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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. 2022-001597

Capital Bank, N.A., formerly known as NAFH National Bank,
successor in interest to Carolina National Bank and Trust Company, and to
First National Bank of the South,Appellant,

v.

Rosewood Holdings, LLC, D. Christopher Twitty, and
First Citizens Bank and Trust Company, Inc., Defendants,

Of which Rosewood Holdings, LLC and D. Christopher Twitty are Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS FOR THE
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	C/A No. 2011-CP-40-02052
Capital Bank, N.A., formerly)	
known as NAFH National Bank,)	
successor in interest to Carolina)	
National Bank and Trust)	
Company and to First National)	
Bank of the South,)	
)	
Plaintiff,)	
)	
vs.)	ORDER ON STATUS OF JUDGMENT
)	
Rosewood Holdings, LLC,)	
D. Christopher Twitty, and)	
First Citizens Bank and Trust)	
Company, Inc.,)	
)	
<u>Defendants.</u>)	

This matter came before the Court for a hearing on August 24, 2022 on Plaintiff's motion to determine the status of the deficiency judgment in this case. The attorneys for the parties were present. Each party filed a memorandum and also made oral arguments.

Based on a review of the history of the case, the Court finds that the Court issued its Judgment and Order of Foreclosure and Sale (the "Foreclosure Decree", which was introduced into the record at the hearing) on July 23, 2012. This judgment determined the amount of the "Total Debt" owed by the Defendants Rosewood Holdings, LLC and D. Christopher Twitty and directed the judicial sale of the mortgaged property, but the text of the foreclosure decree did not direct the entry of a money judgment against any Defendant. The section of the Form 4 under the heading "Information for the Public Index", on which the parties against whom a judgment would be entered, and specifying the dollar amount of the money judgment, was left blank.

The Court then sold the mortgaged property on August 6, 2012, for \$488,547.00. Because the Plaintiff sought a deficiency, the bidding stayed open for 30 days and closed on September 5, 2012. On January 10, 2013, the Court issued its Report on Sale. Plaintiff was entitled to file an Order of Deficiency Judgment on or about January 10,

2013, but failed to do so. In his letter to the Court dated December 17, 2012, Ben Miller, Attorney for the Mortgagee, stated that the Deficiency Judgment Order should be prepared after receipt of the Receiver's report.

The Order for Deficiency Judgment (the "Deficiency Judgment", which was introduced into the record at the hearing) was not filed until July 23, 2015. The Deficiency Judgment contains the following language and provisions:

- a. "I have determined the existence of a deficiency after sale of the property which is the subject of this action in the amount of \$1,887,190.18. It is now proper for this amount to be entered as a money judgment.";
- b. Ordering the entry of a money judgment in favor of the Plaintiff against the Defendants Rosewood Holdings, LLC and D. Christopher Twitty in the amount of \$1,887,190.18, plus interest; and
- c. Ordering that "the Clerk of Court amend the Form 4 previously filed in this action to reflect this monetary judgment."

The Court finds that the effective date of the judgment is July 23, 2012. Therefore pursuant to §15-35-810, the lien of the judgment has expired.

HISTORY OF THE CASE

The facts of the case are not disputed.

The Plaintiff initiated a mortgage foreclosure in March 2011. The Court referred the case to the Master in Equity for resolution. The order of reference provides that any appeal from the Orders of this Court would be to the South Carolina Court of Appeals. In the foreclosure, the Plaintiff sought a deficiency judgment.

In the Foreclosure Decree, the Court found the mortgage debt to be \$2,028,670.40. The Foreclosure Decree directed that the property be sold at the next sale. The Court sold the property on August 6, 2012, which sale became final on September 5, 2012. The Plaintiff bid \$488,547.00 for the property. There were no other bidders.

The Court filed its Report on Sale and Disbursements and Order of Confirmation on January 11, 2013.

Nothing further occurred until 2015 when the deficiency judgment was entered. The Plaintiff is the successor in interest to the original mortgagee. It has initiated post-

judgment collection activities.

LAW AND COURT RULES

Foreclosure is an equitable action.

Neither attorney was able to find a reported case involving similar issues filed in South Carolina or elsewhere.

Rule 58, SCRCP, requires that an Order of Judgment be prepared by the Court or by the attorney at the direction of the Court and that it be filed promptly....upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall **promptly prepare the form of the judgment, or direct counsel to promptly prepare the form of judgment, to which may be attached the decision, order or opinion of the court, and after review and approval by the court, the clerk shall promptly enter it.**

(Emphasis supplied).

Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record. Entry of the judgment should not be delayed for the taxing of costs.

The Foreclosure Decree found the amount of the Defendant's debt on July 23, 2012. This judgment conclusively established the amount of the debt and directed the Defendants to pay it. This judgment became the law of the case once the 30 day appeal period elapsed with no action. The subsequent sale served only to reduce the amount of the Total Debt by the price bid for the property.

It is clear that the amount of the deficiency was known as soon as the deficiency sale closed in September 2012. Any trained title examiner who examined the title to the property would certainly have considered that the Defendant had a judgment against him as of July 23, 2012, and the amount reduced by the amount bid at the sale. This is the case even though the Form 4 is blank. The attorney for the Plaintiff argued that there is no reason not to use the actual filing date of the judgment in 2015. The Court finds that to adopt the Plaintiff's position would create problems. If the Order setting forth the deficiency had not been entered until 2022, would the Plaintiff be entitled to pursue the debt until 2032? The Court finds the answer to be "No."

PLAINTIFF'S ARGUMENT

The Plaintiff asserted that the creation and enforcement of a judgment is a matter of statute, and that ten year "life" of a judgment lien "begin[s] from the time of such entry on the book of abstracts and indices..." S.C. Code Section 15-35-810. Similarly, Section 15-39-30 provides that "Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period..." The Plaintiff asserted that under the language of the Foreclosure Decree and its contemporaneous Form 4, no money judgment was entered against any Defendant on July 23, 2012. Not until the Deficiency Judgment directed the entry of a money judgment in a specified amount against the Defendants and ordered the Clerk of Court to amend the previously filed Form 4 was a judgment lien created, which lien has "active energy" through July 23, 2025.

