THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2023-001402

Kathleen A. Grant, Dylan T. Grant,
Devin D. Grant, and Andrea J. Grant,

Petitioners,

v.

Nationstar Mortgage, LLC,

Respondent.

PETITIONERS' REPLY TO RESPONDENT'S RETURN TO PETITION FOR A WRIT OF CERTIORARI

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Petitioners, through their undersigned counsel, hereby respectfully submit this Reply to Respondent's Return to the Petition for Writ of Certiorari.

1. THIS IS AN EQUITABLE ACTION TO WHICH EQUITABLE PRINCIPLES APPLY.

A. Preliminary Comments

Respondent's Return attempts to avoid Equity and, by implication, the weight of this Honorable Court's equitable powers by characterizing the underlying action as legal in nature, rather than equitable. (Return, p. 9). The reasons for Respondent's position are clear: (1) Respondent does not want this Court to consider and/or apply equitable principles of fairness and justice to this action, and (2) Respondent does not want this Court to take its own view of the preponderance of the evidence. This invites the question: Why? More specifically, why does Respondent, a sophisticated lending institution, demonstrate such an aversion to the concept of Equity when applied to the particular facts of this case? What does Equity entail under these circumstances?

A look at the very definition of Equity points to the answer: 1. Fairness; impartiality; evenhanded dealing. 2. The body of principles constituting what is fair and right and natural. 3. The recourse to principles of justice to correct or supplement the law as applied to a particular circumstance. *Black's Law Dictionary, Second Edition* (1996). Throughout the entirety of this litigation, Respondent has sought to avoid Equity, ignoring the particular facts and circumstances surrounding this case. However, contrary to Respondent's contention, the facts in this case matter. "In applying the doctrines of equity, the equities of both sides are to be considered, and each case must be decided on its own particular facts." *Carroll v. Page*, 215 S.E.2d 203, 204, 264 S.C. 345, 347 (1975), citing 30 C.J.S Equity § 89. Here, the Circuit Court expressly refused

to consider any equitable doctrines, erroneously accepting Respondent's view that the underlying action was legal in nature. (R. p. 14).

The Court of Appeals modified the Circuit Court's Order, correctly determining that an action brought by completely innocent Remaindermen to cancel a mortgage is equitable, but then failed to consider or apply any equitable principles, doctrines, and/or maxims in its analysis. (App. p. 80). "The court of equity must 'balance the equities' between the parties in determining what if any relief to give." *Foreman v. Foreman,* 280 S.C. 461, 464-465, 313 S.E.2d 312, 314 (Ct. App. 1984), citing 27 Am. Jur. Equity Section 103 (1966). There has been no balancing of the equities in this case. This is precisely why a Writ of Certiorari from this Court is vital to achieving a just result.

As set forth in the Remaindermen's Petition, and further discussed hereunder, the preponderance of evidence in this case establishes two things: (1) David Grant, a life tenant, did not have unfettered authority to encumber the subject property "as he saw fit", **and** (2) Nationstar, Countrywide's successor-in-interest, seeks to enforce a mortgage against completely innocent Remaindermen whom Countrywide knew about, but never bothered to notify about placing a $625,000 encumbrance against their interest.

These innocent Remaindermen were not amorphous, unknowable figures hiding in the background as Respondent's Return intimates. (Return, p. 20). Roberta Grant's children were each specifically named and identified as Remaindermen in her Will—a Will that Countrywide knew about, but never even read. (R. pp. 432-433; 180:15 to 181:5; 185:18- 21).

Petitioners respectfully request that this Court consider whether Countrywide's ambivalence to the rights of completely innocent Remaindermen is "fair, and right, and natural;" whether it should be allowed to misconstrue a Will it knew about, but never read in the first

place; or, perhaps consider whether the Respondent is correct in admonishing Roberta's children for pursuing what it calls "a misguided concept of fairness." (Return p. 2). Petitioners respectfully submit that a judicial balancing of the equities is not only appropriate for those reasons set forth below, but also essential to achieving a just result. Accordingly, Petitioners respectfully request that this Honorable Court grant their Petition for a Writ of Certiorari, balance the equities, and give weight to the preponderance of the evidence, applying equitable principles of fairness and justice to the facts and circumstances of this case.

