else from
12 him. So my -- the land that is beside the
13 parcel that that house is on, my -- it was in
14 my mother's name and she deeded it to my
15 daughter. When my daughter and son -- or son-
16 in-law went over there to -- to look at the
17 land, because they were questioning putting a
18 double wide on it, the gentleman who was
19 staying in the house walked outside and was
20 like, you know, what are you doing on my land
21 or whatever. And he said he didn't speak
22 really good English. And he told him, he said,
23 you know, my mother-in-law just deeded this
24 over to us and it's that actual parcel that has
25 a barn on it because we had purchased, or built



1 the barn for our little girl because she was in
2 to horseback riding. So that's -- we thought
3 that it was just people over there that were
4 actually working on the house, on the inside of
5 the house. We didn't know that anyone was
6 actually living there.

7 **THE COURT:** And this was prior to you ---

8 **MR. WURDEMANM:** No, this was after.

9 **MRS. WURDEMANM:** No, this was after that because he
10 ---

11 **THE COURT:** After that.

12 **MRS. WURDEMANM:** And he told us, he said, I'm gonna
13 get rid of it, you know, this is the easiest
14 way to do it.

15 **THE COURT:** Well, tell me about what happened at the
16 time you transferred the property, this deed.
17 Tell me about that. Let Ms. Wurdemann tell me
18 first.

19 **MRS. WURDEMANM:** He basically just said this is the
20 best way for us to do it. If you go ahead and
21 -- if you go ahead and transfer this to me,
22 then I can take it to my investors and tell
23 them what's going on and there won't be a lot
24 of processed paperwork that goes with it. So
25 we, not really knowing anything other than



1 that, I mean, that's what we -- we took him at
2 his advice because he had five or six people
3 that come over with him. Different people at
4 different times.

5 **THE COURT:** Okay. And how did he explain this
6 transaction would -- would happen?

7 **MRS. WURDEMANM:** That he would -- we would fill out
8 the information and that he would turn it in.
9 And that way that Robinhood Invest- --
10 Investments, because that's who he -- his
11 business, he could get the investors that were
12 working directly with him to take on the
13 property and move it quicker.

14 **MR. WURDEMANM:** He was gonna get in touch with the
15 bank and pay off the mortgage.

16 **MRS. WURDEMANM:** Yeah, well, he said that, yeah.
17 But that never happened either. That he ---

18 **THE COURT:** What ---

19 **MRS. WURDEMANM:** --- was supposed to ---

20 **THE COURT:** What was your understanding of what --
21 because according to the deed, you transferred
22 the deed for no -- for no consideration.

23 **MRS. WURDEMANM:** That's not how he explained any of
24 it ---

25 **THE COURT:** Okay. What was your understanding ---



1 MRS. WURDEMANN: --- to us.

2 THE COURT: --- of what -- what your agreement was?

3 MRS. WURDEMANN: That he was going to -- that that
4 would help us get rid of the property sooner
5 because we didn't want the foreclosure on our
6 name.

7 THE COURT: Did you discuss any amount of money,
8 what it would sell for?

9 MRS. WURDEMANN: He said that he thought that he
10 could get 95 for it because of the amount of
11 work that he was gonna have to put into it.

12 MR. WURDEMANN: On top of what was owed.

13 MRS. WURDEMANN: Yeah, on top of what was already
14 owed. And then he said that would even be me
15 taking a cut on it because of the amount that's
16 owed with past due balances for late payments.

17 THE COURT: So, just so I make sure I understand, so
18 Mr. Lepka approached you both, you did not know
19 him pre- -- prior to this. Did he know that
20 the property was in foreclosure?

21 MRS. WURDEMANN: He had to pull it up somewhere
22 because he told us that he got, I guess through
23 the courthouse -- I don't know how he got it.
24 He just said that he noticed that our property
25 was in pre-foreclosure.



1 **THE COURT:** And Mr. Lepka, when he approached you
2 with this deal, he basically said deed the
3 property to Robinhood Investments, then I have
4 investors or buyers that I will sell it to and
5 take a cut of the purchase price?

6 **MRS. WURDEMANM:** Uh-huh.

7 **THE COURT:** And that he anticipated getting at least
8 \$95,000 dollars for your property?

9 **MRS. WURDEMANM:** He anticipated getting at least
10 95,000. And he told us, he said, I will lose
11 money on this because of the amount of money --
12 -

13 **MR. WURDEMANM:** (Inaudible) paying off the mortgage
14 too. The whole deal was (inaudible).

15 **MRS. WURDEMANM:** Yeah.

16 **THE COURT:** Mr. Wurdemann, I'll -- you'll get an
17 opportunity to add anything. So, Mrs.
18 Wurdemann, what happened -- okay -- so what
19 happened after you deeded the property to
20 Robinhood Investments?

21 **MRS. WURDEMANM:** Nothing.

22 **THE COURT:** Okay. Did you speak to Mr. Lepka after
23 that?

24 **MRS. WURDEMANM:** We tried several times to speak to
25 Mr. Lepka and he would not ever return our



1 calls. Now he would send us bible verses via
2 text but he would never return our calls. And
3 we actually had another group that come and
4 tried to get the house and we told them what --
5 you know, what was going on and they just told
6 us that they knew exactly who Robinhood
7 Investments were.

8 **THE COURT:** What group was that?

9 **MRS. WURDEMANM:** I can't remember the name of --
10 they were out of Charlotte. But we kind of
11 wrote them off because I told them, I said,
12 after what we've been through, I don't trust
13 anybody.

14 **THE COURT:** So other than bible verses, nothing from
15 Mr. Lepka? Not regarding the property?

16 **MRS. WURDEMANM:** No, just that he was gonna get in
17 touch. Initially it was he was gonna get in
18 touch with the bank, he was gonna see if he
19 could get the late payment fees waived because
20 his investors were ready to move on it. And
21 then we heard nothing else.

22 **THE COURT:** Mr. Jordan, any questions you would like
23 to add?

24 **MR. JORDAN:** Just a couple.

25 **MRS. WURDEMANM - CROSS EXAMINATION BY MR. JORDAN:**



- 1 Q: How -- how much was the balance on the mortgage
2 when you signed the deed over?
- 3 A: I'm not sure. I don't remember.
- 4 Q: But you did know and you had been served with
5 a foreclosure sale that was pending?
- 6 A: We had it pending, yes. And that's -- when we
7 first started getting the pending letters,
8 that's when Mr. Lepka showed up.
- 9 Q: Okay. And what -- what do you think the value
10 of your property was?
- 11 A: Probably -- I would say -- land value was
12 probably at least 120, because the house is an
13 older house and that's being honest. It is an
14 old house that's been built on to room by room.
- 15 Q: So you're saying that the value of the
16 property, including the old house was 120?
- 17 A: No, the land property was probably 120.
- 18 Q: But what -- what's the whole property with the
19 house included?
- 20 A: If it were to be sold now, probably 200 in
21 today's market.
- 22 Q: And are you aware that the foreclosure action
23 that was pending on this property ultimately
24 went to judgment on September the 14th 2021?
25 You've got a copy of the judgment decree I'm



1 sure.

2 A: I don't know if we do or not. Because I don't
3 think that was the first time -- that was when
4 Robinhood said that they were taking care of
5 all that. Not to worry about ---

6 **MR. WURDEMANM:** Bring this question back up when I
7 get to talk.

8 Q: Okay. All right. Well were you aware then, in
9 September of 2021 that the amount that it would
10 take to pay off that mortgage was over \$125,000
11 dollars?

12 A: Because of the late fees, yes.

13 Q: And attorney's fees and other things. And
14 based on that, did you have any idea that this
15 property somehow could be liquidated by Mr.
16 Lepka and there would be some \$95,000 dollars
17 in your hands, is that what you're saying?

