

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Nov 21 2023

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

James E. Chellis, Master in Equity

Case No. 2023-001652

NCP PILGRIM, LLC

Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL
CREDIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS and
DAVID SEAN CLANCY,

Of whom MARY LOU CERCOPELY, DAVID S. CLANCY,
And DAVID SEAN CLANCY are the

Petitioners.

RESPONDENT'S RETURN TO PETITIONERS' PETITION FOR CERTIORARI

Russell P. Patterson, Esquire (No. 4375)
Lauren P. Williams, Esquire (No. 102341)
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head, South Carolina 29938
(843) 341-9300
Attorneys for the Respondent
NCP Pilgrim, LLC

Other Counsel of Record:

Robert B. Varnado (No. 7850)
Varnado Law Firm, LLC
P.O. Box 387
Charleston, SC 29402
Attorney for Petitioners

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW3

STATEMENT OF THE CASE.....3

ARGUMENT7

I. The Court of Appeals Correctly Affirmed the Trial Court’s Ruling That Petitioners Waived All Defenses and Counterclaims, Except For Lack of Subject Matter Jurisdiction.7

II. The Court of Appeals Properly Affirmed the Trial Court’s Ruling That That It Had Subject Matter Jurisdiction Over Respondent’s Claims.8

A. The Court of Appeals Properly Ruled South Carolina State Courts Are Not Preempted from Determining FIRREA Does Not Apply to This Matter.....9

B. The Court of Appeals Properly Affirmed the Trial Court’s Ruling that FIRREA Did Not Apply.....10

CONCLUSION.....14

QUESTION PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly rule that the Trial Court properly held it had subject matter jurisdiction over this commercial foreclosure action based on its conclusion that 12 U.S.C. §1821(d)(13)(D) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. §1811 *et seq.* ("FIRREA") does not preempt the Trial Court's authority under Rule 53, SCRCF?

STATEMENT OF THE CASE

A. Procedural History

This is an appeal of a commercial mortgage foreclosure action for a vacant commercial building located at 117 S. Cedar Street in Summerville, South Carolina ("Subject Property"). Respondent NCP Pilgrim, LLC ("NCP") as the owner of the subject Note and Mortgage, filed its Summons, Complaint, and Lis Pendens on November 15, 2018. R.pp. 60-90. On January 4, 2019, this foreclosure action was referred to the Dorchester County Master in Equity ("MIE") pursuant to Rule 53, SCRCF. R. pp. 1-2.

Petitioners Mary Lou Cercopely ("Cercopely"), David S. Clancy ("Clancy"), David Sean Clancy, and Defendant Southcoast Community Bank n/k/a Pinnacle Bank timely filed Answers. R. pp. 91-117. Specifically, Petitioners Cercopely and Clancy (collectively "Petitioners") filed an Answer and Counterclaim on January 23, 2019.

Shortly thereafter, Respondent filed its Amended Summons and Complaint on April 5, 2019 (R. pp. 122-27), and Petitioners filed their Amended Answer and Counterclaim on April 22, 2019 (R. pp. 128-39). A foreclosure trial was held before the MIE on January 28, 2020 ("Trial"). At Trial, Petitioners waived all defenses and counterclaims stated in their Amended Answer and Counterclaim and raised a new defense asserting that the Dorchester County Master in Equity

lacked subject matter jurisdiction under FIRREA. R. p. 455, line 16 - p. 456, line 17; R. p. 463, line 19 - line 13 (Tr. 11:16-13:17; 42:19-44:13). Specifically, Petitioners asserted that subject matter jurisdiction lies with the Federal Deposit Insurance Corporation ("FDIC") pursuant to 12 U.S.C. §1821(d)(13)(D). In examining the requirements of FIRREA found in §1821(d), the Trial Court held that NCP's action to foreclose was not a claim subject to the FDIC's administrative review process or the limitation on judicial review. R. pp. 14-17. Thus, the Trial Court concluded that its subject matter jurisdiction was not preempted by 12 U.S.C. §1821(d)(13)(D), awarded NCP a judgment against Clancy in the amount of \$409,074.01, and ordered the subject property be sold at the upcoming foreclosure sale. R. p. 20; R. p. 31.

