

RECEIVED

Jan 10 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity

Appellate Case No.: 2023-001054

Wells Fargo Bank, N.A., not in its individual banking capacity, but solely as Trustee on behalf of
Green Tree Mortgage Trust 2005-HE1 Respondent
v.

James E. Turner, a/k/a James Turner, Sr. Appellant.

RESPONDENT’S RETURN TO APPELLANT’S REQUEST TO STAY

For its return to Appellant’s “Motion for Expedited Consideration of Appellant’s *Ex Parte*
Exigent Circumstances Appellant’s Second Petition for Writ of Supersedeas and Renewal of
Appellant’s First Petition for Supersedeas [*sic*],” counsel for Respondent states and alleges:

Relevant History

A bond hearing was held on August 14, 2023, in front of the Honorable Joseph M.
Strickland, Master-in-Equity for Richland County. Subsequent to said hearing, an Order Setting
Supersedeas Bond Pursuant to S.C. Code §§ 18-9-170; 18-9-210 & SCRCP Rule 62(d) was filed
on August 21, 2023 in C/A No. 2018-CP-40-04044 ordering Appellant to submit a supersedeas
bond in the amount of \$250,000 in order to stay the judicial sale of the subject properties pending
the instant appeal.

Having no means with which to satisfy the bond, on August 24, 2023, Appellant James E.
Turner, through counsel, filed a Notice of Motion and Motion for Reconsideration of Appeal

Bond. Pursuant to Appellant's Motion, a hearing was held on October 12, 2023 in front of the Honorable Joseph M. Strickland, Master-in-Equity for Richland County and an Order Amending Supersedeas Bond Pursuant to S.C. Code §§ 18-9-170; 18-9-210 & SCRCP Rule 62(d) was filed on October 17, 2023 in C/A No. 2018-CP-40-04044 ordering Appellant to submit an amended supersedeas bond in the amount of \$150,000 in order to stay the judicial sale of the subject properties pending the instant appeal on or before November 13, 2023. Copies of said Orders are attached hereto as Exhibits 'A' & 'B' and made a part hereof by reference.

Appellant, still lacking the means with which to comply with said Order Amending Supersedeas Bond, sought to further forestall judicial sale of the subject properties by enlisting an unknown third-party to submit an unexecuted "Undertaking of Ernest E. Yarborough," filed November 13, 2023 in C/A No. 2018-CP-40-04044. A copy of said filing is enclosed here as Exhibit 'C' and made a part hereof by reference. Subsequent to Appellant's failure to comply with said Order Amending Supersedeas Bond, the Master in Equity set a judicial date of January 2, 2024. The property was duly advertised as indicated by Affidavit of Publication (Exhibit 'D'), but the sale was halted by Appellant's filing to which this Return is written.

Appellants "Second Petition for Writ of Supersedeas" & "Renewal of Appellant's First Petition for Supersedeas" are Inappropriate Abuses

Appellant has engaged and continues to engage in a pattern of filings solely meant to frustrate Respondent's ability to enforce its rights under the subject contract. "A stay is not a matter of right, even if irreparable injury might otherwise result.' It is instead 'an exercise of judicial discretion,' and '[t]he propriety of its issue is dependent upon the circumstances of the particular case.'" *Nken v. Holder*, 556 U.S. 418, 433, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009) (Roberts, C.J.) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672-73, 47 S. Ct. 222, 71 L. Ed. 463 (1926)) (internal citation omitted).

The Master in Equity's Orders Setting Supersedeas Bond and Amending Supersedeas Bond were made within his purview and were reasonable, even favorable to Appellant given the judgment amount of \$525,635.03. This is especially true given that, as indicated in the instant Judgment Order, Appellant has failed to make payments on the subject notes for many years and prior to judgment the accounts remained owing for payments due in 2008. As such, Respondent

requests that the Master in Equity's well-reasoned prior Order Amending Supersedeas Bond and subsequent ruling that Appellant failed to adhere to said Order be adjudged as final.

The entire basis of Appellant's filing seems to rely upon a failure of publication of the subject properties prior to the scheduled judicial sale. This is befuddling, as the properties were duly published as indicated by Respondent's Exhibit 'D'. Moreover, Respondent asserts that Appellant or his counsel could have easily ascertained the existence of said publication upon request to either the office of the Master in Equity or through communication with Appellant's counsel. As such, one can only surmise that Appellant's filing was a cynical attempt to further delay enforcement of the subject contract.