18 A: No, that's -- that's not what I said. What I
19 said was, he thought he could sell the house as
20 it was for 95,000.

21 Q: And how much of that would be your return?

22 A: None.

23 Q: Okay.

24 A: He was supposed to get the house out of our
25 name so it did not go into foreclosure and ruin



1 our credit.

2 Q: So the only thing you were looking for out of
3 this deal with Mr. Lepka was to save your
4 credit?

5 **MR. WURDEMANN:** And money -- we were supposed to get
6 something on the back end.

7 A: And -- yeah, and money when he sold it on the
8 back end. That we were supposed to get some
9 money on the back end of it.

10 Q: Okay. Well that seems to be contradictory to
11 what you just said. I mean, where -- where do
12 you -- was it a deal with Mr. Lepka, which is
13 nowhere in writing that I've seen, was that
14 somehow you were going to get a backdoor type
15 payment?

16 A: He said that he could probably give us \$10,000
17 dollars because of us having to go without so
18 long with it affecting our credit and the late
19 fees.

20 Q: Okay. Now ---

21 A: And he also offered to give us one of his
22 friend's numbers that could help our credit.

23 Q: And between July of 2020 and September of 2021,
24 when the judgment was entered, what kind of
25 communications did you have with the mortgage



1 company?

2 A: Several. He did.

3 Q: Okay. Did you try to bring the account current
4 to avoid the foreclosure sale?

5 A: Well, there was no way we could bring the
6 account current to avoid the foreclosure sale.
7 If we would have had that money, this wouldn't
8 even be a question right now. I didn't want to
9 lose the house. It was my grandparent's house.
10 My grandfather built three rooms onto that
11 house himself, with the money that he had when
12 he worked at Bowater.

13 Q: But you did ---

14 A: It's not just the house, it's land.

15 Q: You did voluntarily sign the deed over to R- --
16 to Robinhood Investments, whereby a
17 consideration was recited for the sale of five
18 dollars?

19 A: No. We never sold the house for five dollars.

20 Q: That -- that's what the deed says. You want to
21 look at it again?

22 A: I don't even see five dollars on here.

23 Q: I think the first paragraph. Excuse me.

24 A: No, huh-uh -- yes. Our signature is on it.

25 Q: Does the deed say that or doesn't it say that?



1 A: Yes, sir, it does.

2 Q: Okay.

3 A: But what I'm telling you is, everything that's
4 been done by Robinhood Investments has not been
5 honest and I feel bad for them. I thought they
6 were there working. He never told us that they
7 were living there. So believe what you may,
8 but I did not sell this property for five
9 dollars, because that would have been a slap in
10 my grandparents' face.

11 Q: All right. Based on your previous testimony
12 then, it's your position that you sold it for
13 \$10,000?

14 A: If we could have got \$10,000 out of it, you're
15 right. I would have.

16 Q: Okay. But you have nothing in writing to show
17 that that was the understanding ---

18 A: We have a contract somewhere with Mr. -- that
19 we signed with Mr. Lepka. But it's -- I would
20 have to look for it. If you wanted to go
21 through and give us a chance to find it and
22 bring it back.

23 Q: I have no further questions.

24 **THE COURT:** Thank you, Mrs. Wurdemann. Mr.
25 Wurdemann, can you raise your right hand? Do



1 you swear or affirm to tell the truth, the
2 whole truth, and nothing but the truth, so help
3 you God?

4 **MR. WURDEMANM:** Yes, Your Honor.

5 **THE COURT:** Okay. Anything you'd like to add to
6 Mrs. Wurdemann's testimony?

7 **MR. WURDEMANM - TESTIMONY:**

8 **MR. WURDEMANM:** Okay. So when Dennis come along and
9 to me, I'm -- when he come over it was we were
10 gonna work a -- he said he could help us get
11 out of it, keep us out of foreclosure, all
12 right? So he was supposed to go to the bank.
13 He was gonna pay all the arrears on the bank
14 because at the time, \$125,000 dollars. All
15 right. I knew the last it was at \$86,000 where
16 the mortgage should have been. So he was gonna
17 pay that difference, you know. And then, you
18 know, to keep it out of foreclosure and
19 reinstate the loan. Well, none of that
20 happened. You know, and all of that -- all of
21 us agreeing that with him was -- was based on
22 him getting the loan reinstated and nothing --
23 it never did happen. So it did end up going
24 into foreclosure, which it is against our
25 credit now.



1 THE COURT: Anything else?

2 MR. WURDEMANM: Well, I'm sure there -- it'll all
3 come to me.

4 THE COURT: So I just -- I ---

5 MR. WURDEMANM: But no ---

6 THE COURT: I want to make clear ---

7 MR. WURDEMANM: I mean, the (inaudible) home value -
8 -- yeah, that home value is a lot. Yeah, I
9 mean, it's well over the \$125,000 dollars that
10 -- that the bank was wanting. The home value
11 was well over that. With the land and
12 everything. So no, it wasn't we were just
13 trying to give it away for \$10,000 and you
14 know.

15 MRS. WURDEMANM: Our major goal was just to make
16 sure it didn't affect ---

17 THE COURT: Well ---

18 MRS. WURDEMANM: Oh, I'm sorry.

19 MR. WURDEMANM: And that -- and now it has affected
20 our credit, you know. And it's gonna be
21 against us for seven years, you know. And so,
22 I mean, we're just -- and then looking at it,
23 I mean, I hate what happened to, you know, with
24 them. I really do. I had no part of that, you
25 know. But when all of this took place, you



1 know, if -- if the agreement says we entered it
2 in July of 2020, you know, and if he put
3 somebody in the house after that, I can't help
4 what he did. And how he messed -- and how he
5 messed with their purse. You know, he's
6 messing with mine in the process too. I'll
7 find him one day, so.

8 **THE COURT:** And, Mr. Wurdemann, you didn't received

9 ---

10 **MR. WURDEMANM:** I haven't received any ---

11 **THE COURT:** --- any money from Mr. Lepka regarding -

12 --

13 **MR. WURDEMANM:** No.

14 **THE COURT:** --- this lease with option to purchase -

15 --

16 **MR. WURDEMANM:** No.

17 **THE COURT:** --- from Ms. Alvarado? Mrs. Wurde- --
18 and Mrs. Wurdemann, you have not received any
19 money?

20 **MRS. WURDEMANM:** No, ma'am.

21 **THE COURT:** Were you -- you were aware -- were you
22 aware of the lease at the time? Her lease, Ms.
23 Alvarado?

24 **MRS. WURDEMANM:** No, I did not. Like I said, the
25 only reason that we knew they were there was



1 because our -- my daughter, when they went over
2 to look at the house, they said that the
3 gentleman walked outside and he couldn't speak
4 English and was wanting to know why they were
5 on his property. And that's when we put two
6 and two together and realized they weren't
7 really there working. He had them there
8 living.

9 **THE COURT:** When did you become aware? When did you
10 become aware of this lease with option to
11 purchase, Mrs. Wurdemann?

12 **MR. WURDEMANN:** With them?

13 **MRS. WURDEMANN:** I've not seen that until today.

14 **THE COURT:** Okay. How about you Mr. Wurdemann?

15 **MR. WURDEMANN:** That's the first time I've seen it.
16 But then, we -- word of mouth, when my daughter
17 and her boyfriend, or our future son-in-law,
18 when they went over to the property and looked,
19 they talked -- they talked with Ms. Alveres
20 [sic] and they got a comm- -- a translator on
21 the phone. You know, they -- and then he
22 showed them the paperwork, I own this property
23 right here. I think they were under the
24 impression that they were buying that piece of
25 land too. So, I'm like ...