Subsequently, Petitioners filed an Emergency Motion for Stay of Proceedings to Enforce Judgment or for Supersedeas Bond and To Impose Bond on Plaintiff, on July 14, 2020, which was ultimately denied by the MIE as premature in the August 5, 2020 Form Order. R. pp. 404-07; R. pp. 48-50. On July 23, 2020, Petitioners filed a Motion to Reconsider the Decree of Foreclosure, based on their position that the MIE lacked subject matter jurisdiction under FIRREA. R. pp. 408-18. This Motion was also denied by the MIE on August 5, 2020, in the Order Denying Defendants Cercopely, Clancy, and David Sean Clancy's Motion to Reconsider. R. pp. 56-59. Shortly thereafter, Petitioners filed an appeal with the South Carolina Court of Appeals on August 18, 2020 ("COA Appeal" - Case No. 2020-001168).

On August 25, 2020, Petitioners filed their Second Emergency Motion for Stay of Proceedings to Enforce Judgment or for Supersedeas Bond and to Impose Bond on Plaintiff with the MIE ("Motion for Bond"). R. pp. 438-41. A hearing was held on Petitioners' Motion for Bond on September 14, 2020, and on October 15, 2020, the MIE issued an Amended Order Imposing Supersedeas Bond ("Order Imposing Bond"). R. pp. 35-47. The Order Imposing Bond required

the Petitioners to post a bond of \$172,000, along with a number of other reasonable requirements, with the Dorchester County Clerk of Court by 5:00 p.m. on November 30, 2020, to stay the December 1, 2020, judicial sale of the Subject Property. R. pp. 42-46. This Order was not appealed.

On November 23, 2020, prior to the December 1, 2020 Judicial Sale, Petitioners filed a Motion for Relief from Supercedeas, to Enjoin Master's Sale on 12/01/20, and to Transfer Appeal to the Supreme Court with the South Carolina Court of Appeals ("COA Motion"). The COA Motion was denied by the Court of Appeals on November 30, 2020.

Subsequently, Petitioners failed to post a bond with the Dorchester County Clerk of Court by November 30, 2020, and thus, failed to stay the sale under the MIE's Order Imposing Bond. Also, on November 30, 2020, NCP waived its right to a deficiency judgment against Clancy by filing its Notice of Plaintiff's Waiver of Right to Deficiency Judgment.

The Subject Property was sold on December 1, 2020, to NCP pursuant to that certain deed recorded with the Dorchester County Register of Deeds ("ROD") in Book RB 13053 at Page 266. After this sale, Petitioners filed a Motion for Relief from Supercedeas, to Enjoin Master's Sale on 12/01/20, and to Transfer Appeal to the Supreme Court¹ (Case No. 2020-001574) and a Petition for Writ of Mandamus to Court of Appeals with the South Carolina Supreme Court² (Case No. 2020-1567), both of which were denied by the South Carolina Supreme Court on March 9, 2021.

After the parties fully briefed the COA Appeal, the Court of Appeals issued its decision affirming the Dorchester County Master-in-Equity on August 16, 2023 (Unpublished Opinion No. 2023-UP-293, filed August 16, 2023). The Court of Appeals' decision was based on the

¹ The South Carolina Supreme Court Clerk of Court indicated that this Motion would be construed as a motion to certify the appeal under Rule 204(b), SCACR.

² The South Carolina Supreme Court Clerk of Court indicated that this Petition would be construed as a request for relief under Rule 245, SCACR.

conclusion that section 1821(d)(13)(D) of FIRREA does not apply to this action because Respondent is neither a creditor nor any other type of party seeking to determine its rights against CFSB as a failed financial institution or the FDIC as its receiver. *Id.* at *7 (R. p. 677). On August 30, 2023, Petitioner filed a Motion for Rehearing, which was denied on September 21, 2023. R. pp. 678-87). Thereafter, Petitioner filed the instant Petition for Writ of Certiorari on October 23, 2023 (“Petition”).