RESPECTFULLY SUBMITTED

CRAWFORD & VON KELLER, LLC

/s/ Jason M. Hunter

Theodore von Keller, S.C. Bar No. 5718
B. Lindsay Crawford, III S.C. Bar No. 6510
B. Lindsay Crawford, IV S.C. Bar No. 101707
Charley S. FitzSimons S.C. Bar No. 104326
Jason M. Hunter S.C. Bar No. 101501
Post Office Box 4216
Columbia, South Carolina 29204
Telephone 803-790-2626
ATTORNEYS FOR THE PLAINTIFF

Columbia, SC

January 10, 2024

Exhibit 'A'

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
C/A No.: 2018-CP-40-04044

Wells Fargo Bank, National Association,
not in its individual or banking capacity, but
solely as Trustee on behalf of Green Tree
Mortgage Trust 2005-HE1

Plaintiff,

vs.

James E. Turner a/k/a James Turner, Sr.; *Et*
al.

Defendants,

**ORDER SETTING SUPERSEDEAS
BOND PURSUANT TO S.C. CODE §§ 18-
9-170 & 18-9-210 & SCRCP RULE 62(d)**

File No.:3523.0179

WHEREFORE a hearing was held before me on August 14, 2023, pursuant to Defendant's appeal of judgment in the above-entitled matter, Defendant's filing of a Notice of Undertaking, and Plaintiff's filing of a Motion for a Hearing for Justification of Sureties.

IT IS HEREBY ORDERED that Defendant James E. Turner a/k/a James Turner, Sr. must submit a supersedeas bond in the amount of Two-Hundred Fifty Thousand and 00/100 dollars (\$250,000.00) in order to stay the judicial sale of the subject properties pending their appeal in the instant case. Said bond is to be submitted with sufficient sureties within 10 days of the filing of this Order. Should Defendant fail to submit the required bond within that time, a further hearing will be held, to be scheduled by Plaintiff's counsel.

AND IT IS SO ORDERED!

****JUDGE'S SIGNATURE PAGE TO FOLLOW****



Richland Common Pleas

Case Caption: Wells Fargo Bank National Association , plaintiff, et al vs James E Turner , defendant, et al
Case Number: 2018CP4004044
Type: Master/Order/Other

It is so Ordered

s/Joseph M. Strickland, 3055

Exhibit 'B'

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
C/A No.: 2018-CP-40-04044

Wells Fargo Bank, National Association,
not in its individual or banking capacity, but
solely as Trustee on behalf of Green Tree
Mortgage Trust 2005-HE1

Plaintiff,

vs.

James E. Turner a/k/a James Turner, Sr.; *Et
al.*

Defendants,

**ORDER AMENDING SUPERSEDEAS
BOND PURSUANT TO S.C. CODE §§ 18-
9-170 & 18-9-210 & SCRCR RULE 62(d)**

(made following a hearing on defendant's
motion for reconsideration (S.C.R.C.P.59(e))

File No.:3523.0179

WHEREFORE a hearing was held before me on October 12, 2023, pursuant to Defendant's filing of a motion pursuant to S.C.R.C.P. 59(e), requesting reconsideration of the prior supersedeas bond order.

IT IS HEREBY ORDERED that Defendant James E. Turner a/k/a James Turner, Sr. must submit a supersedeas bond in the amount of One Hundred Fifty Thousand and 00/100 dollars (\$150,000.00) in order to stay the judicial sale of the subject properties pending their appeal in the instant case. Said bond is to be submitted with sufficient sureties on or before November 13, 2023.

Should the Defendant fail to submit the required bond within that time, Plaintiff may, at its discretion, contact this Court to schedule a judicial sale of the subject properties.

AND IT IS SO ORDERED!