1 THE COURT: Any questions, Mr. Jordan.

2 MR. JORDAN: Yes.

3 MR. WURDEMANN - CROSS EXAMINATION BY MR. JORDAN:

4 Q: When -- when was that conversation where you
5 learned that the -- that Ms. Alvarado was a
6 tenant in the property?

7 A: I'd say maybe two months ago.

8 MRS. WURDEMANN: Yeah. That's when they ---

9 A: So this was after -- after the foreclosure
10 sale.

11 Q: After the sale. Yeah, okay.

12 A: So.

13 Q: All right. Now, you made the comment twice
14 that you weren't responsible for their problem
15 because ---

16 A: No, I didn't put --- I didn't word it that way.

17 MRS. WURDEMANN: No.

18 Q: All right. You tell me how you worded it.

19 A: Well you tell me, back it up. You tell me what
20 you heard. That ain't what I said. I didn't
21 say that ---

22 Q: Well, that's the way I took it.

23 A: That's -- that's the way you took it.

24 Q: It wasn't your fault.

25 A: That's the way you took it.



1 MRS. WURDEMANM: Yeah, because we didn't know ---

2 THE COURT: Mrs. Wurdemann, let ---

3 MRS. WURDEMANM: Oh, I'm sorry.

4 Q: What, you know ---

5 A: That's the way you too it, that doesn't -- I
6 didn't say that that's their problem.

7 Q: What's the position that you're taking?

8 A: The position I'm taking? I didn't have nothing
9 to do with their deal with Dennis. Whatever
10 they done with Robinhood Investments, their
11 business, not my business.

12 Q: But you put Robinhood Investments in the
13 position to do what he did, commit whatever
14 fraud he committed?

15 A: I didn't put him in that position.

16 Q: You signed the deed to him, didn't you?

17 A: You know what, I can sign a piece of paper, but
18 I can not control a man's actions and the way
19 he operates his business.

20 Q: But -- but your deed ---

21 A: So don't blame that on me.

22 Q: --- indicates that you're giving him title.

23 A: Don't even try that.

24 Q: Doesn't that ---

25 A: Don't try to blame me for that because I did



1 not make him do what he did.

2 Q: Oh, I'm sure you didn't ---

3 A: I don't ---

4 Q: I'm sure you were not complicit in the criminal
5 act or fraudulent act that he did. But you put
6 him in a position to do that by giving him the
7 deed, didn't you?

8 A: I did not put him -- you're making it sound
9 like I okayed him to do that. No, I didn't.
10 What me and -- what I signed with Robinhood
11 Investments is between me and him. It has
12 nothing to do with what he does after that. He
13 screwed me in the process too.

14 Q: Well I ---

15 A: So...

16 Q: --- I completely get you on that. Now -- but
17 again, you are voluntarily signing a document,
18 a deed to transfer title to the property, to
19 Robinhood Investments, correct?

20 A: With the mortgage still being in my name.

21 Q: The mortgage is in your name ---

22 A: The mortgage ---

23 Q: --- but the ownership ---

24 A: The mortgage is still ---

25 Q: --- is in Robinhood's name?



1 A: But I'm still responsible for the debt of the
2 mortgage.

3 Q: Right. Okay.

4 A: All right, so -- and he was -- and with our
5 agreement, he was supposed to take care of the
6 mortgage.

7 Q: Well ---

8 A: And that wasn't taken care of.

9 Q: And I feel sure that he misled you up and down
10 but at the end of the day, you put him in a
11 position to effectively act in all respects,
12 like the owner of the property?

13 A: That's your opinion, so.

14 Q: No, how -- how am I wrong in that regard? You
15 put him in a position to act as the owner.
16 That's what the deed did.

17 A: Okay.

18 Q: You transferred title to Robinhood Investment.

19 A: I am not -- I am not a, you know, I'm not a
20 lawyer. And I do not know land laws that way,
21 so.

22 Q: Okay. Now, the deed that you signed was July
23 1st, as I recall, 2020, okay? Between July the
24 1st and September of 2021, when the foreclosure
25 judgment was entered, did you make payments to



1 the mortgage -- to your mortgage?

2 A: During that time?

3 Q: Right.

4 A: No.

5 Q: Okay. You indicated you ---

6 A: Because ---

7 Q: --- contacted him a number of times. What was
8 the purpose of your contacting them?

9 A: Well, I was trying to get it to where we could
10 set up a -- the payment plan.

11 Q: And ---

12 A: And then -- and then with Covid going on,
13 everything was getting pushed on -- pushed back
14 and pushed out.

15 Q: Did you inform them that you had transferred
16 the title to Robinhood Investments?

17 A: Didn't know I was supposed to.

18 Q: Okay. All right. I don't believe I have any
19 other questions, Your Honor.

20 **THE COURT:** Anything further, Ms. Heather Wurdemann?

21 **MRS. WURDEMANM:** No, ma'am. I mean it was -- it's
22 bad all the way around. But, I mean, we didn't
23 know that they -- we were told they were there
24 working and that's what we went off of. We did
25 not know that Dennis had put them in the house



1 as tenants and we certainly didn't know that
2 they were paying rent or had put that amount of
3 money down.

4 **QUESTIONS BY THE COURT:**

5 **THE COURT:** I do have another question for you, Mrs.
6 Wurdemann, and for you, Mr. Wurdemann, after
7 she finishes answering. Your understanding of
8 what Mr. Lepka was supposed to do, was it to
9 sell the property or was -- did he ever discuss
10 with you any lease, tenants, option to
11 purchase?

12 **MRS. WURDEMANM:** No, he said that he was going -- he
13 had investors that would take the property off
14 of our hands. That's what he said, that he
15 could probably get 95 for the house as is. So
16 they would have to have money from the
17 investors to go in to fix the house up so it
18 could actually be sold. So that they -- there
19 really wouldn't be anything that they would be
20 profiting from the house. So he doesn't say
21 anything about, oh, you know, the tenants could
22 fix -- because we told him, the air doesn't
23 work, you know, the roof is leaking. And he
24 said that would be taken care of. That he had
25 -- the investors would be able to go in and fix



1 the house.

2 **THE COURT:** How about you ---

3 **MRS. WURDEMANM:** So we -- oh, I'm sorry. So, no, we
4 didn't know about that.

5 **THE COURT:** Mr. Wurdemann, what was your
6 understanding?

7 **MR. WURDEMANM:** On -- repeat that again?

8 **THE COURT:** Only to sell, or did Mr. Lepka discuss
9 with you any lease with option to purchase or
10 tenants at all, renting?

11 **MR. WURDEMANM:** No. Initially when he had come over
12 there on the porch he mentioned something. But
13 he said he thought he could do it through his
14 investors and get, you know, make it happen
15 quicker, you know.

16 **MRS. WURDEMANM:** Yeah, but just to get rid of the
17 house.

18 **MR. WURDEMANM:** Because he -- the house was -- the
19 mortgage was supposed to be paid off and out
20 our name within six months. And that didn't
21 happen, so.

22 **THE COURT:** Okay. Anything further, Mr. Jordan?

23 **MR. JORDAN:** I guess not, Your Honor.

24 **RULING BY THE COURT:**

25 **THE COURT:** Well, Mr. and Mrs. Wurdemann, I really



1 would like to see a copy of that contract, so
2 I'm gonna give you, maybe a couple of weeks.
3 Do you think you could find it, Mrs. Wurdemann?

4 **MRS. WURDEMANM:** We will look everywhere to find it.

5 **THE COURT:** If you could find a copy of the
6 contract, bring it to the Clerk of Court and
7 file it.

8 **MRS. WURDEMANM:** Okay.