B. Factual History³

On or about June 10, 2004, Clancy borrowed \$258,840 from Carolina Federal Savings Bank (“Carolina Federal”) as was evidenced by a customary Note (“Note”). R. pp. 464-67. This loan was secured by a first mortgage the Subject Property owned by Barbara A. Clancy (“Mortgage”). R. pp. 487-91; 493-97. Pursuant to the Note, the loan had an original maturity date of June 10, 2009. Thereafter, Clancy and his mother signed two note and mortgage modifications on August 18, 2009, (R. pp. 499-501) and on June 24, 2010 (R. pp. 503-05). On or about October 13, 2012, Barbara Clancy passed away, leaving the Subject Property to her surviving children, Cercopely and Clancy.

On or about January 30, 2013, the FDIC, which had taken over Carolina Federal, sold the Note and Mortgage (collectively “Loan Documents”) to CRE/ADC Venture, 2012–1 LLC (“CRE/ADC”) as evidenced by the Assignment of Real Estate Mortgage recorded with the ROD in Book 8718 at Page 33, the Assignment of Home Equity Variable Draw Agreement, and the Omnibus Assignment. R. pp. 507-12; 580; 584. Thereafter, CRE/ADC sold the Loan Documents to NCP as evidenced by the Assignment of Mortgage or Other Security Instrument recorded with

³ NCP’s reading of Rule 208(b)(1)(C) SCACR is that disputed facts or matters should not be included in the Statement of Case. In order to avoid being bound by Clancy’s Factual History in its Statement of the Case under Rule 242(f) SCACR, NCP has set forth a brief factual summary.

the ROD in Book RB 11512 at Page 126 and the Assignment of Home Equity Variable Draw Agreement. R. pp. 514-17; 582. It is undisputed that NCP is the current owner and holder of the Loan Documents⁴ and that Clancy has not made a payment on this Note since January 14, 2013. R. p. 18; R. p. 455, line 24 (Tr. 9:24).

At Trial, Petitioners' counsel explicitly waived all counterclaims and defenses except for Petitioners' contention that FIRREA preempted the Trial Court's subject matter jurisdiction and elected to not present any evidence. R. pp. 455, line 16 - 456, line 17; R. p.463, lines 19 - 13 (Tr. 11:16-13:17; 42:19-44:13). Thus, the only issue preserved for appeal is the issue of subject matter jurisdiction. *Gatewood v. Moses*, 39 S.C.L. 244, 247 (S.C. App. L. 1852) (appellant was not permitted to raise and discuss a legal ground expressly waived at the circuit court trial). All other arguments, including NCP's ownership of the loan documents, have been explicitly waived by Petitioners and can no longer be argued before the Court. *Id.* See also *Bodkin v. Bodkin*, 388 S.C. 203, 228, 694 S.E.2d 230, 243 (Ct. App. 2010) (the court must accept stipulations as binding); *C.A.N. Enterprises, Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 2929 S.C. 556, 559, 357 S.E.2d 714, 715 (Ct. App. 1987), *aff'd* 296 S.C. 373, 373 S.E.2d 584 (1998) (stipulations are binding upon parties who make them).

ARGUMENT

I. The Court of Appeals Correctly Affirmed the Trial Court's Ruling That Petitioners Waived All Defenses and Counterclaims, Except For Lack of Subject Matter Jurisdiction.

Throughout the Petition, Petitioners question the validity of the assignment of the Loan Documents to Respondent. Petitioners Pet. at 5-6; 9-11.⁵ As stated above, during Trial,

⁴ As stated in the Decree, NCP is in possession of the Original Note and Original Mortgage, which was produced to Petitioners' counsel on May 20, 2020. R. p. 18. As that time, Petitioners' counsel did not raise any objection to the authenticity of the original Note and original Mortgage. *Id.*

⁵ Throughout their Petition, Petitioners repeatedly assert that as part of this suit Respondent was asking the Court to

Petitioners expressly stipulated that they waived all potentially applicable defenses and counterclaims, with the sole exception of their argument that the Trial Court's subject matter jurisdiction was preempted by FIRREA. R. p. 463, lines 19 - 13 (Tr. 42:19-44:13). As a result, Petitioners' arguments related to any issue other than subject matter jurisdiction, including any challenge to the validity of the assignment of the Note and Mortgage are not preserved for appellate review. See *Bodkin* at 228, 694 S.E.2d at 243 (the court must accept stipulations as binding); *C.A.N. Enterprises, Inc.* at 559, 357 S.E.2d at 715 (stipulations are binding upon parties who make them); *Gatewood* at 247 (appellant was not permitted to raise and discuss a legal ground expressly waived at the circuit court trial). Accordingly, the Court of Appeals properly affirmed the Trial Court's ruling that Petitioners waived any arguments that were outside the scope of their lack of subject matter jurisdiction argument.