B. The Court of Appeals properly determined that the action was equitable because Remaindermen's main purpose in bringing an action for declaratory judgment was equitable in nature.

The Court of Appeals modified the Circuit Court's order and correctly determined that an action seeking cancellation of a mortgage is equitable in nature. Respondent's Return, however, contends that it "continues to stand by its position that the Circuit Court was correct," that the action was a matter controlled by law, not equity. (Return, p. 9). Respondent's position is without merit.

Whether the Remaindermen's action for declaratory relief is legal or equitable in nature is particularly significant for purposes of this Court's review. "On appeal from an action at law that was tried without a jury, the appellate court can correct errors of law, but the findings of fact will not be disturbed unless found to be without evidence which reasonably supports the judge's findings." *Holcombe-Burdette v. Bank of America*, 640 S.E.2d 480, 483 (Ct. App. 2006). However, "In an action in equity, tried by the judge alone, without a reference, on appeal the Supreme Court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence." [Emphasis added] *Townes v. Assocs., Ltd. v. City of Greenville,* 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). See also, *Sullivan v. Brown (In re Estate of Kay)*, 423 S.C. 476,

480-481, 816 S.E.2d 542, 544-545 (2018), expanding *Townes*, and noting that the appellate courts of this state may take their own view of the preponderance of the evidence when dealing with equity matters regardless of how many lower court judges ruled on the case.

"Whether an action for declaratory relief is legal or equitable in nature depends on the plaintiff's main purpose in bringing the action." *Williams v. Wilson*, 349 S.C. 336, 340, 563 S.E.2d 320, 322 (2002). "The main purpose of the action should generally be ascertained from the body of the complaint." *Wells Fargo Bank, NA, v. Smith*, 398 S.C. 487, 730 S.E.2d 328, 332 (Ct. App. 2012), citing *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978). However, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action." Id.

Here, the Remaindermen's main purpose in bringing a declaratory judgment action was to seek the cancellation of a mortgage on the ground that it was invalid. As the Court of Appeals correctly determined, this makes the action equitable: "A mortgage is the imposition of a lien on certain property therein mentioned, given to secure a contract […]." *Aultman & Taylor Co. v. Rush*, 26 S.C. 517, 2 S.E. 402, 405 (1887). "Our courts recognize that an action to dissolve a lien is an action in equity." *Shelley v. S.C. Dep't of Mental Health*, 283 S.C. 344, 346, 322 S.E.2d 687, 689 (Ct. App. 1984), citing *Gantt v. Van der Hoek,* 251 S.C. 307, 313, 162 S.E.2d 267, 273 (1968). "Actions to foreclose or cancel an instrument are actions in equity." *Cody Discount, Inc. v. Merrit*, 629 S.E.2d 697, 699, 368 S.C. 570 (Ct. App. 2006), quoting *Wilder Corp. v. Wilke*, 324 S.C. 570, 576, 479 S.E.2d 510, 513, (1996).

Further, the Remaindermen's main purpose in bringing this action can be readily ascertained from the body of their complaint, the prayer for relief, the arguments presented at the hearing on Nationstar's Motion for Summary Judgment and at trial, and the nature of the

requests for admission served by the Remaindermen upon Nationstar. The very first paragraph of the Complaint states:

> This is a Declaratory Judgment Action filed pursuant to S.C. Code Title 15, Section 53. It asks the Court to declare **whether or not certain mortgages are valid vis-à-vis four remaindermen/ remainderwomen** who only recently came into possession of certain property in Charleston, South Carolina and discovered that the property they inherited is deeply encumbered by mortgages that may well not be entirely proper. (R. p. 22, Emphasis added).