****JUDGE'S SIGNATURE PAGE TO FOLLOW****



Richland Common Pleas

Case Caption: Wells Fargo Bank National Association , plaintiff, et al vs James E Turner , defendant, et al
Case Number: 2018CP4004044
Type: Order/Amend

It is so Ordered

s/Joseph M. Strickland, 3055

Exhibit 'C'

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Wells Fargo Bank, National)
Association, not in its individual or)
banking capacity, but solely as)
Trustee on behalf of Green Tree)
Mortgage Trust 2005-HE,)
)
Plaintiff,)

Case No.: 2018-CP-40-04044

vs.)

**UNDERTAKING OF ERNEST E.
YARBOROUGH**

James E. Turner, a/k/a James)
Turner, Sr. et. al.)
)
Defendants.)

(SC Code Section 18-9-170)

I, Ernest E. Yarborough, hereby provides this written undertaking in the above-referenced case pursuant to *SC Code Section 18-9-170* as follows:

1. I agree to monitor the foreclosed property during the pendency of the appeal, and I will promptly report any waste of the property by the Defendants, if I discover such waste during the pending of the appeal.
2. That in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the Appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency, which sum shall be duly entered as a payment on the judgment. As surety, I, Ernest E. Yarborough, hereby shall serve as a surety and guarantor of the Appellant financial obligations under Section 18-9-170, not to exceed the sum of One Hundred and Fifty Thousand Dollars and no/100ths.
3. Further, I; understand that as surety, I also shall guarantee that the Appellant shall pay, if the judgment be affirmed, of any taxes due at the time of the appeal or already paid by the mortgagee, or becoming due during the pendency of the appeal, and also for the

payment by appellant of the interest on the debt falling due during the pendency of such appeal.

Signed to an entered this the 13th day of November 2023.

Ernest E. Yarborough

Ernest E. Yarborough
307 Ashley Crest Drive
Columbia, SC 29229
(803) 463-1229

Exhibit 'D'

THE COLUMBIA STAR

COLUMBIA, SOUTH CAROLINA

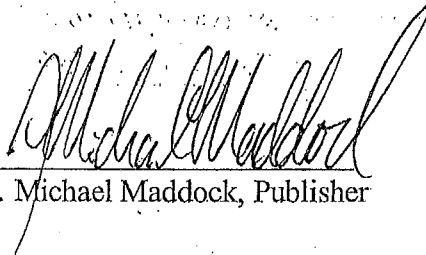
State of South Carolina
County of Richland

Personally appeared before me,
J. MICHAEL MADDOCK,
PUBLISHER OF THE COLUMBIA STAR,
who makes oath that the advertisement

MASTER'S SALE
Wells Fargo Bank, et al.
vs. James E. Turner, et al.

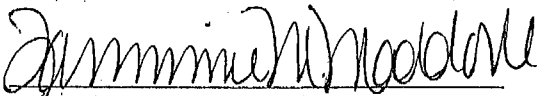
a clipping of which is attached hereto, was printed in
THE COLUMBIA STAR, a weekly newspaper of
general circulation published in the City of Columbia,
State and County afore said, in the issues of

December 15, 22, and 29, 2023



J. Michael Maddock, Publisher

Sworn to before me on this
29th day of December, 2023.



Tammie M. Maddock, Notary Public
My commission expires June 27, 2026

NOTICE OF SALE
(Deficiency Demanded)
CASE NO.

2018-CP-40-04044
Wells Fargo Bank,
National Association, not
in its individual or bank-
ing capacity, but solely as
Trustee on behalf of Green
Tree Mortgage Trust
2005-HE1
Plaintiff,

vs.
James E. Turner a/k/a
James Turner, Sr.; Et al.
Defendant(s).