9 **THE COURT:** If you have any problems with that, just
10 -- just let us know. That way when you file
11 it, Mr. Jordan will see a copy of it. Mr.
12 Jordan, if after they file it you have any
13 objections to the Court receiving that into
14 evidence, you let -- we can ---

15 **MR. JORDAN:** Thank you.

16 **THE COURT:** We can deal with that at that time and
17 raise some objections whether or not we need a
18 hearing or you may just be able to file a
19 motion. But I'm gonna give you a couple of
20 weeks to do that. If you need additional time,
21 we're gonna give you a card. You may already
22 have our email address, but that way if you
23 email -- if you email the Court, please email,
24 include Mr. Jordan if you don't already have
25 his email address. If you email us, we will



1 immediately send you a copy, Mr. Jordan. So
2 we'll make sure that you're -- that you're
3 CC'd. We just have to keep him in the loop ---

4 **MRS. WURDEMANN:** Okay.

5 **THE COURT:** --- when you contact, okay? So I'll say
6 two weeks. Two weeks from today, so that falls
7 on a weekend, then the following Monday.

8 **MRS. WURDEMANN:** Okay.

9 **THE COURT:** Which it shouldn't fall on a weekend, I
10 don't know what I'm talking about. Two weeks
11 from today.

12 **MR. MARTENS:** And, Your Honor, Keith Martens. I
13 represent TPM properties, the purchaser of the
14 foreclosure sale. I'd be happy to -- I could
15 enter a Notice of Appearance if I need to. I'd
16 just like to make sure that I get notice of
17 what's going on.

18 **THE COURT:** Sure. Probably the easiest thing, and I
19 don't know if -- if you have any problem with
20 the Clerk of Court getting you a Notice of
21 Appearance, that way ---

22 **MR. MARTENS:** Okay.

23 **THE COURT:** --- anything that's filed, or anything
24 that we do like that, you'll get notice of.
25 But as far as emails, we'll include you. Just



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make sure that ---
MR. MARTENS: Thank you.
THE COURT: --- Mr. Martens is included on any
emails. We'll make sure of that.
MR. MARTENS: Thank you.
THE COURT: Anything further?
MR. JORDAN: I guess not, Your Honor.
THE COURT: Okay, this hearing is concluded.
(There being nothing further, the hearing was
concluded.)



STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF YORK) 2019-CP-46-04302

U.S. Bank National Association,)
as Trustee For Securitized)
Asset Backed Receivables LLC)
Trust 2006-NC1, Mortgage Pass-)
Through Certificates, Series)
2006-NC1,)

Plaintiff,)

v.)

Aaron C. Wurdemann and Heather)
J. Wurdemann,)

Defendants.)

TRANSCRIPT OF RECORDED HEARING



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com

APPEARANCES

Leonard R. Jordan, Jr., Esquire
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Columbia, South Carolina 29209
Attorney for Ms. Alvarado

ALSO PRESENT:

Mr. Aaron Wurdemann
Mrs. Heather Wurdemann

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1 CALL TO ORDER:

2 THE COURT: This is case number 2019-CP-46-4302,
3 U.S. Bank versus Aaron Wurdemann and Heather
4 Wurdemann. This is a Claimant of surplus funds
5 motion, that being Maritza Alvarado's Motion to
6 Reconsider the Court's order regarding
7 disbursement of surplus funds.

8 Present on behalf of Claimant Ms. -- well
9 -- Alvarado, is Mr. Leonard Jordan. Also
10 present is Mr. Aaron Wurdemann and Heather
11 Wurdemann and they are appearing pro se. I
12 believe notice was also sent to Mr. Dennis
13 Lepka and he is not -- he is not present.

14 MR. JORDAN: That is correct, Your Honor.

15 THE COURT: All right. And, Mr. Jordan, whenever
16 you're ready.

17 MOTION TO RECONSIDER:

18 MR. JORDAN: Thank you, Your Honor. I appreciate
19 you hearing us this afternoon. On behalf of
20 Ms. Alvarado, we have filed this Motion to
21 Reconsider and the motion is quite -- quite
22 lengthy. I'd like to go -- go through it and
23 hit -- hit the points that I have raised in
24 this motion and see if we can get the Court to
25 reconsider her decision that was made back



1 whenever, November of 2022.

2 But I wanted to hand up first, Judge, to
3 make sure that the Court had this. It's
4 attached to my client's claim but I'm not sure
5 we put it into evidence before but here is the
6 quick claim deed that the Wurdemann's signed,
7 conveying the property to Robinhood
8 Investments. And the purpose of my handing
9 that up, Judge, is to -- is to make sure that
10 it's, you know, that the Court can see from the
11 deed that it is a very regular deed. On its
12 face it indicates that it is a general warranty
13 deed and it indicates, in fact, that it was
14 drawn by the grantors, the Wurdemanns. And
15 there's an affidavit attached to it and
16 recorded with it, which also indicates that it
17 was a gift transfer. In other words, it was
18 not -- not a -- a deed that was, you know -- it
19 basically passed between the parties based on
20 a consideration that passed at that time. And
21 the affidavit signed by the Wurdemanns
22 indicated that it was a gift transfer.

23 And I would also point out, Judge,
24 according to Code -- South Carolina Code,
25 Section 27-7-10, and that is effectively the



1 statute that provides how the deeds in South
2 Carolina are to be not only executed, but the
3 terminology to be used to pass along a fee
4 simply interest in the property. And I would
5 -- I would say, Judge, that what we have here
6 in this -- in this deed is actually in full
7 compliance with that statute 27-7-10, which
8 indicates that's why it says for all intents
9 and purposes shall be valid and effectual to
10 carry from one person to another, or others,
11 the fee simple of land or real estate. So we
12 -- we would take the position that that deed in
13 fact does exactly what it appears to do, which
14 is to transfer the title from the Wurdemanns to
15 Robinhood Investments.

16 And it also indicates that it is recorded
17 in the courthouse here in York County. I would
18 -- I would argue that the recording of the deed
19 effectively mandates that it is, you know,
20 notice to all interested parties. Obviously
21 not actual notice, but constructive notice to
22 all parties. And anyone interested in this
23 property, you know, would be aware, legally
24 speaking, of the existence of this deed upon
25 it's recording in the courthouse. So that's --



1 that basically covers the first couple of
2 points that I raised in the motion.

3 The -- as far as -- as far as constructive
4 notice though, it also indicates that the --
5 the transfer of the property, you know, was the
6 ownership of the property, the fee simple
7 ownership went from the Wurdemanns to Robinhood
8 Investments and the -- the recording of the
9 deed certainly passes along to any interested
10 parties that the Wurdemanns had relinquished
11 whatever interest in the property that they
12 had. Interestingly enough, I think, Judge, in
13 your order, you had effectively charged my
14 client, Ms. Alvarado, with construction, you
15 know, constructive notice of foreclosure
16 proceedings. And -- and again that's the way
17 it's supposed to work. I mean, things are
18 recorded in the courthouse and people that are
19 dealing with the property, they're charged with
20 constructive notice of the -- of the conditions
21 affecting that property. And that is in fact
22 the way it's supposed to work in this state.
23 And so the charging of Ms. Alvarado with
24 constructive notice of the fact that this
25 foreclosure proceedings were pending, that's



1 fine. That's fair. You know, but at that time
2 same time, the Court was really not charging
3 the Wurdemanns with the same notice. In fact,
4 they had actual notice of the foreclosure
5 proceedings. They were parties to the
6 foreclosure proceedings. They were named and
7 served with the foreclosure proceeding and I
8 would point out that the foreclosure
9 proceedings continued on for 18 months or more
10 after they signed the deed. So they knew all
11 the time, before all the relevant time, before
12 they signed the deed that the fore- -- that the
13 property was in foreclosure for a year and a
14 half after the deed was signed. They knew the
15 property was in foreclosure and we have no
16 evidence of any kind of due diligence or
17 anything like that that they might have done to
18 protect their interests. I would -- I would
19 submit that they didn't have any interest to
20 protect. They had no expectation to protect.