The body of the Complaint also asserts, "[T]his lawsuit has been put of record to ask the court for assistance and aid in determining whether or not the remaindermen and remainderwomen left in Roberta R. Grant's Last Will really are obligated to pay the mortgage on the property they have inherited." (R. p. 23, para. 5). The Complaint further states, "If Roberta Grant's children are right, it follows that it was not proper or lawful to put permanent mortgages on the property." (R. p. 24, para. 10). The prayer for relief also establishes that the Remaindermen sought equitable relief from the Court: "Wherefore, the Plaintiffs request that the Court inquire into this matter and determine whether or not the mortgages are indeed valid and lawful with regard to the Plaintiffs in this case." (R. p. 24)

While the Remaindermen's Complaint, of course, makes reference to the validity of the mortgage in light of Roberta's Will, the *main purpose* of their declaratory judgment action was not to interpret the Will, but rather for the Court to determine whether the mortgage itself was valid and enforceable against them. As noted in *Williams v. Wilson*, *supra*, it is the

Remaindermen's main purpose in pursuing a declaratory judgment action that sets the standard of review in a declaratory judgment action. 349 S.C. 336, 340, 563 S.E.2d 320, 322 (2002).[1]

Throughout the entirety of this action, the Remaindermen have asserted that the mortgage is not valid or enforceable against them, not just because of the language contained in Roberta's Will, but also because of Countrywide's willful failure to exercise due diligence (e.g. its failure to inquire as to the reason for the mortgage and its failure to notify the Remaindermen about placing a $625,000.00 encumbrance on the property so as to protect all pertinent interests).

To the extent that there was ever any possible doubt as to Remaindermen's main purpose in bringing this action, their counsel addressed this at trial by—out of an abundance of caution—moving to amend the pleadings so as to conform to the evidence and thereby emphasize the equitable nature of their action for declaratory judgment:

> MR. SLOTCHIVER: I agree with everything my co-counsel said, but to add one more point to make it abundantly clear, the law is -- the law sets forth that a party has the right to amend the pleadings to conform to the evidence at any time before, during, or even after a trial is over. So to the extent that they want to assert us on the pleadings, we disagree.
>
> Out of abundance of caution and clarity, we will make a motion. We move at this point to amend the pleadings to conform to the evidence as Mr. Tamasitis stated. We've raised these equitable issues at the motion for summary judgment. We've raised equitable issues in our response to their second set of requests to admit. There's no surprise here what the equitable theories are.
>
> If they want to take the position -- we don't agree with it -- but the pleadings do not contain equity, then at this point,

[1] As discussed below, even if this Court were to find that the Remaindermen's main purpose was solely to interpret Roberta's Will, the present action would *still* require the application of equitable principles, because an action to construe or interpret a testamentary trust is by nature equitable. See *Holcombe-Burdette v. Bank of America*, 640 S.E.2d 480, 483 (Ct. App. 2006), discussed *infra*.

> we move to amend the pleadings to conform to the evidence which is before the parties. Everybody knows about it. There's no surprise. And we would ask that you would grant that motion in addition to denying their motion.
>
> (Trial Tr., R. p. 147, line 11 to p. 148, line 5; See also, Trial Tr., R. p. 143, line 16 to p. 147, line 8; and Summ. J. Hr'g Tr., R. pp. 108-129)

Despite all of the foregoing, the Circuit Court erroneously found that the Remaindermen's action for declaratory judgment was brought as an action at law, and not an action in equity. (Order, R. p. 14). In doing so, it did not address any of the equitable principles raised by the Remaindermen.

The Court of Appeals modified the Circuit Court's Order, correctly determining that an action brought by completely innocent Remaindermen to cancel a mortgage is equitable, but then failed to consider or apply any equitable principles, doctrines, and/or maxims in its analysis. (App. p. 80). Respondent's own return acknowledges that the Court of Appeals does not cite a single equitable maxim. (Return, p. 10). The Court did not balance the equities in this case. Petitioners respectfully submit that this failure to apply equitable doctrines to an equitable action is alone sufficient grounds for granting a Writ of Certiorari. See *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000), reversing the Court of Appeals, and noting, "The Court of Appeals used no equitable doctrines even though Ingram [the Plaintiff] sought an equitable remedy." Accordingly, Petitioners respectfully request that this Honorable Court grant their Petition for a Writ of Certiorari, vacate the Court of Appeals' unpublished opinion, and balance the equities in this case so as to arrive at a fair and just result.

C. Even if the Remaindermen's main purpose in bringing a declaratory action was for the Court to construe the testamentary trust language contained in the Will, the action would still be one in equity.