II. The Court of Appeals Properly Affirmed the Trial Court's Ruling That That It Had Subject Matter Jurisdiction Over Respondent's Claims.

The Court of Appeals properly affirmed the Trial Court's ruling that it had subject matter jurisdiction to hear this matter and rejected Petitioners' argument that the Trial Court lacked subject matter jurisdiction pursuant to FIRREA section 1821(d)(13)(D). The Court of Appeals decision rejected Petitioners' argument that the language of section 1821(d)(13)(D) acts as a jurisdictional bar so complete that South Carolina courts do not even have the necessary jurisdictional authority to determine the applicability of the referred section to this matter.

Specifically, Petitioners' assert that the following section of FIRREA limits the Trial Court's jurisdictional authority:

Except as otherwise provided in this subsection, no court shall have jurisdiction

"perfect its mortgage." While Respondent patently disagrees with this assertion, the validity of NCP's ownership of the Loan Documents is not at issue in this matter. At trial, Petitioners explicitly waived any argument regarding the validity of NCP's ownership of the Loan Documents and the underlying chain of title when they waived all defenses except for lack of subject matter jurisdiction pursuant to FIRREA.

over -

(i) Any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver, including assets which the [FDIC] may acquire from itself as such receiver; or

(ii) Any claim relating to any act or omission of such institution or the [FDIC] as receiver.

12 U.S.C. § 1821(d)(13)(D). Petitioners believe this section divests South Carolina courts of subject matter jurisdiction over this matter because CFSB was a “depository institution” and the FDIC was appointed receiver of its assets. Petitioners’ argument has been repeatedly rejected by the Court of Appeals and the Trial Court.

A. The Court of Appeals Properly Ruled South Carolina State Courts Are Not Preempted from Determining FIRREA Does Not Apply to This Matter.

The Court of Appeals properly ruled that South Carolina state courts are not preempted from determining FIRREA does not apply in this matter. It is well established that whether a federal statute preempts state law is a question of law for the trial court to decide. *Weston v. Kim's Dollar Store*, 385 S.C. 520, 536, 684 S.E.2d 769, 777 (Ct. App. 2009), *aff'd and remanded*, 399 S.C. 303, 731 S.E.2d 864 (2012). Courts should not lightly infer preemption. *Normandy Corp. v. S.C. Dep't of Transp.*, 386 S.C. 393, 409, 688 S.E.2d 136, 144 (Ct. App. 2009). Federal law may preempt state law in three distinct ways: "(1) Congress may expressly define the extent to which it preempts state law; (2) Congress may occupy a field of regulation, 'impliedly' preempting state law; or (3) a state law may be preempted to the extent it 'conflicts' with federal law." *Id.*

State courts, as well as federal courts, are entrusted with concurrent jurisdiction to try federal claims. *Haywood v. Drown*, 556 U.S. 729, 734-35 (2009). Furthermore, "the mere fact that a given federal law might 'apply' or even provide a federal defense to a state-law cause of action, is insufficient alone to establish federal question jurisdiction. To give rise to federal

question jurisdiction, a court must find complete preemption." *Hart v. Bayer Corp.*, 199 F.3d 239, 244 (5th Cir. 2000) (citing *Franchise Tax Bd. of State of Cal. V. Constr. Laborers Vacation Tr. For S. California*, 463 U.S. 1, 23-24 (1983)).

Here, as the Court of Appeals correctly reasoned, the plain language of the FIRREA clearly indicates that Congress established two specific scenarios under which exclusive jurisdiction would lie with the FDIC: when an individual is (1) making claims against a failed financial institution or (2) seeking to adjudicate their rights against the failed institution. See 12 U.S.C. §1821(d)(13)(D); See e.g. *Tillman v. Resolution Tr. Corp.*, 37 F.3d 1032, 1035 (4th Cir. 1994); *Freeman v. F.D.I.C.*, 56 F.3d 1394, 1399 (D.C. Cir. 1995). Thus, FIRREA falls squarely into the first way federal law may preempt state law and the plain language establishes the very limited extent to which exclusive jurisdiction would lie with the FDIC. Accordingly, the Court of Appeals properly found that the Trial Court had the necessary jurisdictional authority to determine whether those two specific scenarios applied to the case at hand.