21 Now, we did hear from them at the last
22 hearing that their expectation was up to
23 \$10,000 dollars is what they expected to
24 receive. And, you know, that's certainly a
25 fair comment but the Court asked them to



1 produce a copy of the agreement between the
2 Wurdemanns and the -- and the Robinhood
3 Investment Company and actually provided the
4 Wurdemanns for a period of 10 days or two weeks
5 after the hearing, the opportunity to produce
6 that particular agreement, and it was never
7 produced. The court order indicates that it
8 was never produced. And I see today that they
9 have no agreement with them, so, you know, I
10 would -- I would submit to the Court that the
11 failure to produce this agreement should be --
12 should -- the Court should presume that the
13 agreement, if -- if ever produced, would be
14 adverse to their interests. Otherwise they'd
15 be producing it. So at this stage, to -- to
16 just assume everything is as the Wurdemanns say
17 it is, when they can't produce a written
18 document that they admit was a document they
19 signed, but they can't produce it and
20 therefore, you know, can not prove what the
21 agreement was that they had with Robinhood
22 Investments. You know, so at this stage, it
23 certainly appears to me that in accordance with
24 the deed, that was a gift of this property to
25 Mr. Lepka I believe his name was, for Robin- --



1 with Robinhood Investments, and in connection
2 with that, the Wurdemanns received a promise
3 from Robinhood Investments that they would sell
4 the property and avoid the foreclosure sale.
5 Now whether or not that was a complete lie from
6 the beginning, who's to know, but at the end of
7 the day, obviously Robinhood did not come
8 through and did not -- did not produce a sale
9 of this property. And, you know, that's --
10 that's all, you know, kind of -- kind of
11 looking at it in hindsight, but at the time of
12 the agreement, the question would be whether or
13 not the promise that was made by Robinhood
14 Investments was a legitimate promise or not.
15 And, again, we don't have the agreement to see
16 what the agreement was, but, you know, there's
17 certainly an indication that there was some
18 kind of exchange of promises for -- for the
19 Wurdemanns to do what they say they are going
20 to do, and their expectation to receive \$10,000
21 dollars. Or actually I think their wording was
22 up to \$10,000 dollars for the fact that they're
23 giving up the title.

24 Now one thing I would point out, Judge, is
25 the Wurdemanns' house, where they live, is 3.1



1 miles from this property, from the subject
2 property. And in a period of a year and a half
3 after they give the property away to -- to
4 Robinhood, they could have probably on a
5 regular basis driven by the property to see if
6 anything was being done to market it. What
7 they would have found is that Ms. Alvarado and
8 her family lived in the property. So it would
9 appear, I'm sure, to them and the world that --
10 that the property was not being marketed. If
11 it was not being marketed, why then did -- did
12 the Wurdemanns allow the status quo to continue
13 on for that year and a half until the property
14 was ultimately sold at a foreclosure sale?
15 They were in a position to do something about
16 it. It would appear to me, if they are
17 complaining today that they somehow were
18 defrauded, okay, why weren't they, you know,
19 why couldn't they conclude that, you know, a
20 year and half before the foreclosure sale?
21 Makes no sense to me, but obviously, you know,
22 they can answer for themselves. But I see that
23 there was absolutely no due diligence, which
24 almost tells me that there was no expectation
25 of -- of getting any benefit from giving away



1 this property.

2 So, you know, again, I would say, they had
3 an opportunity to attack the deed. They gave
4 a deed and never attacked it. They (inaudible)
5 -- they -- the deed's regular on it's face, its
6 unambiguous, but they haven't attacked it as
7 being somehow a bad document. It doesn't say
8 what it -- what it on its face says. And
9 again, the burden of proof is certainly on
10 their -- their part to attack it and prove it,
11 that it was not what it appears to be. And I
12 would point out, once again, too, Judge, that
13 the deed says it was drawn by the Wurdemanns.
14 They drafted the document according the
15 document itself. I mean, from that -- from
16 that perspective, I would say, you know, the
17 burden is even doubly on them to prove what is
18 wrong with the deed. They prepared it
19 according to the deed. It should be construed
20 against them if there are any ambiguities but
21 I would say, Judge, in my opinion, there are
22 not ambiguities. It certainly appears to be
23 regular and there are no reservations, and that
24 type of thing. But the -- you know, the fact
25 that there is no agreement to look at, that



1 burden is on the Wurdemanns. The Court should
2 explore why that agreement is not produced,
3 especially when extra time was afforded them to
4 produce it. The -- let's see here.

5 Okay, one important part of the -- of the
6 court order that I think needs to be addressed
7 is the fact that the only -- only party that
8 filed a legitimate claim for the surplus funds
9 is my client, Ms. Alvarado. Robinhood filed a
10 claim but it wasn't verified and the order
11 found that that wasn't a legitimate claim, so
12 -- and they certainly are not here to -- to try
13 to press their point on view that they're
14 entitled to anything. But again, the
15 Wurdemanns did not file any type of claim and,
16 as indicated in the court order, your staff
17 told them they didn't have to file a claim.
18 Now, frankly, in the way I read the Rule 71(c),
19 that's -- that's not the intent of that -- of
20 that rule. The rule basically indicates that
21 they would, at least potentially, that they
22 would be able to claim surplus funds if no
23 claims were filed. In this case Ms. Alvarado
24 filed a claim and of course the Robinhood claim
25 I've addressed already. But no claim



1 whatsoever was filed by the Wurdemanns within
2 the 45 day period. And pursuant to Rule 71(c),
3 that claim shall be considered abandoned and
4 waived as to such surplus. I don't know that
5 the rule could be any clearer than that. So
6 the -- the Wurdemanns did not file a claim and,
7 nevertheless, the Court awarded them the
8 surplus in full, even though no claim was filed
9 and especially in light of the fact that Ms.
10 Alvarado filed a claim, which the courthouse
11 determined to be a legitimate -- as far as
12 content of the claim, a legitimate claim.

13 The claim of Ms. Alvarado is based on her
14 dealings with Robinhood Investments, which was
15 the owner of record of the property. They were
16 the holder of the recorded deed. I don't know
17 what else could be done by Ms. Alvarado to
18 protect her interests in regard to the property
19 but she dealt with the owner. The owner signed
20 a lease agreement. She paid a down payment of
21 \$45,000, which from all appearances would be
22 deemed to be like an option fee because her
23 contract included an option to purchase the
24 property in addition to the lease. But she's
25 out \$45,000. And not only that, but she signed



1 a lease agreement to rent this property for a
2 period of time on property she was not
3 interested at all in leasing, she wanted to buy
4 it. So -- but for the option, she would not
5 have bought this -- or she would not have
6 signed on to this contract. So the primary
7 purpose of the agreement was to allow her to
8 purchase the property over some time and allow
9 her to get a -- an attractive purchase price
10 for the property. So that's -- that's what her
11 inducement was to sign this contract with
12 Robinhood Investments. And, you know, she's
13 done everything she could to protect her
14 interests with regard to the court filings.
15 She -- she in fact filed a claim and that's
16 she's been to the court now twice to press her
17 claim, and in all fairness, Judge, you know, in
18 equity, she's entitled to get her money back
19 out of the property. She was duped by
20 Robinhood Investments to ---

21 **THE COURT:** That I absolutely agree with.