Assuming *arguendo* that the main purpose of this action was to interpret Roberta Grant's Will, this action would still—under the present set of facts—be one in equity, requiring consideration and application of equitable principles. In instances where a trust is encapsulated in a will (i.e. a testamentary trust), an action to construe or interpret the testamentary trust is equitable in nature. See *Holcombe-Burdette v. Bank of America*, 640 S.E.2d 480, 483 (Ct. App. 2006), noting "In the case sub judice, a trust is encapsulated within the four corners of a will. An action to construe or interpret a testamentary trust is equitable in nature." Citing *Waddell v. Kahdy*, 309 S.C. 1, 4-5, 419 S.E.2d 783, 785-86 (1992). "Trusts have long and broadly been a field for the jurisdiction of equity." *Floyd v. Floyd*, 615 S.E.2d 465, 485, 365 S.C. 56 (2005), *superseded by statute on other grounds*, quoting *Epworth Orphanage v. Long*, 199 S.C. 385, 389, 19 S.E.2d 481, 482 (1942).

Here, the Court of Appeals correctly determined that the Remaindermen's action was equitable, but, again, did not take the additional, necessary step of considering and applying equitable principles to the facts and circumstances in this case. It did not balance the equities. As set forth below, it also erred in misconstruing the testamentary trust contained in the Will.

D. The wide range of liberties afforded to trustees under the Will did not apply to David Grant.

While there is language in the Will which transfers the Property to David Grant "for the term of his life, if he shall survive me" (i.e. creates a life interest subject to the express limitations and restriction set forth under Article V of the Will), there is no language which transfers the property to any specified trust for the benefit of the Remaindermen during David's

lifetime. (R. p. 431). However, even if this Court were to assume, *arguendo,* that the Property had somehow transferred to an unspecified trust during David's lifetime for him to hold and administer as a trustee (and not just as a life tenant with a severely restricted right of disposition), the testamentary trust language cited by the trial Court would *still* not give David the authority to mortgage the Property as he did. This is because the wide range of liberties afforded to possible Trustees under the Will, which include Roberta's sister, Barbara, specifically do not apply to David. (Will. R. pp. 431 and 445; Trial Tr., R. p. 218, lines 21-25).

Unlike Barbara or other potential trustees under the Will, Roberta placed express restrictions and limitations on ***David's authority*** to use, consume, and/or mortgage the Property, and she expressly instructed that—as it applied to David— **"the provisions of this Article [V] *and of the Will in general* shall be construed accordingly."** (Will, R. p. 431). Had Countrywide not turned a blind eye to the existence of Roberta's Will and actually read the limitations and restrictions contained therein, it would have known that David did not have the authority to mortgage the property "as he saw fit," nor did he have the authority to invade the principal. "We stress that sophisticated financial institutions that prepare mortgages purporting to encumber a customer's property must ensure that the customer in fact holds a legal interest in that property so as to protect all pertinent interests." *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 746 S.E.d 35 (2013). Here, Countrywide did not ensure that David, a life tenant, had authority to mortgage the property. More importantly, it failed to contact the Remaindermen—each of who were specifically named in the Will—about its intent to place a $625,000 encumbrance against their interest. Nationstar, Countrywide's successor in interest, should not be permitted to "ameliorate their complete failure to exercise proper due diligence at the expense of third parties." Id. Said differently, people need to know when their property interests are

being encumbered, particularly where the lending institution knows they have an interest. It was error for the Court to construe the testamentary trust language of the Will to absolve Countrywide and its successor-in-interest of any responsibility.

II. RESPONDENT'S RETURN MISCONSTRUES EQUITABLE MAXIMS IN AN EFFORT TO DIVEST COMPLETELY INNOCENT REMAINDERMEN OF THEIR INTEREST.

A. Equity follows the law, except where there is no superseding law to follow.

Respondent's Return contends that Petitioners "ignore one simple maxim: Equity follows the law." (Return, pp. 3 and 10). Respondent, however, fails to cite a single statute that would trump and/or supersede Equity in the instant matter. The reason is simple: There is no superseding law. Faced with this dilemma, Respondent directs this Court's attention the Court of Appeals' decision in *Regions Bank v. Wingard Props., Inc.*, for the generalized proposition that "all that would be required to resolve the issues cited in [the Remaindermen's] Petition would involve citations to *Regions Bank* for the principle that equity follows the law." (Return, p. 10, citing *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 254, 715S.E.2d 348, 355 (2011). Respondent notably offers no discussion of the case. Respectfully, Respondent gravely misapprehends the facts and holding in *Regions Bank*, both of which support a ruling in favor of the Petitioners.