The Plaintiff also argued that South Carolina statutes provide two different methods by which a money judgment may be entered in a foreclosure action, a "quasi in rem" proceeding in which the mortgagee seeks in rem (judicial sale of the mortgaged property) and in personam (money judgment) remedies.

SECTION 29-3-650. Court may render judgment and order sale at same time.

The court may also render judgment against the parties liable for the payment of the debt secured by the mortgage and direct at the same time the sale of the mortgaged premises. Such judgment so rendered may be entered and docketed in the clerk's office in the same manner as other judgments. Upon the sale of the mortgaged premises the officer making the sale under the order of the court shall credit upon the judgment so rendered for the debt the amount paid to the plaintiff from the proceeds of the sale.

SECTION 29-3-660. Deficiency judgment.

In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage and if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor the plaintiff may make such person

a party to the action and the court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises against such other person and may enforce such judgment as in other cases.

The Plaintiff argued that although the court had the discretion under §29-3-650 to direct entry of a personal judgment against the obligors to be “entered and docketed in the clerk’s office in the same manner of other judgments” and later credited by the proceeds of sale, this is not what the Foreclosure Decree provided. Instead, the Plaintiff asserted that the Foreclosure Decree in this case followed the alternative (and more customary) procedure described in §29-3-660: The Foreclosure Decree directed the sale of the subject property but did not direct entry of a money judgment against the obligors for the “Total Debt”. Instead, the court delayed the entry of a money judgment until after the completion of the sale, at which time the court “adjudge[d] payment of such debt remaining unsatisfied after a sale of the mortgaged premises”. Until the second Deficiency Order was entered, there was no judgment entered, no lien created and no ability of the Plaintiff to execute on other assets of the judgment debtors.

DEFENDANT’S ARGUMENT

The defendant argued that the amount of the debt was set when the Court issued its judgment of foreclosure in 2012. The sale served only to reduce the amount of the debt. To allow a creditor to delay in any significant way when the judgment is effective would lead to unreasonable results.

CONCLUSION

The Court recognizes that Judge Simmons, the Greenville County Master in Equity reached a contrary conclusion¹ by drawing this distinction between §29-3-650 and §29-3-660:

Section 29-3-660 [titled “Deficiency judgment”] “is an independent statute that does not relate back to S.C. Code 29-3-650. Specifically, section 29-3-660 does not provide that the deficiency amount established following a sale be then credited against the amount determined in section 29-3-650.

¹ Independence National Bank v. Buncombe Professional Park, LLC and David D. DeCarlis s/a David D. DeCarlis, Greenville County C/A 2010-CP-23-03860 (June 11, 2021).

To the contrary, section 29-3-660 provides that deficiency judgments are themselves judgments that may be enforced as in other cases. If DeCarlis' construction of section 29-3-650 were correct, i.e., that the amount due following a sale of property at foreclosure is a "credit", then there would be no need for section 29-3-660 and the statute-which itself is captioned "Deficiency judgment"-would be a nullity. See generally Federal Land Bank v. Davant, 292 S.C. 172, 355 S.E.2d 293 (1987).

This Court, however, finds that the statutes were enacted by the legislature at the same time and should be read to make them harmonious.

The entry of the judgment determining the deficiency was a matter which was solely within the control of the Plaintiff. The Plaintiff failed to act to file the deficiency judgment for three years. It would be inequitable to grant the Plaintiff an extra three years to enforce its judgment when the delay in its entry was solely the choice of the Plaintiff. In response, the Plaintiff argued that it had no money judgment until July 23, 2015 and therefore no judgment lien that attached to other assets and no ability to execute on the judgment. The Plaintiff also argued that the Defendants could have requested that the court enter a deficiency judgment to avoid any possible prejudice. The court has considered and rejected these arguments.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

The effective date of the judgment is July 23, 2012. Pursuant to §15-35-810, the lien of the judgment therefore expired July 23, 2022.

AND IT IS SO ORDERED.

Joseph M. Strickland
Master in Equity for Richland County

October , 2022.



Richland Common Pleas

Case Caption: NAFH National Bank , plaintiff, et al vs Rosewood Holdings LLC ,
defendant, et al
Case Number: 2011CP4002052
Type: Master/Order/Other

It is so Ordered

s/ Joseph M. Strickland, 3055

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
) JUDGMENT ROLL NO. 2011CP4002052

Capital Bank, N.A., formerly known as NAFH)
National Bank, successor in interest to)
Carolina National Bank and Trust Company)
and to First National Bank of the South,)

Plaintiff,)

vs.)

Rosewood Holdings, LLC, D. Christopher Twitty,)
and First Citizens Bank and Trust Company, Inc.,)

Defendants.)

ORDER FOR DEFICIENCY JUDGMENT

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C.C.P. & G.S.
M. STRICKLAND

As shown on the attached computation, I have determined the existence of a deficiency after sale of the property which is the subject of this action in the amount of \$1,887,190.18. It is now proper for this amount to be entered as a monetary judgment.

IT IS THEREFORE ORDERED that Capital Bank, N.A., formerly known as NAFH National Bank, successor in interest to Carolina National Bank and Trust Company and to First National Bank of the South, have judgment against the Defendants Rosewood Holdings, LLC, and D. Christopher Twitty in the amount of \$1,887,190.18, together with interest thereon at the rate of 7.65% per annum from September 5, 2012, until paid.

IT IS FURTHER ORDERED that the Clerk of Court amend the Form 4 previously filed in this action to reflect this monetary judgment.

Columbia, South Carolina

July 20, 2015

JOSEPH M. STRICKLAND
Master in Equity for Richland County

COMPUTATION OF DEFICIENCY JUDGMENT

Capital Bank, N.A., formerly known as NAFH National Bank, successor in interest to Carolina National Bank and Trust Company and to First National Bank of the South,

vs.

Rosewood Holdings, LLC, D. Christopher Twitty, et al.

