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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2023-001739

Richard Young and Jason Greene ..... Respondents,

v.

John W. Beasley a/k/a John W. Beasley, Sr.
and Lillian Beasley in their individual capacities
and as Trustees or as Successors in trust under
the Beasley Living Trust dated August 14, 2018,
and any amendments thereto.....Appellants.

INITIAL BRIEF OF APPELLANTS

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December 6, 2023

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I. Whether Appellants have satisfied the Debt allegedly owed such that the Second Settlement Agreement constitutes a release of the aforementioned Debt?

II. In the alternative, whether one or more genuine issues of material fact exist warranting the denial of summary judgment for either of the parties?

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

John W. Beasley a/k/a John W. Beasley, Sr., and Lillian Beasley in their individual capacities and as Trustees or as Successors in trust under the Beasley Living Trust dated August 14, 2018, and any amendments thereto ("**Appellants**"), own the real property located at 1050 Sea Eagle Watch, Charleston, South Carolina 29412 ("**Subject Property**").

A. *First Settlement Agreement*

On November 20, 2017, Appellants executed a Settlement Agreement and Conditional Release of Claims (the "**First Settlement Agreement**") wherein Appellants and other debtors not parties to this lawsuit, acknowledged a debt to Richard Young and Jason Greene ("**Respondents**") in the amount of Six Hundred Forty-Seven Thousand Five Hundred and 00/100 Dollars ($647,500.00) (the "**Debt**"). (First Settlement Agreement, p. 2.) The debtors other than Appellants that were named in this First Settlement Agreement are John W. Beasley, Jr. and the Beasley Construction Company, LLC. (First Settlement Agreement, p. 1.)

B. *The Note, Mortgage, and Confession of Judgment*

Simultaneous with the First Settlement Agreement, Appellants delivered an executed Promissory Note (the "**Note**"), a Mortgage (the "**Mortgage**") securing said Note, by a lien on the Subject Property, as well as a Confession of Judgment (the "**Confession of Judgment**"), as

security for Respondents' recovery on the Debt. At the time of the recording of the Mortgage, on December 8, 2017, the Mortgage was junior to other liens, including, without limitation, a mortgage executed and delivered by Appellants, upon the Property, in favor of First-Citizens Bank & Trust Company ("**First-Citizens**").[1]

On May 30, 2019, upon default on the Note and/or the First Settlement Agreement, Respondents filed the Confession of Judgment with the Clerk of Court for Charleston County, South Carolina and obtained a judgment against Appellants. On September 10, 2019, First-Citizens filed an action seeking to foreclose the mortgage upon the Property, previously executed in its favor by Appellants. This action, filed with the Clerk of Court for Charleston County as Civil Action No. 2019-CP-10-4676, was amended on September 19, 2019. Both the original and the amended foreclosure action in favor of First-Citizens includes Respondents herein as well as Appellants, pursuant to the Confession of Judgment. The foreclosure action initiated by First-Citizens was referred to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County by Order entered November 15, 2019. First-Citizens' foreclosure action was resolved pursuant to the Master-in-Equity's Order and Judgment of Foreclosure and Sale entered on March 16, 2020.

C. *The Second Settlement Agreement*

Following the recordation of the Confession of Judgment, as well as the disposition of the mortgage foreclosure initiated on behalf of First-Citizens, Respondents, upon information and belief, anticipated foreclosure to occur, leading them to believe they would be left without any collateral securing the Debt. Both Respondents and Appellants sought to resolve the Debt as to

[1] The Note and Mortgage are individual forms of security for the Debt agreed upon in the First Settlement Agreement. The Debt is not the Note or the Mortgage, the Debt is the borrowed money, and the former are the available avenues to recover the Debt upon default.

only Appellants and as to the Property, to the extent the Debt was not already resolved, upon extinguishment of the lien created by the Confession of Judgment and addressed in the foreclosure action on behalf of First-Citizens.[2] Accordingly, on November 30, 2020, Respondents and Appellants agreed to the terms of a Settlement Agreement and Conditional Release of Claims (the "**Second Settlement Agreement**").