Regions Bank involved a dispute as to whether the Respondent, Mr. Ray Covington, held a first priority equitable lien superior to Regions Bank's mortgage on a certain parcel of real property located in Myrtle Beach, South Carolina. Mr. Covington held his equitable lien by virtue of a residential home purchase agreement he entered into with the property owner. This purchase agreement predated Regions Bank's mortgage on the property. Importantly, Regions Bank was aware of Mr. Covington's interest prior to further encumbering the property.

Prior to the Regions Bank mortgage, Mr. Covington wrote the property owner a check as a down payment in accordance to the purchase agreement. However, the property owner did not deposit the check for several weeks, waiting until the day after Regions Bank had recorded its own mortgage to do so. On appeal, Regions Bank argued that it should have priority over Mr. Covington—pursuant to the recording statute—because Mr. Covington's check was not deposited in the property owner's bank account until after Regions Bank recorded its mortgage. In support of its position, Regions Bank argued that "equity should follow the law and reward a party who filed first." *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 254, 715S.E.2d 348, 355 (2011).

Unlike Respondent in the instant case, **who points to no statute**, Regions Bank cited to a specific, definite statute (S.C. Code § 30-7-10) for the proposition that equitable principles should not be considered and/or applied. And yet, the appellate court was not moved by the bank's self-serving argument, finding that Regions Bank could not hide behind the statute where it had knowledge of Mr. Covington's interest.

> The purpose of the recording statute is to protect a subsequent buyer without notice. *Frierson v. Watson,* 371 S.C. 60, 67, 636 S.E.2d 872, 875 (Ct. App. 2006). In the common law and in equity, a purchase money mortgage will ordinarily be given priority over other security instruments in realty. *Citizens & S. Nat'l Bank of S.C. v. Smith,* 277 S.C. 162, 164, 284 S.E.2d 770, 771 (1981). However, <u>if the mortgage holder has notice of a prior purchase money mortgage, then it cannot prevail under the recording statute by virtue of filing first.</u> *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.,* 273 S.C. 306, 308, 257 S.E.2d 496, 497 (1979).
>
> *Regions Bank v. Wingard Props., Inc.*, 394 S.C. at 254, 715S.E.2d at 355 (2011).

Here, Respondent fails to cite any statute, let alone one that is unambiguously worded so as to avoid the application of equitable principles to the instant case. Moreover, like the bank in

Regions Bank, Countrywide had knowledge of the Remaindermen's interest in the property—it knew that Roberta Grant left a last Will and Testament. It knew that David Grant held a life estate interest by virtue of the Will. It knew that Roberta Grant left children who held a remainder interest in the property. Yet, it did not read the Will. It did not think it important to contact the named Remaindermen about placing a $625,000 encumbrance against their interest.

III. COUNTRYWIDE'S PLACEMENT OF A $625,000.00 MORTGAGE ON THE SUBJECT PROPERTY DID NOT PROTECT THE INNOCENT REMAINDERMEN OR TAKE INTO ACCOUNT THEIR INTEREST, IT SEEKS TO DIVEST THEM.

Respondent argues that the innocent Remaindermen have somehow benefitted from the imposition of a $625,000 mortgage on their Property because taxes and homeowners insurance were paid out of escrow under the terms of the mortgage, and as a result, "it protected the property from being involuntarily sold at a tax sale." (Return, p. 17). In making this argument, Nationstar seems to ignore that it is now trying to involuntarily sell the property at a foreclosure sale. (Trial Tr., R. p. 283, lines 12-17; p. 309, lines 4-9; p. 210, lines 18-21). In actuality, Nationstar's requirement that taxes and insurance be paid out of escrow is not designed to protect the innocent Remaindermen's interests in the Property, but rather to protect Nationstar's security interest under the unsanctioned mortgage.