B. The Court of Appeals Properly Affirmed the Trial Court's Ruling that FIRREA Did Not Apply.

The Court of Appeals properly affirmed the Trial Court's ruling that FIRREA is inapplicable to this matter for two reasons. First, FDIC's assignment of the Loan Documents removes this Loan from the FDIC's jurisdiction. Second, Respondent's claims are not subject to the explicit language of section 1821(d)(13)(D).

1. The Court of Appeals Properly Ruled that FIRREA Does Not Apply Based on The Assignment of the Loan Documents to Respondent.

The Court of Appeals properly ruled that FIRREA does not apply to this matter based on the assignment of the Loan Documents to Respondent. On or about January 30, 2013, the FDIC, which had taken over Carolina Federal, sold the Loan Documents to CRE/ADC Venture, 2012-1

LLC (“CRE/ADC”) as evidenced by the Assignment of Real Estate Mortgage recorded with the ROD in Book 8718 at Page 33, the Assignment of Home Equity Variable Draw Agreement, and the Omnibus Assignment. R. pp. 507-12; 580; 584. Thereafter, CRE/ADC sold the Loan Documents to Respondent as evidenced by the Assignment of Mortgage or Other Security Instrument recorded with the ROD in Book RB 11512 at Page 126 and the Assignment of Home Equity Variable Draw Agreement. R. pp. 514-17; 582. As stated above, Petitioners explicitly waived at trial any arguments regarding the validity of these assignments. Thus, the Court of Appeals properly determined these assignments must be accepted as valid and any arguments to the contrary presented by Petitioners must be ignored. *Gatewood* at 247 (appellant was not permitted to raise and discuss a legal ground expressly waived at the circuit court trial).

In reaching this conclusion, the Court of Appeals properly applied the well-established legal principle that an assignee has all the same rights and privileges as the assignor to hold that a third-party who purchases an asset from the FDIC also has the authority to pursue the foreclosure of the assigned asset.⁶ *Dittmer Properties, L.P. v. F.D.I.C.*, 708 F.3d 1011, 1017 (8th Cir. 2013); *Twelfth RMA Partners, L.P. v. Nat’l Safe Corp.*, 335 S.C. 635, 640, 518 S.E.2d 44, 46 (Ct. App. 1999) (“When a contract is assigned, the assignee should have all the same rights and privileges, including the right to sue on the contract, as the assignor”). *See also, Deutsche Bank Nat’l Tr. Co. v. Burke*, 902 F.3d 548, 552 (5th Cir. 2018) (finding that “[b]ecause the FDIC could sell ‘all the real and personal property’ of [a failed bank], it necessarily had power to assign the rights under the note, including the foreclosure rights”); *Newman v. JP Morgan Chase Bank, N.A.*, 81 F. Supp. 3d 735, 745 (D. Minn. 2015); *Haynes v. JPMorgan Chase Bank, N.A.*, 466 F. App’x 763, 766 (11th Cir. 2012). Without this principle, it would be illogical for a third-party to ever accept an

⁶ This principle universally applies whether the underlying agreement assigned is subject to U.C.C. Articles 3 or 9 or common law.

assignment of an asset from the FDIC, because without the ability to foreclose, the asset would be worthless.

Accordingly, the Court of Appeals properly concluded that the assignment of the Loan Documents rendered section 1821(d)(13)(D) inapplicable.

2. The Court of Appeals Properly Ruled that the Plain Wording of Section 1821(d)(13)(D) Does Not Apply to This Matter.

After conducting a detailed review of the language contained in §1821(d)(3)-(13) and the case law interpreting these sections, the Trial Court properly ruled that Respondent's claims were not subject to FIRREA because NCP was not making a single claim against the failed institution, Carolina Federal, or against the receiver, the FDIC, in this action. In reaching this conclusion, the Trial Court properly relied upon *Tillman* and *Freeman* to conclude that FIRREA section 1821(d)(13)(D) requires only those persons or entities making claims *against a failed financial institution* or seeking to adjudicate their rights *against the failed institution* to present their claims first to the FDIC through its administrative claims process. Ultimately, the Trial Court reasoned that NCP was simply seeking to exercise its lawful authority to enforce the Loan Documents it was assigned by virtue of the June 26, 2018 Assignments from CRE/ADC by filing a routine foreclosure action, which is not a claim subject to section 1821(d)(13)(D). R. pp. 514-517; R. p. 582.