Following the execution of the Second Settlement Agreement and pursuant to its terms, Respondents received a sum of Fifty Thousand and 00/100 Dollars ($50,000.00).[3] (Second Settlement Agreement, p. 2.) Thereafter, on March 17, 2021, Respondents filed the Release of Judgment Lien as to Specific Property, Release of Judgment Lien as to Certain Defendants, and Partial Satisfaction of Judgment (the "**Release**") with the Clerk of Court for Charleston County, South Carolina. The Release provides, in pertinent part:

> For and in consideration of the payment of the total sum of Fifty Thousand and 00/100 Dollars ($50,000) (the "Release Fee"), paid to [Respondents], by only Defendant John W. Beasley, Sr. . . . and Defendant Lillian Beasley [i.e. Appellants] . . . towards the reduction of the previously entered judgment in this matter, the receipt of which is hereby acknowledged, a certain parcel of real property owned by [Appellants] is hereby released from the lien of said judgment, such parcel being described on the attached Description of Property.
>
> Moreover, [Appellants] are hereby personally released from judgment in this matter.
>
> . . . Nothing in this document shall affect or limit the rights of the [Respondents] in their collective or individual pursuit of collecting the remaining balance of said judgment from any ***other*** property, real or personal, presently owned or acquired hereafter

[2] Of note, the Second Settlement Agreement was not a part of the foreclosure process in the sense it was a requirement of First-Citizens or the foreclosure action. Instead, Respondents were prompted to take their own separate and distinct action in an attempt to protect their ability to collect on the Debt.

[3] Additionally, Respondents received Twenty-Five Thousand and 00/100 Dollars ($25,000.00) relating to the First Settlement Agreement.

from ***the Remaining Defendants***.

(Release, pp. 1–2 (underlined emphasis removed, but bolded/italicized emphasis added).)

D. *Order of Restitution*

One of the other parties to the Note was John W. Beasley, Jr. ("**John Jr.**"), the son of Appellants. (Note, p. 1.) It is undisputed John Jr. was convicted in federal court of crimes relating to Respondents and the aforementioned Debt. As a consequence of his conviction, John Jr. received an order of restitution in which he must provide restitution to both Respondents relative to the Debt owed. There is no documentation in the record of how much John Jr. has paid to date in restitution.

II. PROCEDURAL HISTORY

On May 5, 2023, Respondents moved for summary judgment, attaching six exhibits. Respondents did not attach the Note to their Motion. On August 4, 2023, Respondents filed a Memorandum in Support of their Motion for Summary Judgment, again failing to attach the Note to their Memorandum. On August 8, 2023, Appellants filed their Memorandum in Opposition to Respondents' Motion for Summary Judgment. A hearing was conducted on August 8, 2023. Following the hearing, the Master-in-Equity issued its Order on August 23, 2023, finding "[t]here is no reference anywhere in the Second Settlement Agreement as to the Note and Mortgage which were included in the [F]irst Settlement Agreement." (Order of Aug. 23, 2023, p. 4.) Based on this finding, the Master-in-Equity granted Respondents' Motion for Summary Judgment.

Appellants moved for reconsideration on September 1, 2023. A hearing was conducted on September 27, 2023. On October 6, 2023, the Master-in-Equity denied (1) Appellants' Motion for Reconsideration and (2) Appellants' previously-filed Motion for Summary Judgment dated August 14, 2023. On October 16, 2023, Appellants moved for reconsideration of the Master-in-Equity's denial of their Motion for Summary Judgment, which was denied on November 1, 2023, without

a hearing. Ultimately, the Master-in-Equity entered an order and judgment of foreclosure and sale of the Subject Property on November 2, 2023. (Amended Order of Nov. 2, 2023.)

STANDARD OF REVIEW

"A mortgage foreclosure is an action in equity." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) (citing *Collier v. Green*, 244 S.C. 367, 137 S.E.2d 277 (1964)). Therefore, the standard of review on appeal is *de novo*. *Id.* ("Our scope of review of a case heard by a master who enters a final judgment is to determine facts in accordance with our own view of the preponderance of the evidence.") (citing *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 391 S.E.2d 538 (1989)).

Likewise, when summary judgment is granted on a question of law, the appellate court must review the ruling *de novo*. *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634–35, 776 S.E.2d 434, 437 (Ct. App. 2015) (citing *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (quoting *Pye v. Est. of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006), *overruled on other grounds by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021)).