JUDGMENT ROLL NO. 2011CP4002052

A. Amount due Plaintiff per Master's Order and Judgment of Foreclosure and Sale dated July 16, 2012:

(a)	Judgment amount with interest on principal amount to November 29, 2011.	\$2,260,437.28
(b)	Interest on principal amounts \$1,822,747.55 from November 29, 2011, to July 16, 2012, at 7.65% per annum.	87,866.42
(c)	Interest on Judgment amount and interim interest (\$2,348,303.70) from July 16, 2012, to September 5, 2012 (close of sale), at 7.65% per annum.	<u>25,101.11</u>
	Sub-total	\$2,373,404.81
(d)	LESS: Net proceeds of receivership	\$ - 2,185.13
(e)	Balance of Master's fees and costs paid by the Plaintiff.	2,500.00
(f)	Publication costs paid by Plaintiff	<u>2,017.50</u>

TOTAL DEBT PER JUDGMENT \$2,375,737.18

B. Amount bid by the Plaintiff \$ 488,547.00

C. Amount of Deficiency against the Defendants
Rosewood Holdings, LLC, and D. Christopher Twitty (A-B) \$1,887,190.18

List of Properties

Parcel #1

917 South Kilbourne Road

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on the western side of South Kilbourne Road, in the City of Columbia, in the County of Richland, State of South Carolina, shown and delineated as Lot 2, Block CE, on a plat prepared for D. Christopher Twitty by Baxter Land Surveying Co., Inc., dated August 14, 2000, and recorded in the Office of the Register of Deeds for Richland County in Record Book 436 at page 1213, and having the following metes and bounds, to wit: On the East by South Kilbourne Road, whereon it fronts and measures 50.00 feet; on the South by Lot 3, whereon it measures 135.00 feet; on the West by portions of Lots 6 and 35, whereon it measures a total of 50.00 feet; and on the North by Lot 1, whereon it measures 135.16 feet. All measurements being a little more or less. TMS# 13707-24-09

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

Parcel #2

3717 Hickory Street

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as Lot 7, Block CE, on a plat prepared for Live Oak Holdings by Benjamin H. Whetstone, R.L.S., dated January 6, 1993, and recorded in the Office of the Register of Deeds for Richland County in Plat Book 54 at page 4304, and further being shown on a plat prepared for D. Christopher Twitty by Baxter Land Surveying Co., Inc. dated January 13, 2004, and recorded in said Register's Office in Record Book 905 at page 2782. Reference is craved to said latter plat for a more complete and accurate description of the metes, bounds, courses and distance of the property contained therein. All measurements being a little more or less. TMS# 13707-24-12

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

Parcel #3

3730-32 Hickory Street

All those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lots A and B on a plat prepared for Betty J. Arant and George F. Arant by Claude R. McMillan, Jr., P.E. & R.L.S., dated October 28, 1981, and recorded in the Office of the Register of Deeds for Richland County in Plat Book Z at page 1457, and being further shown and delineated as Lots 15 and 16, Block CD, on a plat prepared for JHR Property Development Company by Hussey, Gay, Bell & DeYoung, Inc. dated June 18, 1992, and recorded in said Register's Office in Plat Book 54 at page 2367. Reference is craved to said latter plat for a more complete and accurate description. All measurements being a little more or less.
TMS# 13707-23-01

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

Parcel #4

3711 Hickory Street

All that certain piece, parcel of lot or land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as Lot 8, Block CE, on a plat prepared for Live Oak Holdings by Benjamin H. Whetstone, R.L.S., dated July 19, 1993, and recorded in the Office of the Register of Deeds for Richland County in Plat Book 54 at page 7349. Reference is craved to said plat for a more complete and accurate description of the metes, bounds, courses and distance of the property contained therein. All measurements being a little more or less. TMS# 13707-24-13

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

Parcel #5

Vacant lots on South Kilbourne Road

All those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lots 1 and 2, Block CD, on a plat prepared for Live Oak Holdings, Partnership, by Hussey, Gay, Bell & DeYoung, Inc., dated November 16, 1992, and recorded in the Office of the Register of Deeds for Richland County in Plat Book 54 at page 3870. Reference is craved to said plat for a more complete and accurate description of the metes, bounds, courses and distance of the property contained therein. All measurements being a little more or less. TMS# 13707-23-02 (Lot 1) and TMS# 13707-23-03 (Lot 2)

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

Parcel #6

3701-3705 Hickory Street and 1005-1001 Whitman Street

All those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as Lots A and B on a plat prepared for Samuel R. Peake by McMillan Engineering Company, dated November 17, 1964, and recorded in the Office of the Register of Deeds for Richland County in Plat Book V at page 210, and further being shown and delineated as Lots F and G on a plat prepared for Live Oak Holdings, a S.C. Limited Partnership, by Cox and Dinkins, Inc. dated December 1, 1992, and recorded in said Register's Office in Plat Book 54 at page 3810. Reference is craved to said plats for a more complete and accurate description of the metes, bounds, courses and distance of the property contained therein. All measurements being a little more or less. TMS# 13707-24-14 (Lot A or F) and TMS# 13707-24-15 (Lot B or G)

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

Parcel #7

Vacant lot on east side of 3717-3719 Hickory Street

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as Lot 6, Block CE, on a plat prepared for Live Oak Holdings by Benjamin H. Whetstone, R.L.S., dated January 6, 1993, and recorded in the Office of the Register of Deeds for Richland County in Plat Book 54 at page 4304, and further being shown on a plat prepared for D. Christopher Twitty by Baxter Land Surveying Co., Inc., dated January 13, 2004, and recorded in said Register's Office in Record Book 905 at page 2782. Reference is craved to said plats for a more

complete and accurate description of the metes, bounds, courses and distance of the property contained therein. All measurements being a little more or less. TMS# 13707-24-11

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

PARCEL #8

THE LIVE OAK PROPERTIES

All those certain pieces, parcels, of lots of land, together with improvements thereon, situate, lying and being on the southeastern side of Live Oak Street near the southeastern limits of the City of Columbia, in the County of Richland, State of South Carolina, (the same being commonly known as 3628, 3630, 3632, 3634, 3636, 3638, 3640, 3700, 3702, 3706, 3708, 3710, 3712, 3714, and 3716 Live Oak Street) being shown and delineated as Lots 29, 30, 31, 32, 33, 34, and 35, Block CE, on a plat of PALMETIO ESTATES prepared for C.W. & Bessie Marshall by W. H. Miller, C.E., dated February 21, 1938, and recorded in the Office of the Register of Deeds for Richland County in Plat Book H at page 108; being more specifically shown and delineated as Five (5) parcels fronting on Live Oak Street on a plat prepared for Live Oak Holdings, a S.C. Limited Partnership, by Cox and Dinkins, Inc., dated November 25, 1992; said lots being bounded and measuring as follows: On the Northwest by Live Oak Street, whereon the property fronts and measures in a broken line a total of 366.34 feet; on the East by property now or formerly of Mary Watts Calhoun, whereon it measures 99.84 feet; on the Northwest again by property now or formerly of Mary Watts Calhoun, whereon it measures 20.97 feet; on the East by property now or formerly of David I. Wilson and property now or formerly of Ava N. Lowrimore, whereon it measures 48.93 feet; on the Southeast by property now or formerly of Louise Williams Anders and property now or formerly of C.F. Singletary, whereon it measures in a broken line a total of 169.17 feet; also on the Southeast by other property of Live Oak Holdings, whereon it measures 155.97 feet; and on the Southwest by property now or formerly of Sammy D. Peake and Ramona Peake, whereon it measures 135.00 feet. All measurements being a little more or less.