In addition, obtaining a mortgage is not a precursor to paying property taxes. Nationstar's Return ignores that David Grant, as a life tenant, had both a moral and legal duty to pay taxes on the property regardless of whether it was mortgaged. See *Mcdavid v. Mcdavid*, 187 S.C. 127, 197 S.E. 204, 116 A.L.R. 1412 (1938), noting, "It is clear that it is both the moral and legal duty of the life tenant [in this case] to pay these taxes," and *Kirkham v. First Nat. Bank Of City Of N.Y.*,

149 S.C. 545, 147 S.E. 648 (1929). This is a duty that befalls the life tenant who is liable for taxes accruing during his life tenancy, not the completely innocent Remaindermen.[2]

Nationstar also disregards that by placing a $625,000.00 encumbrance on the property, it is not "preserving the property for the Grants", but rather acting in its own financial self-interest. Respondent's speculation that encumbering the property by $625,000.00 somehow resulted in $500,000 increase in equity is, respectfully, pure fantasy. As the innocent Remaindermen testified, no mortgage proceeds were used maintain the property or provide necessary repairs. (Trial Tr., R. p. 226, line 23 to p. 228, line 25; p. 246, line 16 to p. 247, line 17; p. 251, line 18 to p. 252, line 3; p. 252, line 23 to p. 254, line 18). Indeed, when David Grant died, the money was all gone and the house was left in terrible disrepair. (Stip. of Facts, R. p. 501; Trial Tr., R., p. 222, line 16; p. 224, lines 10-15). Nationstar's attempt to appear as some sort of altruistic entity favoring the interests of the innocent Remaindermen is nothing short of disingenuous. By encumbering the property without any regard for the innocent Remaindermen's interests, Countrywide and Nationstar have demonstrated a "complete failure to exercise due diligence at the expense of third parties." *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421 at n.1, 746 S.E.d 35 at n.1 (2013).

Nationstar's contention that the payment of homeowners insurance out of escrowed mortgage funds was in keeping with Roberta's intent is also a complete fabrication. Roberta's Will specifically states, "I direct that my husband, David E. Grant, […] shall not be required to

[2] It is worth noting that if David Grant could not afford to pay the taxes, he could have sold the property and invested the proceeds to protect the Remaindermen taking after him. His life estate was not, however, an invitation to invade the principal and encumber the Remaindermen's interest. Had Countrywide actually read the Will, it would have known this. It would have known that David Grant did not have the authority to consume and/or invade the principal. Countrywide could have and should have contacted the Remaindermen about encumbering their interest in the property. It chose not to do so.

carry any insurance on the life estate property." (Will, R. p. 431). Were Nationstar truly interested in looking at Roberta's intent, it would find that she explicitly instructed that David Grant did not have the authority to consume or retain any principle of the estate as his own, and that he did not have the authority to mortgage the Property unless it was in furtherance of his obligation to protect the Remaindermen after him. (Will, R. pp. 431-432).

Further, unlike the completely innocent Remaindermen in the instant action, Countrywide was in a better position to protect itself—and did so, by obtaining title insurance on the property just in case there was an issue like the one the parties confront today.

CONCLUSION

For each of the foregoing reasons, Petitioners respectfully request that this Honorable Court grant their Petition for a Writ of Certiorari, balance the equities, and give weight to the preponderance of the evidence, applying equitable principles of fairness and justice to the facts and circumstances of this case. It was error for the Court of Appeals to hold that sophisticated financial institutions that prepare mortgages do not owe a duty to protect the pertinent interest of completely innocent third-parties, particularly where the institution has express knowledge of the third-parties' interest in the property.

Here, Countrywide received notice that the life tenant and Remaindermen's interests were subject to the terms of a Will. It knew that Roberta's children held the remainder interest in the property. Yet, Countrywide willfully ignored and failed to even review the Will, including the express restrictions contained therein. It failed to make any inquiry as to the life tenant's *reason* for the mortgage so as to ascertain whether it was permissible. More importantly, Countrywide failed to notify any of the innocent Remaindermen (all of whom were known) as to its placement of a $625,000.00 mortgage against their interest.

Nationstar, Countrywide's successor-in-interest is not without remedy, because Countrywide, who was in a far better position to protect itself than the completely innocent Remaindermen, obtained title insurance in case there was just such an issue with enforcing the mortgage. Accordingly, Petitioners respectfully request that this Honorable Court grant their Petition for a Writ of Certiorari, vacate the Court of Appeals' per curium, unpublished opinion, and find that the subject mortgage is not enforceable against completely innocent remaindermen.

Respectfully submitted,

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