BY VIRTUE of a judg-
ment heretofore granted
in the case of Wells Fargo
Bank, National Associa-
tion, not in its individual
or banking capacity, but
solely as Trustee on behalf
of Green Tree Mortgage
Trust 2005-HE1 vs. James
E. Turner a/k/a James
Turner, Sr., Cynthia
McGriff, Cynthia Lakeltha
Turner, Mary Louise
Turner, Willie Henry,
Emergent Mortgage Cor-
poration, Wells Fargo
Bank, National Associa-
tion (aka Wachovia Bank
National Association, Lisa
Washington, South Caroli-
na Department of Employ-
ment and Workforce, ADT
Security Services, Inc.,
South Carolina Depart-
ment of Social Services,
South Carolina Depart-
ment of Revenue, United
States of America acting
by and through its agency
the Internal Revenue
Service and Willie B.
Henry Jr. and Ukeba
Henry as Personal Repre-
sentatives of the Estate of
Willie E. Henry Sr., Keny-
on Henry, and Akeem
Henry and any other
Heirs-at-Law or Devisees
of Willie E. Henry Sr.,
Decedent, their heirs, Per-
sonal Representatives,
Administrators, Success-
ors and Assigns, and all
other persons entitled to
claim through them; all
unknown persons with
any right, title or interest
in the real estate
described herein; also any
persons who may be in the
military service of the
United States of America,
being a class designated
as John Doe; and any
unknown minors or per-
sons under a disability
being a class designated
as Richard Roe, I, Joseph
M. Strickland Master in
Equity for Richland Coun-
ty, will sell on January 2,
2024, at 12:00 Noon, at
the Richland County Judi-
cial Center, 1701 Main
Street, Courtroom 2-D,
Columbia, South Carolina,
to the highest bidder:

All that certain piece, par-
cel or lot of land, with any
improvements thereon,
situate, lying and being
on S.C. Road S-61, approxi-
mately five (5) miles
North of the City of
Columbia, in the County
of Richland, State of

South Carolina, the same
being shown on Plat pre-
pared for James E. Turner
by B.P. Barber & Assoc-
ates, Inc., Engineers,
dated March 1, 1983, and
recorded in the Office of
the RMC for Richland
County in Plat Book "Z" at
page 4918, said property
being described on said
plat as follows: commenc-
ing at an iron on the right-
of-way of S.C. Road S-61
and running S 74-01-45 E
for a distance of 66.48 feet
to an iron, and continuing
S 78-63-25 E for a dis-
tance of 38.52 feet to an
iron, along the right-of-
way of said S.C. Road S-
61, thence turning and
running S 1-55-56 W for a
distance of 589.47 feet
along property of C.S.W.
Co. to an iron; thence
turning and running N 82-
67-18 W for a distance of
146.71 feet along undesi-
gnated property to an iron;
thence turning and run-
ning N 1-54-18 E for a dis-
tance of 608.71 feet along
property of C.S.W. Co. to
the point of commence-
ment. Be all measure-
ments a little more or less.
TMS: 12100-08-04

Commonly known as 528
Koon Store Rd., Columbia,
SC 29208

ALSO INCLUDING:

All that certain piece, par-
cel or lot of land, with the
improvements thereon,
situate, lying and being
approximately five miles
North of Columbia, South
Carolina, in the County of
Richland, State of South
Carolina, and being shown
as 1.00 acre on a plat pre-
pared for C.S.W., Co by
B.P. Barber & Assoc., Inc.,
Engineers, dated October
7, 1982. Said parcel of
land being bounded and
measuring as follows:
Bounded on the North by
the highway right-of-way
of South Carolina Road S-
61 whereon it measures
120.0 feet; on the East by
lands of C.S.W. Co. where-
on it measures 364.7 feet;
on the South by lands of
C.S.E. Co. whereon it
measures 120.0 feet; and
on the West by lands of
C.S.E. Co. whereon it
measures 364.7 feet. Be
all measurements a little
more or less.
TMS: 12100-08-05

Now Commonly known as
532 Koon Store Rd.
Columbia, SC 29208

**SUBJECT TO RICH-
LAND COUNTY TAXES**

TERMS OF SALE: The
successful bidder, other
than the Plaintiff, will
deposit with the Master in
Equity at conclusion of the
bidding, five (5%) of his
bid, in cash or equivalent,
as evidence of good faith,
the same to be applied to
purchase price in case of
compliance, but to be for-
feited and applied first to
costs and then to Plain-
tiff's debt in the case of
noncompliance. Should
the last and highest bid-
der fail or refuse to make
the required deposit at the
time of the bid or comply
with the other terms or
the bid within twenty (20)
days, then the Master in