TMS# 13707-24-02 (Lot 29), TMS# 13707-24-03 (Lots 30 and 31), TMS# 13707-24-04 (Lots 32 and 33), TMS# 13707-24-05 (Lot 34), and TMS# 13707-24-06 (Lot 35).

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of John Holmes Rainsford dated February 19, 2004, and recorded February 19, 2004, in the Office of the Register of Deeds for Richland County in Record Book 904 at page 1142.

ALSO: All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the City of Columbia, in the County of Richland, State of South Carolina, being commonly known as 3718 Live Oak Street, and being shown and delineated as Lot 1, Block V, on a plat of PALMETTO ESTATES by J.A. Bright, dated May 13, 1935, and recorded in the Office of the Register of Deeds for Richland County in Plat Book H at pages 61 and 62; being more specifically shown and delineated on a plat prepared for Live Oak Holdings by Benjamin H. Whetstone, R.L.S., dated March 18, 1993, and recorded in said Register's Office in Plat Book 54 at page 5336; said plats are incorporated herein and reference is craved thereto for a more complete and accurate description of the metes, bounds, courses and distances of the property concerned herein. All measurements being a little more or less.

TMS# 13707-24-07

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of John Holmes Rainsford dated February 19, 2004, and recorded February 19, 2004, in the Office of the Register of Deeds for Richland County in Record Book 904 at page 1142.

ALSO: All that certain piece, parcel or lot of land situate, lying and being in the City of Columbia, in the County of Richland, State of South Carolina, being commonly known as 3707 Live Oak Street, and being shown and designated as Lot Y on a plat of property of Metropolitan Mortgage Company prepared by Wingfield and Rudisill, dated December 7, 1948, and recorded in the Office of the Register of Deeds for Richland County in Plat Book M at page 199; being more particularly shown on survey prepared for Live Oak Holdings by Inman

Land Surveying Co., Inc., dated October 13, 1994, having such boundaries and measurements as shown on said plats, reference to which is hereby craved for a more complete and accurate description. All measurements being a little more or less. TMS# 13707-02-22

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of John Holmes Rainsford dated February 19, 2004, and recorded February 19, 2004, in the Office of the Register of Deeds for Richland County in Record Book 904 at page 1142.

PARCEL #9

921 South Kilbourne Road and adjoining lots on South Kilbourne Street

All that certain piece, parcel or lot of land, situate, lying and being in the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lot 3, Block CE, on a plat of Palmetto Estates prepared by W. H. Miller, CE, dated February 21, 1938, and recorded in the Office of the Register of Deeds for Richland County in Plat Book H page 108, said lot lying on the western side of South Kilbourne Road (formerly known as Milford Road and Sunset Avenue) between Live Oak and Hickory Streets as shown on said plat, and measuring on the northern and southern sides each one hundred thirty-five (135') feet, more or less, measuring on the eastern and western sides fifty (50') feet, more or less, and bounded as follows: North by Lot 2, East by Kilbourne Road, South by Lot 4, and West by a portion of Lot 6 in said Block CE as shown on said plat. TMS# 13707-24-10

Said property is a portion of the property conveyed to Rosewood Holdings, LLC by Deed of Palmetto Property Partners, LLC, dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3185.

ALSO: All those pieces, parcels or lots of land, situate, lying and being near the Southeastern limits of the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lots 4 and 5, Block CE, on a plat of Palmetto Estates prepared by W. H. Miller, CE, dated February 21, 1938, and recorded in the Office of the Register of Deeds for Richland County in Plat Book H page 108, said lots lying on the western side of South Kilbourne Road (formerly known as Milford Road and Sunset Avenue) being the Northwestern corner of Kilbourne Road and Hickory Street as shown on said plat, measuring on the northern and southern sides one hundred thirty-five (135') feet, more or less, and the two lots together and adjoining measuring on the eastern and western sides one hundred (100') feet, more or less, and bounded as follows: North by Lot 3, East by South Kilbourne Road, South by Hickory Street, and West by a portion of Lot 6 in said Block CE as shown on said plat. TMS # 13707-24-20

Said property is a portion of the property conveyed to Rosewood Holdings, LLC by Deed of Palmetto Property Partners, LLC, dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3185.

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

JUDGMENT IN CIVIL CASE

CASE NO. 2011-CP-40-2052

Capital Bank, N.A., formerly known as NAFH
National Bank, doing business as First National
Bank of the South, successor in interest to
Carolina National Bank and Trust Company,
PLAINTIFF(S)

Rosewood Holdings, LLC, et al

DEFENDANT(S)

Submitted by: Ben N. Miller III	Attorney for: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40 (j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

RICHLAND COUNTY
 FILED
 2012 JUL 23 12:19 PM
 JEANNE B. HILL, CLERK
 C.C.P. & G.S.

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: See attached list of properties		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge Master

2097
Judge Code

7/16/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 23 day of July, 2012, and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Ben N. Miller III
P.O. Box 58
Columbia, SC 29202
ATTORNEY(S) FOR PLAINTIFF

See below

ATTORNEY(S) FOR DEFENDANT

CLERK OF COURT

Jeanette W. McBride

Court Reporter:

Spencer Andrew Syrett, Esquire
PO Box 7403
Columbia, SC 29202

Ian D. McVey, Esquire
PO Box 1390
Columbia, SC 29202

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
DOCKET NO. 2011-CP-40-2052

Capital Bank, N.A., formerly known as)
NAFH National Bank, successor in)
interest to Carolina National Bank and)
Trust Company and to First National Bank)
of the South,)
Plaintiff,)

vs.)