This conclusion is consistent with a review of the national case law evaluating the applicability of section 1821(d)(13)(D). Throughout the multiple cases ruling a third party could proceed with the foreclosure of an asset purchased by a third-party from the FDIC, not one case stated that the third-party purchaser was subject to the FDIC's administrative claims process or section 1821(d)(13)(D). See 122 A.L.R. Fed. 519. Instead, each court has repeatedly upheld the third-party's right to foreclose and did not impose a limitation on judicial review. Respondent has

been unable to locate a single case adopting Petitioners' position that a third-party purchaser of a loan from the FDIC cannot proceed with a judicial foreclosure and neither have Petitioners. As there have been hundreds of thousands of such loans sold by the FDIC, it would seem logical there would be many reported cases supporting Petitioners' argument. However, there are none.

Finally, it would be entirely illogical that a third party who purchases an asset from the FDIC would later have to get the FDIC's approval through the administrative claims process before it could exercise its rights under the terms of the asset. Also, section 1821(d)(13)(D) does not say this is the case. If it was Congress' intent to require this additional step, they would have explicitly stated that requirement. The FDIC's goal is to liquidate the assets of a failed financial institution in order to pay off the failed institution's creditors as quickly as possible. If an asset sold to a third-party purchaser is subject to the administrative claims process, there would be a substantial chilling effect upon the FDIC's ability to perform its statutory functions as a receiver because no third-party would ever purchase an asset from a failed institution. This is especially true in this case where Respondent is attempting to foreclose the loan over seven (7) years after the FDIC took over the failed institution, Carolina Federal, and long after all of the time constraints of the FDIC's administrative claims process have expired. *See* 12 U.S.C. §1821(d)(3)-(13). Thus, it would not only be impractical for Respondent to comply with the FDIC's administrative claims process, it would be impossible. As highlighted above, Petitioner's arguments are at odds with the plain language and intent of FIRREA.

Petitioners argue that the Court of Appeals made a fatal error in failing to explicitly focus on the plain wording of section 1821(d)(13)(D).⁷ This argument fails because even a brief glance

⁷ In making this argument, Petitioners repeatedly cite *Preister v. Cromer*, 401 S.C. 38, 43, 736 S.E.2d 249, 252 (2012). This reliance is incorrect because the *Preister* court was not concerned with express preemption, as established by section 1821(d)(13)(D), but with implied conflict preemption. The principles and analysis of implied conflict preemption are entirely different than those of express preemption.

of the Court of Appeals' Opinion reveals a detailed analysis of the plain wording of section 1821(d)(13)(D) throughout Section II of the Opinion. R. pp. 674-77. The Court of Appeals repeatedly highlights the plain wording of FIRREA and relies explicitly on this language to determine that neither scenario outlined in section 1821(d)(13)(D) is applicable to the matter at hand.

Petitioners are trying to read language in section 1821(d)(13)(D) that simply does not exist so as to avoid the ultimate conclusion that has been reach by the Trial Court, the Court of Appeals, and this Court in many other cases, that an assignee of a note and mortgage has the right to foreclose upon said note and mortgage when its terms are violation for non-payment.

CONCLUSION

For all of the foregoing reasons, this Court should deny the petition for writ of certiorari. Should this Court grant the petition, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully submitted,

/s/ Lauren P. Williams

Russell P. Patterson (No. 4375)

Lauren P. Williams (No. 102341)

Russell P. Patterson, P.A.

P.O. Box 8047

Hilton Head Island, SC 29938

(843) 341-9300

lauren@russellpattersonlaw.com

Russell@russellpattersonlaw.com

Attorneys for the Respondent,

NCP Pilgrim, LLC

Hilton Head Island, South Carolina
November 21, 2023