ARGUMENT

I. The Second Settlement Agreement Expressly References the Note and the Mortgage.

There are two key provisions within the Second Settlement Agreement that appear to have been overlooked by the Master-in-Equity. To be sure, counsel for Respondents assisted in facilitating this mistake. During the August 8, 2023 hearing, counsel for Respondents stated "***nowhere in this agreement***, all right -- again, the 2020 agreement [i.e. the Second Settlement

Agreement] ***doesn't reference the note and the mortgage***. It doesn't say anything we're doing with the note and the mortgage." (Hearing Transcript of Aug. 8, 2023, p. 61, ll. 6–9 (emphasis added).) Counsel for Respondents' representation was wrong at best and, at worst, was a deliberate attempt to obfuscate and confuse the issue. A further analysis and *de novo* review of the two key provisions within the Second Settlement Agreement will resolve this obfuscation.

A. ***Reference to the Note***

The Second Settlement Agreement expressly references the Note in the fifth "WHEREAS" clause, found at the bottom of the first page. This clause states:

> WHEREAS, in summation, John Beasley Jr. borrowed the principal sum of Six Hundred Forty Thousand and 00/100 Dollars ($640,000.00) from [Respondents], which said sum was to be solely used for the improvement of certain real estate and to be repaid in full, which with interest, totaled Seven Hundred Sixty-Five Thousand and 00/100 Dollars ($765,000.00), on or before October 19, 2017 (***the "Loan"***) . . .

(Second Settlement Agreement, p. 1 (emphasis added).) **It is undisputed the Loan referenced in this provision is a reference to the Note.**[4] After all, a loan and a note are essentially interchangeable words for a debt owed from a debtor to a creditor, with the latter just being formalized in writing. *Compare Loan*, *Black's Law Dictionary* (11th ed. 2019) ("A thing lent for the borrower's temporary use; esp., a sum of money lent at interest . . . ."), *with Note*, *Black's Law Dictionary* (11th ed. 2019) ("A written promise by one party (the *maker*) to pay money to another party (the *payee*) or to bearer."). Further, a review of the Note demonstrates it is titled as a Promissory Note, but contains the ***same amount*** of debt outlined in the fifth "WHEREAS" clause of the Second Settlement Agreement as well as the ***same amount*** listed in the Mortgage

[4] As stated during the September 27, 2023, to the extent Respondents dispute whether the Loan referenced is the Note at issue in this case, a genuine issue of material fact arises sufficient to defeat the grant of summary judgment. (Hearing Transcript of Sept. 27, 2023, p. 39, ll. 4–13.)

for which foreclosure is currently ordered. (Note, p. 1; Second Settlement Agreement, p. 1; Mortgage, p. 1.)

Lastly, the following "WHEREAS" clause of the Second Settlement Agreement, the first one found at the top of the second page, expressly states that Appellants joined as debtors underthe Note (i.e. the Loan), by stating "John Sr. and Lillian agreed to join John Beasley Jr as co-Debtors for the repayment of the Loan . . . ." (Second Settlement Agreement, p. 2.) And, point in fact, the Note bears the initials and signatures of Appellants and their agreement to become co-Debtors. (Note, pp. 1–4.) To be sure, if you searched for the word "note" in the Second Settlement Agreement, that word is not found. However, based on theforegoing, there can be no dispute that the use of the word Loan, alongside the other facts detailed in the aforementioned clause, is a direct and express reference to the Note, contrary to the allegations made by Respondents' counsel and findings entered by the Master-in-Equity.

B. ***Reference to the Mortgage***

In the same "WHEREAS" clause discussed immediately above, i.e. the first "WHEREAS" clause found at the top of the second page of the Second Settlement Agreement, the Mortgage is expressly referenced. The clause reads in full:

> WHEREAS, John Sr. and Lillian [i.e. Appellants] agreed to join John Beasley Jr., along with certain other parties, as co-Debtors for the repayment of the Loan ***as well as agreed to pledge certain collateral to secure the repayment of the Loan under the terms hereof*** . . .

(Second Settlement Agreement, p. 2 (emphasis added).) **It is undisputed the collateral and the security interest referenced in this provision is a reference to the Subject Property that was subject to the Mortgage.**[5] After all, a mortgage represents a loan secured by real property as the

[5] As before, to the extent Respondents dispute whether the collateral referenced is the Property

collateral. *Mortgage*, *Black's Law Dictionary* (11th ed. 2019) ("A conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms."). There is no other collateral at issue in this case. It can only be a reference to the Subject Property that was subject to the Mortgage. Again, a perfunctory search for the word "mortgage" in the Second Settlement Agreement will be unavailing in determining whether the Second Settlement Agreement actually references the Mortgage. But the proper interpretation of the Second Settlement Agreement requires more than a simple search for this word. When reviewing this clause, there can be no dispute it directly references the Mortgage, contrary to the allegations made by Respondents' counsel and findings entered by the Master-in-Equity.