Rosewood Holdings, LLC, D. Christopher)
Twitty, and First Citizens Bank and Trust)
Company, Inc.,)
Defendants.)

MASTER'S REPORT

AND

JUDGMENT

OF

FORECLOSURE

AND

SALE

(Deficiency Demand)

Notice: The original of this document was filed in the Office of the Clerk of Court for Richland County, and copies forwarded to the following on the same date to:

Mr. Ben N. Miller III of the firm of McDonald McKenzie, Rubin, Miller and Lybrand, L.P., Attorney for the Plaintiff.

Mr. Spencer Andrew Syrett as Attorney for the Defendants Rosewood Holdings, LLC, and D. Christopher Twitty.

Mr. Ian D. McVey of the firm of Callison Tighe & Robinson, LLC, as Attorney for the Defendant First Citizens Bank and Trust Company, Inc.

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause. Any appeal from this Order is to the South Carolina Supreme Court or the South Carolina Court of Appeals as appropriate.

Pursuant to the said Order of Reference, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find, conclude, and order as follows:

JEANETTE I. McBRIDE
CLERK OF COURT & G.S.
2012 JUN 23 PM 12:19
RICHLAND COUNTY
FILED

FINDINGS OF FACT AS TO BOTH CAUSES OF ACTION:

1. As shown by the Certification of Exemption on record in the court file, the property is not "owner occupied" as defined in the Administrative Order of the SC Supreme Court 2011-05-02-06, dated May 2, 2011, upon the following grounds: the property owner, the Defendant Rosewood Holdings, LLC, is a corporation and corporations are not entitled to any benefits under said Order. Therefore, the Administrative Order of May 2, 2011 is inapplicable to this case and neither the merits hearing nor the sale are stayed by the Administrative Order.

1. The Lis Pendens was filed on March 28, 2011.

2. The Summons and Complaint were filed on March 28, 2011.

3. Service was made upon the defendants named in this Report as shown by the proofs of service filed herein.

4. None of the Defendants are in default as shown by the affidavit filed herein.

5. All attorneys of record were notified of the time, date, and place of the hearing in this matter.

6. The Defendant First Citizens Bank and Trust Company, Inc. has or may claim to have some interest in or lien upon the subject property by virtue of that certain Mortgage in the amount of \$50,000.00 given to it by Rosewood Holdings, LLC, dated April 30, 2009, recorded May 1, 2009, in the Office of the Register of Deeds for Richland County in Record Book 1517 at page 2663; the interest or lien of the Defendant First Citizens Bank and Trust Company, Inc., if any, is junior and subordinate to the lien of the Plaintiff's mortgages.

7. The Defendant First Citizens Bank and Trust Company, Inc. has or may claim to have some interest in or lien upon the subject property by virtue of that certain Mortgage in the original principal amount of \$50,000.00 given to it by Rosewood Holdings, LLC, dated April 30, 2009, recorded May 1, 2009, in the Office of the Register of Deeds for Richland County in Record Book 1517 at page 2663; also by virtue of that certain Assignment of Leases and Rents given to it by Rosewood Holdings, LLC, dated April 30, 2009, recorded May 1, 2009, in said Register's Office in Record Book 1517 at page 2670;

the interest or lien of the Defendant First Citizens Bank and Trust Company, Inc., if any, is junior and subordinate to the lien of the Plaintiff's mortgages and assignments of rents and leases.

FINDINGS OF FACT AS TO THE FIRST CAUSE OF ACTION:

8. For value received, the Defendant Rosewood Holdings, LLC, made, executed and delivered a note dated October 6, 2006, promising thereby to pay to the order of Carolina National Bank and Trust Company the sum of \$1,650,000.00, with interest at 7.65% per annum. Other terms and conditions are stated in the Note which is of record herein.

9. On October 6, 2006, the Defendant D. Christopher Twitty guaranteed the payment of the Note described in paragraph eight (8) supra.

10. To better secure the payment of the Note described above, the Defendant Rosewood Holdings, LLC, made, executed and delivered to Carolina National Bank and Trust Company, its successors and assigns, a mortgage in writing, dated October 6, 2006, covering real property in Richland County, which is the same as that described in the Complaint. The mortgage was filed on October 6, 2006, and is of record in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3188.

11. This mortgage constitutes a first lien on the subject property and is a purchase money mortgage.

12. As additional security for payment of the Note described in paragraph eight (8) supra, the Defendant Rosewood Holdings, LLC, executed an Assignment of Rents and Leases to Carolina National Bank and Trust Company dated October 6, 2006, recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3201.

13. By Modification Agreement dated December 21, 2007, the monthly payments were changed to interest only payments for twelve months beginning December 5, 2007, followed by resumption of regular installment payments.

14. On February 18, 2008, Carolina National Bank and Trust Company was merged into

First National Bank of the South, as shown by records on file with the Federal Deposit Insurance Corporation.

15. On July 16, 2010, First National Bank of the South was merged into NAFH National Bank, as shown by records on file with the Federal Deposit Insurance Corporation.

16. On June 30, 2011, the name of NAFH National Bank was changed to Capital Bank, N.A., as shown by records on file with the Federal Deposit Insurance Corporation; by virtue of said merger and name change, Capital Bank, N.A., is now the owner and holder of the Note and Mortgage subject of this action. By separate Order of the undersigned, Capital Bank, N.A., has been substituted for NAFH National Bank as the Plaintiff in this action.

17. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is the Defendant Rosewood Holdings, LLC, which is the original mortgagor.

18. Payment due on the note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of the attorney herein for collection.

19. The amount due and owing on the note, with interest at the rate provided in the Note, and all other costs and expenses of collection, including an attorney's fee, secured by the note and mortgage, is as follows:

(a)	Principal balance.	\$ 1,627,553.67
(b)	Interest from June 30, 2009, to November 29, 2011, at 7.65% per annum.	312,829.56
(c)	Property appraisals.	15,050.00
(d)	Appraisal review fees	1,250.00
(e)	Delinquent real estate taxes	71,987.17
	TOTAL DEBT	<u>\$2,028,670.40</u>

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of judgment debt entered on this cause of action.