Equity may resell the
property on the same
terms and conditions on
some subsequent Sales
Day (at the risk of the
former highest bidder).
Should the Plaintiff or
one of its representatives,
fail to be present at the
time of sale, the property
is automatically with-
drawn from said sale and
sold at the next available
sales day upon the terms
and conditions as set forth
in the Judgment of Fore-
closure and Sale or by
Supplemental Order.
A personal or deficiency
judgment having been
demanded by the Plaintiff,
the sale of the subject
property will remain open
for thirty (30) days per-
suant to Section 15-89-
720, Code of Laws of
South Carolina, 1976; pro-
vided, however, that the
Court recognizes the
option reserved by the
Plaintiff to waive such
deficiency judgment prior
to the sale, and notice is
given that the Plaintiff
may waive in writing the
deficiency judgment prior
to the sale; and that
should the Plaintiff elect
to waive a deficiency judg-
ment, without notice other
than the announcement of
the sale and notice of
writing to the debtor
defendant(s) that a defi-
ciency judgment has been
waived, and that the same
will be final, the bidding
will not remain open after
the date of sale, but com-
pliance with the bid may
be made immediately.
NOTICE: The foreclosure
deed is not a warranty
deed. Interested bidders
should satisfy themselves
as to the quality of title to
be conveyed by obtain-
ing an independent title
search well before the
foreclosure sale date.
This Property will be sold
subject to the 120 day
right or redemption of the
United States of America,
by and through the US
Agency the Internal Re-
venue Service. The success-
ful bidder will be required
to pay interest on the
amount of the bid from
the date of sale to date of
compliance with the bid at
the rate of 11.49% per
annum.
Joseph M. Strickland,
Master in Equity for Rich-
land County
B. Lindsay Crawford, III
(SC Bar# 6510)
Theodore von Keller (SC
Bar# 6718)
Jason M. Hunter (SC
Bar# 101501)
B. Lindsay Crawford, IV
(SC Bar# 101707)
Email: court@rcrawford-
vk.com
Columbia, South Carolina
Attorney for Plaintiff
5

RECEIVED

Jan 10 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity

Appellate Case No.: 2018-CP-40-04044

Wells Fargo Bank, N.A., not in its individual banking capacity, but solely as Trustee on behalf of
Green Tree Mortgage Trust 2005-HE1Respondent

v.

James E. Turner, a/k/a James Turner, Sr.Appellant.

PROOF OF SERVICE

I certify that I served the foregoing Respondent's Return to Appellant's Request to Stay
in this case on the date given below by mailing it to opposing counsel at the address noted below.

Glenn Walters, Sr.
1910 Russell Street
P.O. Box 1346
Orangeburg, SC 29116

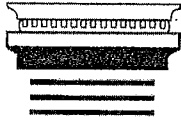
glennwalterspa@gmail.com

Respectfully submitted,

s/ Jason M. Hunter

Jason M. Hunter
S.C. Bar No. 101501
Crawford & von Keller, LLC
Post Office Box 4216
Columbia, South Carolina 29250
(803) 764-7444
ted@crawfordvk.com
Attorney for Respondent

January 10, 2024



CRAWFORD & VON KELLER, LLC

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

NORTH CAROLINA
Benjamin A. Barco
Brittany T. Morrison**
William Kibbe

Charley S. FitzSimons
Jason M. Hunter
Eric H. Nelson
Lawrence W. Johnson, Jr.* - Special Counsel

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

**Admitted in South Carolina and North Carolina

January 10, 2024

RECEIVED

Jan 10 2024

SC Court of Appeals

Via ctappfilings@sccourts.org

SC Court of Appeals
PO Box 11629
Columbia, SC 29211

**RE: Wells Fargo Bank, N.A., not in its individual banking capacity, but solely as
Trustee on behalf of Green Tree Mortgage Trust 2005-HE1 vs. James E. Turner
a/k/a James Turner, Sr.
Appellate Case No.: 2018-CP-40-04044**

Dear Sir/Madam:

Enclosed please find Respondent's Return to Appellant's Request to Stay and Proof of Service regarding the above referenced matter.

Sincerely,

CRAWFORD & VON KELLER, LLC

Jason M. Hunter, Esquire
Post Office Box 4216
Columbia, South Carolina 29240
Telephone: (803) 790-2626
Attorney for Respondent

JMH/tdd
Enclosure

Cc: Glenn Walters, Sr.
1910 Russell Street
P.O. Box 1346
Orangeburg, SC 29116