II. Because the Second Settlement Agreement Expressly References ***and*** Implicates Both the Note and the Mortgage, Appellants are Released Therefrom.

A. *The Full Release*

As demonstrated above, the Second Settlement Agreement directly references the Note and the Mortgage. But the Second Settlement Agreement goes further: it also implicates the Note and Mortgage, such that they are subject to the release. Following the recitals discussed above, which reference the Note and the Mortgage, the Second Settlement Agreement sets forth the terms of the release:

> NOW, THEREFORE, in consideration of the payments and promises recited herein, [Respondents] ***fully release and forego[6] all legal, equitable, and statutory remedies and processes available to***

that was subject to the Mortgage and whether the Mortgage is referenced and implicated by the Second Settlement Agreement, a genuine issue of material fact arises sufficient to defeat the grant ofsummary judgment. (Hearing Transcript of Sept. 27, 2023, p. 39, ll. 4–13.)

[6] Of note, the First Settlement Agreement, rather than using the phrase "fully release and forego," uses the phrase "conditional agreement to forego." (Exhibit B, First Settlement Agreement, p. 2.) Thus, in comparison, the Second Settlement Agreement language not only is stronger, but evidences the all-encompassing and unconditional nature of the release afforded by the Second Settlement Agreement.

> ***them*** so long as [Appellants] fully perform all obligations hereunder, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged . . .
>
> 4. . . . It is understood and agreed that this Settlement and Release represents the compromise by [Respondents] and [Appellants] ***to resolve a variety of doubtful and disputed claims and counterclaims***, and that the amounts paid and received hereunder are made solely for ***the purposes of ending their disagreements*** and ***to buy, sell, and exchange their individual and respective peace of mind*** and ***to avoid the significant costs of protracted litigation***.
>
> 5. This Settlement and Release constitutes the ***entire agreement and understanding*** between [Respondents] and [Appellants], and ***it supersedes all prior understandings or agreements***, written or oral, ***on the subjects contained herein***, and the terms of this Settlement and Release are contractual and not mere recitals.

(Second Settlement Agreement, p. 2 (emphasis added).) The first paragraph above constitutes a full release. The only question is whether the Note and Mortgage are implicated within this full release. And, of course, they are implicated and subject to the full release. Paragraph 4 above demonstrates the numerous ***disagreements*** (plural) between the parties and implies the various vehicles by which Respondents could seek satisfaction of the Debt, i.e. via the Note, the Mortgage, and/or the Confession of Judgment. Further, the intent of the full release was to provide for all parties' peace of mind, which begs the question: if only the Confession of Judgment were being resolved, how would any of the parties have peace of mind as to the Debt, when, according to Respondents, the Note and the Mortgage were still unsatisfied? Likewise, the intent of the full release was to avoid the significant costs of protracted litigation, which begs a similar question: if only the Confession of Judgment were being resolved, which clearly does ***not*** require protracted litigation, what protracted litigation was being avoided if not the prospective litigation related to the Note and the Mortgage? Respondents cannot address these questions and did not address these

questions in the hearing on Appellants' first Motion to Reconsider, because they present counterfactuals and lead to an absurd result. South Carolina case law is clear:

> Language used in a contract ***must*** be interpreted in its natural and ordinary sense. A contract should receive sensible and reasonable construction and ***not*** such construction as will lead to absurd consequences or unjust results. Where one construction makes the provision unusual or extraordinary and another construction which is equally consistent with the language employed would make it reasonable, fair and just, the latter construction must prevail.

Holden v. Alice Mfg., Inc., 317 S.C. 215, 221, 452 S.E.2d 628, 631 (Ct. App. 1994) (emphasis added) (internal citations omitted); *see also FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 284–85 (7th Cir. 2002) ("Nonsensical interpretations of contracts . . . are disfavored. Not because of a judicial aversion to nonsense as such, but because people are unlikely to make contracts . . . that they believe will have absurd consequences."). The only way to avoid the absurd result of Respondents' theory is to accept the actual intent of the parties at the execution of the Second Settlement Agreement, which is clear from the plain text.