FINDINGS OF FACT AS TO THE SECOND CAUSE OF ACTION:

20. For value received, the Defendant D. Christopher Twitty, made, executed and delivered a note dated November 7, 2007, promising thereby to pay to the order of Carolina National Bank and Trust Company the sum of \$203,291.00, with interest at initial rate of 7.75% per annum. Other terms and conditions are stated in the Note which is of record herein.

21. On November 7, 2007, the Defendant Rosewood Holdings, LLC, executed a Security Agreement securing the payment of the Note described in paragraph twenty (20) supra.

22. To better secure the payment of the Note described above, the Defendant Rosewood Holdings, LLC, made, executed and delivered to Carolina National Bank and Trust Company, its successors and assigns, a mortgage in writing, dated November 7, 2007, covering real property in Richland County, which is the same as that described in the Complaint. The mortgage was filed on November 8, 2007, and is of record in the Office of the Register of Deeds for Richland County in Record Book 1374 at page 1773.

23. This mortgage constitutes a second lien on the subject property and is not a purchase money mortgage.

24. On February 18, 2008, Carolina National Bank and Trust Company was merged into First National Bank of the South, as shown by records on file with the Federal Deposit Insurance Corporation.

25. On July 16, 2010, First National Bank of the South was merged into NAFH National Bank, as shown by records on file with the Federal Deposit Insurance Corporation.

26. On June 30, 2011, the name of NAFH National Bank was changed to Capital Bank, N.A., as shown by records on file with the Federal Deposit Insurance Corporation; by virtue of said merger and name change, Capital Bank, N.A., is now the owner and holder of the Note and Mortgage subject of this action. By separate Order of the undersigned, Capital Bank, N.A., has been substituted for NAFH National Bank as the Plaintiff in this action.

27. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is the Defendant Rosewood Holdings, LLC, which is the original mortgagor.

28. Payment due on the note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of the attorney herein for collection.

29. The amount due and owing on the note, with interest at the rate provided in the Note, and all other costs and expenses of collection, including an attorney's fee, secured by the note and mortgage, is as follows:

(a)	Principal balance.	\$ 195,213.88
(b)	Interest from September 7, 2009, to November 29, 2011, at a variable.	15,808.00
TOTAL DEBT		<hr/> \$ 211,021.88

Interest for the period from the date shown in (b) above through the date of this Judgment at 3.5% per annum to be added to the above stated "Total Debt" to comprise the amount of judgment debt entered on this cause of action.

SUMMARY OF DEBT FIGURES AND AWARD OF ATTORNEY'S FEES:

30. The sum of \$20,000.00 is a reasonable fee to allow as attorney fees for plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Note and Mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

31. The total debt for the two causes of action, for additional charges for taxes paid by the Plaintiff, and for the Plaintiff's foreclosure fees and cost is as follows:

<u>First mortgage:</u>	
(a) Principal balance.	\$ 1,627,533.67
(b) Interest from June 30, 2009, to November 29, 2011, at 7.65% per annum.	312,829.56
(c) Property appraisals.	15,050.00
(d) Appraisal review fees	1,250.00
(e) Delinquent real estate taxes	71,987.17
<u>Second mortgage:</u>	
(f) Principal balance.	\$ 195,213.88
(g) Interest from September 7, 2009, to November 29, 2011, at a variable.	15,808.00
<u>Foreclosure fees and cost:</u>	
(h) Costs of collection prior to hearing (service, filing, reference fee, etc.)	745.00
(i) Attorney's fee	20,000.00
<hr/>	
TOTAL DEBT secured by note and mortgage, including interest to date shown	\$ 2,260,437.28

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of judgment debt entered herein, and interest after the date of judgment at the rate of 7.65% per annum (pursuant to the terms of the notes and mortgages), on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

CONCLUSIONS OF LAW

I, therefore, conclude that the Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$2,260,437.28, representing the total debt due Plaintiff as set out in paragraph thirty-one (31) supra., together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof. Any sums advanced by the Plaintiff for real estate taxes on the subject property subsequent to the date of the hearing in this action shall be added to the judgment debt without further hearing.

2. The amount due in the preceding paragraph (the "total debt" as set forth in the paragraph thirty-one (31) supra., and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 7.65% per annum.

3. That the Defendants liable for the aforesaid mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Master in Equity, at public auction, at the Richland County Judicial Center, in the City of Columbia, County and State aforesaid, on some convenient salesday hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the salesday shall be on the Tuesday next succeeding such holiday), on the following terms, that is to say:

A. FOR CASH: The undersigned Master in Equity, will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs and plaintiff's debt.

B. Purchaser to pay interest on his bid from the date of sale to the date of compliance at the rate of 7.65% per annum.

C. The sale shall be subject to taxes and assessments, to existing easements and restrictions, and to any other senior encumbrances.

D. Purchaser to pay for all costs of recording the deed.

E. Should the Plaintiff or the Plaintiff's attorney or agent fail to appear on sales day, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect; the property shall be readvertised and sold at some convenient sales day thereafter when the Plaintiff or the Plaintiff's attorney or agent is present.

5. If Plaintiff is the successful bidder at said sale for a sum not exceeding the amount of costs, disbursements, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs, disbursements and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. Since a personal and deficiency judgment has been demanded, the sale will remain open for thirty (30) days pursuant S.C. CODE Ann. §15-39-720 (1976).

7. That the undersigned Master in Equity, will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and the Master in Equity will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within twenty (20) days after date of the sale, then the undersigned Master in Equity may advertise the said premises for sale on the next or some other subsequent salesday, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. That the undersigned Master in Equity will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchaser money will pay on the same; if the proceeds of sale are insufficient to pay the amounts hereinbefore authorized to be paid out of said proceeds, the Plaintiff shall have a judgment for such deficiency against the Defendants Rosewood Holdings, LLC and D. Christopher Twitty pursuant to S.C. CODE Ann. §29-3-660 (1976), and such judgment will be entered without further notice or hearing.

NEXT: Any surplus will be held pending the further Order of this Court.

9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the defendants in possession herein, the Sheriff of Richland County is ordered and

directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

10. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

11. IT IS FURTHER ORDERED that, pursuant to S.C. CODE Ann. §30-9-31 (Supp. 1987), the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Deeds for Richland County in the name of the owner of record of the subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity who executes such deed as grantor.

12. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c) SCRPC.

13. The following is a description of the premises herein ordered to be sold:

Parcel #1

917 South Kilbourne Road

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on the western side of South Kilbourne Road, in the City of Columbia, in the County of Richland, State of South Carolina, shown and delineated as Lot 2, Block CE, on a plat prepared for D. Christopher Twitty by Baxter Land Surveying Co., Inc., dated August 14, 2000, and recorded in the Office of the Register of Deeds for Richland County in Record Book 436 at page 1213, and having the following metes and bounds, to wit: On the East by South Kilbourne Road, whereon it fronts and measures 50.00 feet; on the South by Lot 3, whereon it measures 135.00 feet; on the West by portions of Lots 6 and 35, whereon it measures a total of 50.00 feet; and on the North by Lot 1, whereon it measures 135.16 feet. All measurements being a little more or less. TMS# 13707-24-09

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

judgment against the Defendants Rosewood Holdings, LLC, and Christopher Twitty for any deficiency in this action remaining after sale of the mortgaged premises.

4. The Defendant First Citizens Bank and Trust Company, Inc. has or may claim to have some interest in or lien upon the subject property by virtue of that certain Mortgage in the amount of \$50,000.00 given to it by Rosewood Holdings, LLC, dated April 30, 2009, recorded May 1, 2009, in the Office of the Register of Deeds for Richland County in Record Book 1517 at page 2663; the interest or lien of the Defendant First Citizens Bank and Trust Company, Inc., if any, is junior and subordinate to the lien of the Plaintiff's mortgage.

5. The Defendant First Citizens Bank and Trust Company, Inc. has or may claim to have some interest in or lien upon the subject property by virtue of that certain Mortgage in the original principal amount of \$50,000.00 given to it by Rosewood Holdings, LLC, dated April 30, 2009, recorded May 1, 2009, in the Office of the Register of Deeds for Richland County in Record Book 1517 at page 2663; also by virtue of that certain Assignment of Leases and Rents given to it by Rosewood Holdings, LLC, dated April 30, 2009, recorded May 1, 2009, in said Register's Office in Record Book 1517 at page 2670; the interest or lien of the Defendant First Citizens Bank and Trust Company, Inc., if any, is junior and subordinate to the lien of the Plaintiff's mortgages and assignments of rents and leases.

FOR A FIRST CAUSE OF ACTION:

6. The allegations of paragraphs 1 through 5 supra., are incorporated herein as if fully restated.

7. Heretofore, on October 6, 2006, the Defendant Rosewood Holdings, LLC, made, executed and delivered to Carolina National Bank and Trust Company a certain Mortgage Note in writing, wherein and whereby by it promised to pay to the order of Carolina National Bank and Trust Company the principal sum of \$1,650,000.00, together with interest at the rate of 7.65% per annum on the unpaid balance; said principal and interest being payable in monthly installments of \$13,554.87,

*Done
Page 2*

commencing on the fifth day of November, 2006, and on the fifth day of each month thereafter until said note is fully paid; among other things the said Note provides as follows:

If I am in default on this note you have, but are not limited to, the following remedies: (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges). (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "Set-Off" paragraph herein. (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy. (4) You may refuse to make advances to me or allow purchases on credit by me. (5) You may use any remedy you have under state or federal law.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

8. On October 6, 2006, the Defendant D. Christopher Twitty guaranteed the payment of the Note described in paragraph two (2) supra.

9. As additional security for payment of said note, the said Defendant Rosewood Holdings, LLC, did, on October 6, 2006, make, execute and deliver to Carolina National Bank and Trust Company, its successors and assigns, a certain mortgage covering the premises located in the County and State aforesaid and described as follows:

Parcel #1
917 South Kilbourne Road

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being on the western side of South Kilbourne Road, in the City of Columbia, in the County of Richland, State of South Carolina, shown and delineated as Lot 2, Block CE, on a plat prepared for D. Christopher Twitty by Baxter Land Surveying Co., Inc., dated August 14, 2000, and recorded in the Office of the Register of Deeds for Richland County in Record Book 436 at page 1213, and having the following metes and bounds, to wit: On the East by South Kilbourne Road, whereon it fronts and measures 50.00 feet; on the South by Lot 3, whereon it measures 135.00 feet; on the West by portions of Lots 6 and 35, whereon it measures a total of 50.00 feet; and on the North by Lot 1, whereon it measures 135.16 feet. All measurements being a little more or less.

*Baxter
Page 3.*

TMS# 13707-24-09

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

Parcel #2

3717 Hickory Street

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as Lot 7, Block CE, on a plat prepared for Live Oak Holdings by Benjamin H. Whetstone, R.L.S., dated January 6, 1993, and recorded in the Office of the Register of Deeds for Richland County in Plat Book 54 at page 4304, and further being shown on a plat prepared for D. Christopher Twitty by Baxter Land Surveying Co., Inc. dated January 13, 2004, and recorded in said Register's Office in Record Book 905 at page 2782. Reference is craved to said latter plat for a more complete and accurate description of the metes, bounds, courses and distance of the property contained therein. All measurements being a little more or less.

TMS# 13707-24-12

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

Parcel #3

3730-32 Hickory Street

All those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lots A and B on a plat prepared for Betty J. Arant and George F. Arant by Claude R. McMillan, Jr., P.E. & R.L.S., dated October 28, 1981, and recorded in the Office of the Register of Deeds for Richland County in Plat Book Z at page 1457, and being further shown and delineated as Lots 15 and 16, Block CD, on a plat prepared for JHR Property Development Company by Hussey, Gay, Bell & DeYoung, Inc. dated June 18, 1992, and recorded in said Register's Office in Plat Book 54 at page 2367. Reference is craved to said latter plat for a more complete and accurate description. All measurements being a little more or less.

TMS# 13707-23-01

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

Parcel #4

3711 Hickory Street

All that certain piece, parcel of lot or land, with improvements thereon, situate, lying and being in the

B. Gay 4.

County of Richland, State of South Carolina, being shown and delineated as Lot 8, Block CE, on a plat prepared for Live Oak Holdings by Benjamin H. Whetstone, R.L.S., dated July 19, 1993, and recorded in the Office of the Register of Deeds for Richland County in Plat Book 54 at page 7349. Reference is craved to said plat for a more complete and accurate description of the metes, bounds, courses and distance of the property contained therein. All measurements being a little more or less.