22 **MR. JORDAN:** Yeah. She was -- she was duped by them
23 to do -- to do that. I mean, there's no
24 getting around that. Robinhood will
25 ultimately, I'm sure, be sued because of what



1 they did. But they did in fact do that. And,
2 you know -- but, you know, when you get into
3 whether or not they assigned their rights in
4 the property to her, I think clearly they did.
5 I think clearly they are not what you would
6 call a -- an innocent assignor, but Ms. Alvarado
7 is an innocent assignee. And she, you know,
8 she took -- she took her interest, you know,
9 when she signed this contract, she basically,
10 you know, had paid quite a bit of equity into
11 this property, \$45,000 dollars is certainly a
12 nice chunk of money. She paid that and -- and
13 when they, you know, signed the contract, she
14 moved in and acted as a tenant with a contract
15 that was an option to buy the property as well.
16 And that's what -- if this property hadn't been
17 lost to foreclosure, she would have ultimately
18 purchased this property, I'm sure. She had too
19 much money invested in it not to.

20 So, you know, that's -- that's where we
21 are on that, I think, Judge. But if -- in this
22 case if the Wurdemanns, you know, wanted the
23 surplus funds, they should have made it known
24 by filing a claim. The fact that they didn't
25 file a claim, to me is very problematical to



1 their point of view and, you know, the fact
2 that they also couldn't produce a copy of an
3 agreement with the Rainbow [sic] Investment
4 Company, I -- I think that's, you know,
5 probably more of a difficult part to get over
6 for the Court because, at the end of the day,
7 you know, they're unable to basically show what
8 they're deal was, what their expectations were,
9 you know. And, if as they testified, they were
10 expected to get up to \$10,000, that's fine,
11 but, you know, giving them -- giving them more
12 than \$50,000 is certainly a windfall in my
13 view. You know, when they didn't expect
14 anything more than \$10,000 at the best. So,
15 Judge, that's -- that's the Plaintiff's case
16 and we would just ask the Court to reconsider
17 the order and protect Ms. Alvarado's position.

18 **THE COURT:** Thank you. Anything you'd like to say,
19 Mr. Aaron Wurdemann?

20 **MRS. WURDEMANN:** Go ahead.

21 **RESPONSE BY MR. WURDEMANN:**

22 **MR. WURDEMANN:** Just, I mean -- you know, with us it
23 was -- we -- I did do, you know, I come in to
24 make our claim in the -- you know, I come up
25 here to the office to make a claim and I was --



1 I was told I didn't need to, you know, file the
2 paper, you know, file that paperwork, coming up
3 here and I was -- that was doing my part, so.
4 And, you know, I hate that that happened to
5 them. You know, he -- I mean, I paid the
6 mortgage on it, you know, on that property for,
7 you know, 17, 18 years. That's not something
8 I just wanted to give away that, you know, just
9 to make -- I feel like I have a right to that
10 because it's no different than having -- you
11 know, you have a -- just like even property
12 values go up, you know. And it's I -- I've had
13 17 years invested in, you know, in that
14 property too, you know. I -- we were duped and
15 I -- Robinhood Investments, you know, I mean
16 they -- they tell us one thing and, you know,
17 did something completely different. And, you
18 know, we had an agreement and it was supposed
19 to be out my name in three months and it
20 wasn't. Then once that's signed, you know, its
21 -- my hands are kind of tied to even get the
22 property back. You know, I mean, so.

23 **THE COURT:** Anything you'd like to say, Mrs.
24 Wurdemann?

25 **RESPONSE BY MRS. WURDEMANN:**



1 MRS. WURDEMANN: I think that the general consensus
2 here is Robinhood Investments really pulled the
3 wool over two families' eyes. We were hoping
4 that they were gonna help us get it sold and
5 that's what the pretensions where when we went
6 into it. And Ms. Alvares (sic) -- I don't mean
7 to mis-speak her name, she had signed a lease
8 thinking she was buying. So I think the issue
9 here is with Robinhood Investments, because
10 we're both trying to be Defendants against
11 Robinhood Investments and they're not here.

12 DISCUSSION:

13 THE COURT: I agree. It appears to the Court
14 Robinhood Investments really wasn't forthcoming
15 with either the Wurdemanns or Ms. Alvarado.
16 Clearly the lease, in a section that talks
17 about what mortgages are on the property, it
18 was silent as to whether or not a mortgage was
19 on the property. Although I still say there's
20 -- she's deemed with having notice due to the
21 lis pendens, it's -- the Court also understands
22 that not everybody is familiar with the process
23 of how -- how to search and what to do prior to
24 entering into agreements with individuals. Mr.
25 Jordan, my issue is, that Rule 71 says the



1 money goes to the mortgagor or a lienor. If
2 I'm to look at it as an assignment, then I'd
3 have to track it from that the Wurdemanns
4 assigned their interest to Robinhood and that
5 Robinhood assigned all of its interest to Ms.
6 Alvarado. Now, Robinhood Investments was still
7 the owner of the property at the time. And if
8 Ms. Alvarado is deemed with knowledge of the
9 mortgage, then she protects her interest by
10 exercising her option and paying off the
11 mortgage, which she did not do. Also, just the
12 dealings with Robinhood, just in equity, he
13 didn't treat either party fairly, or the entity
14 didn't treat either party fairly. And so for
15 me to find that those rights were assigned, I'd
16 have to find that Robinhood, it was properly
17 assigned to him, and there was not
18 consideration given to Robinhood regarding this
19 transfer. So I -- I mean, unless there's
20 something else that you haven't presented me.
21 I haven't heard anything that -- that lends me
22 to change my decision as far as what -- what
23 I've already ruled upon.

24 MR. JORDAN: Well may I comment on two of your
25 points then, Judge?



1 THE COURT: Sure.

2 MR. JORDAN: It certainly doesn't take -- in the
3 deed it does not take a recitation of monetary
4 consideration to make a deed valid. It could
5 be a gift all day long. Family deeds happen by
6 gift everyday. So the fact that there is no
7 monetary kind of consideration suggested in the
8 deed, especially when the deed recites on its
9 terms that it is a gift transfer, I mean, that
10 -- that doesn't make the deed somehow invalid.
11 It's a completely valid to the extent of
12 transferring the title from one party to
13 another. That's what the statute says. So
14 that's one point. Now, I agree with what you
15 said about the funds shall be paid over to the
16 mortgagor or the lien holder but the first part
17 of that sentence in Rule 71(c) says in the
18 event no claims are filed against the surplus
19 funds ---

20 THE COURT: But that would be a claim filed by a
21 party, and I find that she's not a party by
22 assignment.

23 MR. JORDAN: It doesn't say anything about a party.
24 It says in the event no claims are filed
25 against the surplus funds, comma, the funds



1 shall be paid over to the mortgagor or lienor.

2 **THE COURT:** Right. The rule only requires those who
3 are parties to the action or had a lien at the
4 time of the sale to file a claim. So she's
5 neither a party nor a lien holder at the time
6 of sale.

7 **MR. JORDAN:** Well the argument is that she's the
8 assignee of the lien holder.

9 **THE COURT:** That's ---

10 **MR. JORDAN:** Now, you actually cite a case in your
11 order to the effect of an assignee that would
12 have been somebody that came across -- came
13 later, okay? Came -- wasn't a party in the
14 lawsuit, okay? It was an assignee of a
15 mortgage in that case. But -- and it also
16 talks about the fact that the, you know, is it
17 an innocent assignee versus, I guess, a non-
18 innocent assignee. In this particular case,
19 Ms. Alvarado is an assignee, is my argument, and
20 of course, she is an innocent assignee.

21 **THE COURT:** Well, and explain to me how Robinhood
22 Investments assigned all of their rights to
23 surplus? They were still the owner of the
24 property at the time of sale.

25 **MR. JORDAN:** Well, they didn't assign all of their



1 rights. They assigned, effectively, a big
2 chunk of the equity of this property because
3 she paid \$45,000 dollars down against the
4 purchase price of this property.