Perhaps more importantly, and again, using the plain text of the Second Settlement Agreement, Paragraph 5 expressly provides for what prior promises and instruments are implicated in the full release. Because the Note and Mortgage are referenced earlier in the Second Settlement Agreement, Paragraph 5 expressly makes them subject to the full release. In case there is any lingering doubt about the plain text, Paragraph 5 also states the full release supersedes ***all*** prior ***understandings*** or ***agreements*** (again, plural), demonstrating it was not only the Confession of Judgment being resolved, but the understandings and agreements related to the Note, Mortgage, and the First Settlement Agreement that likewise referenced and implicated the Note and the Mortgage. Based on the foregoing, the Second Settlement Agreement not only references, but expressly subjects the Note and the Mortgage to the full release, thereby requiring the denial of summary

judgment in Respondents' favor and reversal of the foreclosure order.

B. *Respondents' Actions*

Respondents' actions are telling of their original intent in executing the Second Settlement Agreement. Their original intent is important, because in construing contracts, courts must "ascertain the intention of the parties, and to that end will, as far as possible, determine the situation of the parties, as well as the purposes had in view ***at the time the contract was made***." *Bruce v. Blalock*, 241 S.C. 155, 161, 127 S.E.2d 439, 442 (1962). And again, "[a]ll contracts should receive a sensible and reasonable construction, and not such a one as will lead to absurd consequences or unjust results." *Id.*

At the time of the Second Settlement Agreement, Respondents already possessed the Confession of Judgment. Respondents could have sought the full Debt pursuant to that Confession of Judgment, without the need for protracted litigation or settlement. Instead, Respondents chose to enter into the Second Settlement Agreement and accept fifty thousand dollars. If Respondents truly believed the Second Settlement Agreement only resolved the Confession of Judgment, then they chose to settle one avenue of relief for fifty thousand dollars that required no protracted litigation, and left open the door for protracted litigation in a foreclosure action to obtain the remainder of the hundreds of thousands of dollars in debt. Such a situation is absurd. No rational party to a contract would entertain such an absurd result. It does not make sense why one would accept fifty thousand dollars in settlement of a Confession of Judgment, which does not require protracted litigation, and then proceed to incur thousands of dollars in attorney's fees to foreclose in an attempt to obtain the remainder of the debt, knowing protracted litigation would result. ***A rational party would do the exact opposite***, i.e. either pursue the Confession of Judgment *ex ante* for the full Debt (or as much as you could obtain), or resolve via settlement in order to obtain as much you possibly could in exchange for a full release. The latter is what occurred. To hold

otherwise would be to ignore Respondents' actions and their original intent at the time of the execution of the Second Settlement Agreement.

C. *Paragraph 16 and the Release*

The Master-in-Equity cited with significance to Paragraph 16 of the Second Settlement Agreement. (Order of Aug. 23, 2023, p. 4.) In so doing, the Court acknowledged, ironically, the "the terms of the first agreement [i.e. the First Settlement Agreement] . . . included the [N]ote and [M]ortgage." (Order of Aug. 23, 2023, p. 4.) This acknowledgment is ironic, because it concedes the case for Appellants rather than Respondents. The two key "WHEREAS" clauses in the Second SettlementAgreement are essentially verbatim with the two nearly mirror-image "WHEREAS" clauses in the First Settlement Agreement. (*Compare* Second Settlement Agreement, pp. 1–2 *with* First Settlement Agreement, p. 2.) And a further analysis of the First Settlement Agreement demonstrates the Loan and the collateral referenced therein means the Note and the Property subject to the Mortgage. (First Settlement Agreement, pp. 2–3.) Again, Paragraph 16 supports Appellants' position. For ease of reference, Paragraph 16 holds as follows:

> Except for the release of Debtors herein [i.e. Appellants], this Settlement and Release shall not alter or amend the Prior Settlement and Release Agreement nor the Judgment, which shall remain in full force and effect and of record.

(Second Settlement Agreement, p. 5.) To be clear, the First Settlement Agreement contained parties other than Appellants, so it makes sense the Second Settlement Agreement would ensure the first one remained in effect as to the other parties. But critically, the Second Settlement Agreement releases Appellants altogether.