5 **THE COURT:** Right. But she hadn't exercised her
6 option at this point.

7 **MR. JORDAN:** Well, again, the way the document is
8 prepared, it doesn't call the \$45,000 dollars
9 an option fee, which you would expect it to
10 normally say. The document does have a
11 paragraph in there about an option to purchase.
12 But the \$45,000 dollars is designated as a down
13 payment, okay? Which, you know, when you're
14 dealing with non-lawyer drafted stuff, you're
15 gonna end up having things like that. But at
16 the end of the day, it's not an option fee as
17 such, which would, of course, in 99.9 percent
18 of the cases, you know, would be applied
19 against the purchase price when you exercise
20 the option. But in this case, clearly if it's
21 a down payment against the purchase price, it's
22 already, by its own definition, applied against
23 the purchase price.

24 **THE COURT:** Right. But a deed had not been
25 executed.



1 MR. JORDAN: Well, again, that -- you know, it
2 wouldn't be an option ---

3 THE COURT: Robinhood Investments was still the
4 owner of the property.

5 MR. JORDAN: Well, yeah. But they were still --
6 they had -- they had effectively encumbered the
7 property by this contract.

8 THE COURT: Well, but if you -- if your argument is
9 that the Wurdemanns assigned all their rights
10 by deed to Robinhood, there is no other deed
11 from Robinhood Investments. Assigning ---

12 MR. JORDAN: Right. So ---

13 THE COURT: Assigning their rights.

14 MR. JORDAN: Robinhood, you know, they were the
15 owner of this property at the time -- at all
16 relevant times, okay? Which would be 18 months
17 before the foreclosure sale and the foreclosure
18 sale. They were the owner of record of this
19 property.

20 THE COURT: But where's the agree- -- where's the
21 assignment of rights?

22 MR. JORDAN: Well the assignment of rights ---

23 THE COURT: What (inaudible) ---

24 MR. JORDAN: --- is the contract. It's the lease
25 that's attached to Ms. Alvarado's claim.



1 THE COURT: But it's not been a -- it's not been
2 finalized, right?

3 MR. JORDAN: No. The contract is final. What -- to
4 what it is. But it certainly doesn't give her
5 the fee simple ownership of the property.
6 We're saying it gave an encumbrance ---

7 THE COURT: So what gives you -- what gives you
8 right to surplus? What gives you the right to
9 surplus? If you're fee simple owner of the
10 property ---

11 MR. JORDAN: Well, you know ---

12 THE COURT: --- is that not the right to surplus
13 (inaudible)?

14 MR. JORDAN: She would -- she would be -- as far as
15 the Court or anyone else is concerned, she
16 would be standing in the shoes of Robinhood
17 Investments. Robinhood Investments clearly, in
18 equity, is not entitled to a dime, okay? We'll
19 admit that. But at the end of the day, you
20 know, they were the owners of record and they
21 had -- the reason that they wouldn't be
22 entitled to a dime, is because of the fact that
23 they contracted with Ms. Alvarado, who then, you
24 know, paid a bunch of money down, and relied on
25 their -- that relationship and the -- and



1 Robinhood, you know, they even tried to file a
2 claim, you know, after the sale, and obviously
3 when they saw we filed a claim, they withdraw,
4 withdrew theirs. And so they didn't want to go
5 forward with -- they probably didn't want to
6 show up in court is the reason they didn't want
7 to go forward. But at the end of the day, they
8 compromised their ownership interest by sharing
9 that interest with Ms. Alvarado, you know. I
10 mean, clearly, the first \$45,000 dollars of any
11 value of this property, you know, would --
12 would, you know, would be an equitable
13 ownership interest that Ms. Alvarado has, you
14 know? Robin- ---

15 **THE COURT:** With notice that it was in foreclosure.

16 **MR. JORDAN:** Well it was in foreclosure. But she
17 didn't know that ---

18 **THE COURT:** Scheduled to be sold.

19 **MR. JORDAN:** --- actually.

20 **THE COURT:** Well, no. She did. I mean, well, she's
21 -- I agree that they're -- very likely she had
22 no idea about the foreclosure because I would
23 imagine that a lot of people do not know,
24 again, that they should search, do a title
25 search, before they enter into agreements like



1 this. But they don't.

2 **MR. JORDAN:** Correct.

3 **THE COURT:** But she -- she's on constructive notice.
4 That's why -- that's why you have a lis
5 pendens.

6 **MR. JORDAN:** Well ---

7 **THE COURT:** That's why those are filed, so that you
8 can search these sort of arrangements before
9 you pur- -- enter into these agreements and pay
10 someone this type of money.

11 **MR. JORDAN:** Well, I mean that -- that's all well
12 and good in theory. That's not the way the
13 real world works. But that's -- you know,
14 that's theory completely.

15 **THE COURT:** Well, that's the law too.

16 **MR. JORDAN:** Well that's legalese. But at the end
17 of the day, you're going to hold Ms. Alvarado
18 responsible for constructive notice, which is,
19 you know -- I'm sure you have now admitted, is
20 not the same as actual notice. But then at the
21 same time you absolve the Wurdemanns of the
22 fact that they had complete actual knowledge of
23 the same information. Not constructive
24 knowledge ---

25 **THE COURT:** I would say it's absolve. I think both



1 parties here are, again, they -- they have, for
2 lack of a better term, fallen victim to
3 Robinhood Investments.

4 MR. JORDAN: Okay.

5 THE COURT: And I -- I think that it's both parties.
6 My concern is what does the rule say and what
7 is the law? The rule says that the money goes
8 to the mortgagor or lienors. The Wurdemanns
9 are the mortgagors.

10 MR. JORDAN: Well, you know ---

11 THE COURT: Unless -- unless it can be shown. And
12 there's not much case law about assignment.
13 There is just one case law because it's obvious
14 about mortgages get assigned at any time and
15 it's really not been decided by an appellate
16 court if, in this sort of situation, is the
17 deed sufficient to assign rights to surplus for
18 a mortgagor, who -- you have to take into
19 consideration, like Mr. Wurdemann said, have
20 paid on this home, has paid on this mortgage
21 all this time. To say that they're getting a
22 windfall, not necessarily the case.

23 MR. JORDAN: Well ---

24 THE COURT: But I -- I just go by the rule. The
25 rule says mortgagor, lienor. The rule also



1 requires that you be a party to the action and
2 I don't see how the -- those rights to surplus
3 got assigned to her from Robinhood Investments.
4 I don't think you get past Robinhood
5 Investments. Even if I were to find that the
6 deed was sufficient to assign those rights, and
7 I say no because there's no consideration
8 given. I don't see how you can have an
9 assignment without consideration. When you
10 assign a mortgage to another company, they --
11 they do it for free? I don't think so.

12 MR. JORDAN: Well let me -- let me say this then,
13 Judge, if -- if you would find that this deed
14 was legitimate, completely beyond reproach, how
15 does that change anything? They're still the
16 mortgagors?

17 THE COURT: Correct.

18 MR. JORDAN: Okay. In other words, you would agree
19 that the word mortgagor is the problem? That's
20 unintentional ---

21 THE COURT: That's ---

22 MR. JORDAN: That's an error in the Rule 71(c)?

23 THE COURT: I don't think it's an error. I think
24 that's what they -- they put mortgagor.

25 MR. JORDAN: But you would -- you would -- say there



1 were two or three deeds, okay? You have a
2 mortgagor, now I'm sure you'll give me the fact
3 that a mortgagor is the person who actually
4 gives the mortgage, okay? It's not anything
5 other than that. That's what a mortgagor is.

6 **THE COURT:** Well, but in typical cases, when someone
7 comes in and transfers ownership of property,
8 it's in a closing where the mortgage is paid
9 off and then wouldn't have been an issue.
10 That's typically what you see. But Robinhood
11 Investments made this a different sort of deal.
12 In fact, I think this was exactly what
13 Robinhood Investments intended to do.

14 **MR. JORDAN:** Oh, I ---

15 **THE COURT:** Was dupe -- was take advantage of both
16 parties in this situation.

17 **MR. JORDAN:** I'm not gonna disagree with that,
18 Judge.

19 **THE COURT:** And this is a difficult decision and
20 what Robinhood Investments did to Ms. Alvarado
21 is -- it's unconscionable, really. It's really
22 unconscionable. And -- but the rule requires
23 that the money goes to the mortgagors and I --
24 that's what I see and I don't see an assignment
25 under these facts that have presented to me, an



1 assignment of the rights to surplus. I could
2 be wrong. I could be wrong. But the Rule --
3 the rule says it goes to the mortgagor.

4 **MR. JORDAN:** Okay. Well, again, you know, I can
5 tell you the problem I have in, you know, from
6 the first time ever reading this rule, the word
7 mortgagor jumped -- just jumps out as, you
8 know, why would that person be entitled to
9 anything in, -- in a normal real estate
10 transaction?

11 **THE COURT:** I -- you know, I don't know, Mr. Jordan.
12 I don't know that they anticipated these sort
13 of situations because, again, I think typically
14 when people transfer ownership of property,
15 knowing that it's in foreclosure, or on notice
16 that it's in foreclosure, usually those are
17 resolved in the closing when the prop- -- when
18 you have the transfer of property, it's all --
19 it's all handled together. And I -- and maybe
20 that's why they did the mortgagor, was for
21 situations where they're not -- they -- it's a
22 transfer without satisfying the mortgage and so
23 the money is still owed -- this surplus funds
24 are still accessible by the mortgagors.

25 **MR. JORDAN:** Well ---



1 THE COURT: I don't know the intention. I just know
2 that the rule -- the rule says if no claims are
3 made, and this is essentially to me, no claim
4 has been made by a person who is authorized or
5 allowed to make a claim in this case.

6 MR. JORDAN: Okay. Do you equate the word mortgagor
7 with the actual owner of the property?

8 THE COURT: I equate mortgagor with who executed the
9 mortgage.

10 MR. JORDAN: Okay. So it doesn't necessary -- if
11 you have a scenario where you have, like in
12 this case, a removed party who no longer owns
13 the property, but was the signer of the
14 mortgage, okay, then that person and not the
15 owner of the property is going to get the
16 surplus funds?

17 THE COURT: Well, again, if -- if you have a
18 transfer of property, and you have not paid off
19 the mortgage then why are you entitled to
20 surplus funds?

21 MR. JORDAN: Well, because you say they're the
22 mortgagor.

23 THE COURT: No, no, no. You -- you said the owner.

24 MR. JORDAN: Okay. What I'm saying is the owner of
25 the property is the one with equity in the



1 property.

2 **THE COURT:** Well they -- they have -- they have a
3 right to redeem the property, yes. But they
4 are not subject to the -- they -- they are not
5 personally responsible for the mortgage. They
6 have no obligation to pay the mortgage. The --
7 the mortgagors are still -- could still be held
8 for deficiency judgment because the mortgage
9 has not been paid off.

10 **MR. JORDAN:** Now, in a typical scenario where
11 somebody comes in and buys a piece of property
12 subject to a mortgage, okay? The mortgage is
13 unaffected whatsoever. The person pays down a
14 amount of equity in the property, completely
15 takes the seller, who was the mortgagor out of
16 the picture, okay? And you're saying even in
17 that scenario the seller, the one who has been
18 paid their equity already, is the party
19 entitled to the surplus?

20 **THE COURT:** I -- maybe I'm not following you. It
21 would -- in this circumstance -- I can only
22 tell you in this circumstance, you're basing --
23 and I don't think this was something that was
24 included in the claim. I don't think an
25 assignment was argued in your claim. I think



1 it was the unfairness of the -- of the
2 agreement with Mr. Lepka or Robinhood
3 Investments. So it was -- but then assignment
4 was brought up at the hearing and so I
5 addressed it as far as what assignment is. And
6 I believe, well my understanding is that the
7 law for assignments requires consideration be
8 paid. The Wurdemanns received no consideration
9 from Robinhood Investments. And before you get
10 to Ms. Alvarado being assigned any interest, you
11 must then -- I must first find that Robinhood
12 had been assigned interest -- the rights to
13 surplus, correct? Correct?

14 **MR. JORDAN:** Well not necessarily because the deed
15 would indicate that they in fact transferred
16 the title.

17 **THE COURT:** Well, that's what -- but that's what you
18 argue, is that the deed alone assigned their
19 rights to surplus to Ms. ---

20 **MR. JORDAN:** Right.

21 **RULING OF THE COURT:**

22 **THE COURT:** --- to Robinhood Investments. Okay. So
23 you must get there first. Well my finding is
24 there was, no -- there was no proper assignment
25 because no consideration was made.



1 MR. JORDAN: Okay. Well I ---

2 THE COURT: And that he dealt unfairly in this
3 situation also. I think I -- yes. That he
4 can't base any claim to it off of that because
5 he dealt, you know, with -- unfairly in this
6 situation. So -- but I don't think you get to
7 Ms. Alvarado without finding that everything was
8 appropriately done in equity and law with --
9 with Robinhood Investments. And it was not.

10 MR. JORDAN: And you're -- you're saying that it's
11 your opinion that instead of the ability to
12 rely on a recorded deed to mean what it says,
13 you basically have to look behind it and ---

14 THE COURT: No.

15 MR. JORDAN: --- can not rely on it.

16 THE COURT: I think -- I think the interests were
17 transferred. There's no question that the
18 ownership of the property had transferred to
19 Robinhood Investments.

20 MR. JORDAN: Well what ---

21 THE COURT: We're talking about rights to surplus.

22 MR. JORDAN: Okay. So if you transferred the
23 ownership interest, how are you entitled to any
24 kind of surplus?

25 THE COURT: Well, I mean, look at -- well, look at



1 the rule. The rule -- the rule doesn't say
2 owners as the time of sale. The rule says
3 mortgagors.

4 MR. JORDAN: Okay. Well, that would be a nice --
5 nice law school question for the Court of
6 Appeals to handle, I guess.

7 THE COURT: Uh-huh.

8 MR. JORDAN: All right ---

9 THE COURT: Well, I'm not saying it would be this
10 way -- again, I haven't -- I'm not aware of any
11 case that says by a transfer under this
12 situation, transfers all a mortgagor's right to
13 surplus. But specifically under this
14 situation, I find that they did not assign
15 their rights to surplus to Robinhood
16 Investments.

17 MR. JORDAN: All right, Judge. Thank you.

18 THE COURT: All right.

19 MR. JORDAN: Thank you. Thank you for hearing me
20 out.

21 THE COURT: Thank you.

22 (There being nothing further, the hearing concluded.)
23
24
25



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Master in Equity

Case No. 2019-CP-46-04302

Appellate Case No. 2023-000390

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SC Court of Appeals

Ex Parte: Maritza Flores Alvarado, Appellant,

In re:

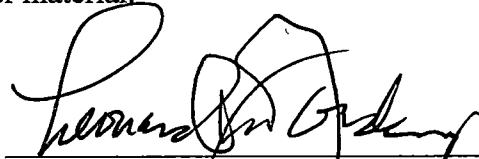
U.S. Bank National Association, as Trustee For Securitized Asset Backed Receivables LLC Trust
2006-NC1, Mortgage Pass-Through Certificates, Series 2006-NC1, Plaintiff,

v.

Aaron C. Wurdemann and Heather J. Wurdemann, Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.



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September 26, 2023