To be sure, the title of the release suggests there was a "Partial Satisfaction of Judgment." (Release, p. 1.) However, it is important not to misconstrue the manner in which the Release is partial. The satisfaction here was ***not*** a partial one relative to Appellants. The Release, pursuant to

the Second Settlement Agreement, fully released Appellants, but the First Settlement Agreement remained in full force and effect as to the other parties. Therefore, the satisfaction was fully performed as to Appellants, but was partial only in the sense that all parties originally subjected were not released. In other words, the release was not partial as to Appellants' satisfaction, but partial as to the parties to which satisfaction applied. The operative language of the Release mirrors Paragraph 16 of the Second Settlement Agreement:

> [A] ***certain parcel of real property*** owned by the Released Defendants ***is hereby released*** from the lien of said judgment, such parcel of property being described on the attached Description of Property [i.e. the Subject Property].
>
> Defendant John W. Beasley, Sr. and Defendant Lillian Beasley, the Released Defendants [i.e. Appellants], ***are hereby personally released from judgment*** in this matter.
>
> The remaining balance of said judgment lien, plus accruing post-judgment interest and costs, shall continue on record against Defendant John W. Beasley, Jr. and Defendant Beasley Construction Company, LLC, collectively, the "Remaining Defendants", and any, and all, other property of said Remaining Defendants. Nothing in this document shall affect or limit the rights of the [Respondents] in their collective or individual pursuit of collecting the remaining balance of said judgment from any ***other*** property, real or personal, presently owned or acquired hereafter from the ***Remaining*** Defendants.

(Release, pp. 1–2 (emphasis added).) Based on the foregoing, foreclosure is unlawful against the Subject Property and Appellants when they have been released.

III. Case Law Favors Appellants.

Lever v. Lighting Galleries, Inc., 374 S.C. 30, 647S.E.2d 214 (2007), is instructive. In *Lever*, the Supreme Court found a creditor may pursue two remedies for one debt. However, the Supreme Court also stated "a creditor shall not have two satisfactions for the same debt." *Id.* at 35, 647 S.E.2d at 217. The ensuing principle is that if one remedy results in a satisfaction, it acts as a bar to any other remedy. *Id.* at 36, 647 S.E.2d at 218. This principled finding resonates with the

prohibition against multiple recoveries for the same injury. *See, e.g.*, *Riddle v. City of Greenville*, 251 S.C. 473, 478, 163 S.E.2d 462, 464 (1968) ("It is elementary law that one cannot actually recover twice for the same damage.").

By obtaining multiple forms of security for one debt, Respondents did not obtain duplicative rights of satisfaction, but rather multiple avenues to achieve satisfaction. In other words, to better secure their ability to collect the debt, Respondents secured not only a Note and a Mortgage, but a Confession of Judgment as well. Respondents had the option to pursue both an action at law on the Note and a foreclosure on the Mortgage to satisfy the Debt. However, Respondents acknowledged such courses of action would have led to "protracted litigation." (Second Settlement Agreement, p. 3.) Further, it is extremely likely Respondents chose not to pursue an earlier foreclosure of their Mortgage, as it was and remained junior to other liens on the Property, including, without limitation, that of First-Citizens. In order to avoid that protracted litigation, Respondents chose to file the Confession of Judgment instead, thereby converting the security of the Mortgage into a judgment lien. And in a further attempt to avoid protracted litigation related to the Note and the Mortgage, Respondents bargained with Appellants to resolve all three vehicles to satisfy the Debt by subjecting all three to the Second Settlement Agreement. Appellants performed their end of the bargain pursuant to the Second Settlement Agreement, and Respondents' acknowledgement of that performance is clearly and unambiguously set forth in the Release, which releases Appellants from any further debt and specifically releases the Property. Accordingly, Respondents have received full accord and satisfaction, are barred from pursuing this foreclosure, and cannot receive a second recovery for the Debt. *See Fanning v. Hicks*, 284 S.C. 456, 458, 327 S.E.2d 342, 343 (1985) ("The elements of an accord and satisfaction are the agreement between the parties to settle a dispute (the accord), and the payment of the consideration

expressed in the accord (the satisfaction).").

In the words of *Nichols v. Briggs,* Appellants did indeed submit the full and "actual payment of the debt or an express release," which "operate[s]as a discharge of the [M]ortgage." 18 S.C. 473, 484 (1883) (holding "nothing short of an actual payment of the debt or an express release, will operate as a discharge of the mortgage"). Thus, Appellants' portion of the Debt is satisfied. Contrary to the Master-in-Equity's interpretation of the case law, it is plain to see how all the case law contained within the Order of August 23, 2023 actually favors Appellants instead, because a party cannot receive a second satisfaction on the same debt.

IV. In the Alternative, If Any Ambiguity Exists, Respondents have Forfeited All Claims Whatsoever or, At Minimum, Genuine Issues of Material Fact Exist.

A. *Forfeiture*

Based on the foregoing, Appellants respectfully submit there is no question the Note and the Mortgage are both referenced and implicated in the full release of the Second Settlement Agreement. However, in the alternative, to the extent Respondents' right to foreclose and/or their intent in executing the Second Settlement Agreement are unclear, both Respondents and Appellants plainly agreed the mutual intent of their agreement was to extinguish any claim or demand whatsoever against Appellants and the Subject Property. Paragraph 9 of the Second Settlement Agreement, which is expressly covenanted and agreed to be a part of the consideration of the Second Settlement Agreement, states:

> The Parties further agree that any questions, doubts and ambiguities in connection with the meaning of any term of this Settlement and Release shall be construed as if the Parties jointly drafted the Settlement and Release with the mutual intention ***that claim or demand whatsoever should survive the making of this Settlement and Release under any circumstances***.

(Second Settlement Agreement, pp. 1, 4 (emphasis added).) To the extent there is a genuine issue of

material fact as to the interpretation of the Second Settlement Agreement or whether Respondents retain any claim to foreclosure, the claims and demands asserted by Respondents in this action have clearly been forfeited based on Paragraph 9.

B. ***Genuine Issues of Material Fact***

Lastly, even if forfeiture is unclear, which it is not, there remains the standard of review in this case which holds summary judgment must not be granted when a genuine issue of material fact exists. Rule 56(c), SCRCP. There should be no dispute as to whether satisfaction has been accomplished by Appellants; however, if the Court determines there is a dispute, then the dispute is a genuine one requiring denial of summary judgment. In support of this position and as noted above, to the extent Respondents have contested whether the Second Settlement Agreement references or implicates the Note and the Mortgage, a genuine issue of those two material facts exists. The Master-in-Equity should allow for further discovery and testimony in order to further develop and ascertain the parties' original intent, because the evidence in the existent record and Respondents' actions demonstrate they, too, viewed the Second Settlement Agreement as having released Appellants.

Next, given there is no evidence in the record of how much restitution has been paid by John Jr., the amount of the Debt outstanding constitutes a genuine issue of material fact as well. Lastly, given the current dispute, there is circumstantial evidence of a lack of consideration in the Second Settlement Agreement, no meeting of the minds having occurred, and potentially coercion based on the Second Settlement Agreement being executed while Appellants' son was facing criminal liability. Appellants served discovery requests on Respondents and asked the Court, to the extent there was any ambiguity or genuine issues of material fact, for the ability to conduct further discovery prior to granting summary judgment for either of the parties; however, these

requests by Appellants were perfunctorily denied. (Hearing Transcript of Sept. 27, 2023, p. 7, l. 14 – p. 9, l. 11; p. 59, l. 20 – p. 61, l. 4.)

CONCLUSION

Based on the foregoing, Appellants have demonstrated they have satisfied the Debt and are released therefrom, which is supported and acknowledged by the executed documents in the record as well as Respondents' own actions. In the alternative, genuine issues of material fact exist warranting the denial of summary judgment and allowance for further discovery. Therefore, in addition to such other and further relief this Court deems proper, Appellants respectfully request this Court to rule as follows:

A. Reverse the Master-in-Equity's grant of summary judgment in favor of Respondents, thereby denying the same;

B. Reverse the Master-in-Equity's denial of summary judgment against Appellants, thereby granting the same, or, in the alternative, instruct the Master-in-Equity to allow for further discovery before ruling on Appellants' Motion for Summary Judgment; and

C. Overrule the Master-in-Equity's Order and Judgment of Foreclosure and Sale and remand for further proceedings consistent therewith.

Respectfully submitted,

[SIGNATURE BLOCK FOLLOWS]

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December 6, 2023

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2023-001739

Richard Young and Jason Greene .....Respondents,

v.

John W. Beasley a/k/a John W. Beasley, Sr.
and Lillian Beasley in their individual capacities
and as Trustees or as Successors in trust under
the Beasley Living Trust dated August 14, 2018,
and any amendments thereto .....Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief complies with Rule 208, SCACR.

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PROOF OF SERVICE

The undersigned certifies that this Initial Brief of Appellants was served on Respondents via e-mail to Respondents' counsel of record on December 6, 2023 as follows:

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