TMS# 13707-24-13

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

Parcel #5

Vacant lots on South Kilbourne Road

All those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lots 1 and 2, Block CD, on a plat prepared for Live Oak Holdings, Partnership, by Hussey, Gay, Bell & DeYoung, Inc., dated November 16, 1992, and recorded in the Office of the Register of Deeds for Richland County in Plat Book 54 at page 3870. Reference is craved to said plat for a more complete and accurate description of the metes, bounds, courses and distance of the property contained therein. All measurements being a little more or less.

TMS# 13707-23-02 (Lot 1) and TMS# 13707-23-03 (Lot 2)

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

Parcel #6

3701-3705 Hickory Street and 1005-1001 Whitman Street

All those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as Lots A and B on a plat prepared for Samuel R. Peake by McMillan Engineering Company, dated November 17, 1964, and recorded in the Office of the Register of Deeds for Richland County in Plat Book V at page 210, and further being shown and delineated as Lots F and G on a plat prepared for Live Oak Holdings, a S.C. Limited Partnership, by Cox and Dinkins, Inc. dated December 1, 1992, and recorded in said Register's Office in Plat Book 54 at page 3810. Reference is craved to said plats for a more complete and accurate description of the metes, bounds, courses and distance of the property contained therein. All measurements being a little more or less.

TMS# 13707-24-14 (Lot A or F) and TMS# 13707-24-15 (Lot B or G)

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

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Parcel #7

Vacant lot on east side of 3717-3719 Hickory Street

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and delineated as Lot 6, Block CE, on a plat prepared for Live Oak Holdings by Benjamin H. Whetstone, R.L.S., dated January 6, 1993, and recorded in the Office of the Register of Deeds for Richland County in Plat Book 54 at page 4304, and further being shown on a plat prepared for D. Christopher Twitty by Baxter Land Surveying Co., Inc., dated January 13, 2004, and recorded in said Register's Office in Record Book 905 at page 2782. Reference is craved to said plats for a more complete and accurate description of the metes, bounds, courses and distance of the property contained therein. All measurements being a little more or less.

TMS# 13707-24-11

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of D. Christopher Twitty dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3179.

PARCEL #8

THE LIVE OAK PROPERTIES

All those certain pieces, parcels, of lots of land, together with improvements thereon, situate, lying and being on the southeastern side of Live Oak Street near the southeastern limits of the City of Columbia, in the County of Richland, State of South Carolina, (the same being commonly known as 3628, 3630, 3632, 3634, 3636, 3638, 3640, 3700, 3702, 3706, 3708, 3710, 3712, 3714, and 3716 Live Oak Street) being shown and delineated as Lots 29, 30, 31, 32, 33, 34, and 35, Block CE, on a plat of PALMETIO ESTATES prepared for C.W. & Bessie Marshall by W. H. Miller, C.E., dated February 21, 1938, and recorded in the Office of the Register of Deeds for Richland County in Plat Book H at page 108; being more specifically shown and delineated as Five (5) parcels fronting on Live Oak Street on a plat prepared for Live Oak Holdings, a S.C. Limited Partnership, by Cox and Dinkins, Inc., dated November 25, 1992; said lots being bounded and measuring as follows: On the Northwest by Live Oak Street, whereon the property fronts and measures in a broken line a total of 366.34 feet; on the East by property now or formerly of Mary Watts Calhoun, whereon it measures 99.84 feet; on the Northwest again by property now or formerly of Mary Watts Calhoun, whereon it measures 20.97 feet; on the East by property now or formerly of David I. Wilson and property now or formerly of Ava N. Lowrimore, whereon it measures 48.93 feet; on the Southeast by property now or formerly of Louise Williams Anders and property now or formerly of C.F. Singletary, whereon it measures in a broken line a total of 169.17 feet; also on the Southeast by other property of Live Oak Holdings, whereon it measures 155.97 feet; and on the Southwest by property now or formerly of Sammy D. Peake and Ramona Peake, whereon it measures 135.00 feet. All measurements being a little more or less.

TMS# 13707-24-02 (Lot 29), TMS# 13707-24-03 (Lots 30 and 31), TMS# 13707-24-04 (Lots 32 and 33), TMS# 13707-24-05 (Lot 34), and TMS# 13707-24-06 (Lot 35).

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of John Holmes Rainsford dated February 19, 2004, and recorded February 19, 2004, in the Office of the Register of Deeds for Richland County in Record Book 904 at page 1142.

B.H.W.
Page 6.

ALSO: All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the City of Columbia, in the County of Richland, State of South Carolina, being commonly known as 3718 Live Oak Street, and being shown and delineated as Lot 1, Block V, on a plat of PALMETTO ESTATES by J.A. Bright, dated May 13, 1935, and recorded in the Office of the Register of Deeds for Richland County in Plat Book H at pages 61 and 62; being more specifically shown and delineated on a plat prepared for Live Oak Holdings by Benjamin H. Whetstone, R.L.S., dated March 18, 1993, and recorded in said Register's Office in Plat Book 54 at page 5336; said plats are incorporated herein and reference is craved thereto for a more complete and accurate description of the metes, bounds, courses and distances of the property concerned herein. All measurements being a little more or less.

TMS# 13707-24-07

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of John Holmes Rainsford dated February 19, 2004, and recorded February 19, 2004, in the Office of the Register of Deeds for Richland County in Record Book 904 at page 1142.

ALSO: All that certain piece, parcel or lot of land situate, lying and being in the City of Columbia, in the County of Richland, State of South Carolina, being commonly known as 3707 Live Oak Street, and being shown and designated as Lot Y on a plat of property of Metropolitan Mortgage Company prepared by Wingfield and Rudisill, dated December 7, 1948, and recorded in the Office of the Register of Deeds for Richland County in Plat Book M at page 199; being more particularly shown on survey prepared for Live Oak Holdings by Inman Land Surveying Co., Inc., dated October 13, 1994, having such boundaries and measurements as shown on said plats, reference to which is hereby craved for a more complete and accurate description. All measurements being a little more or less.

TMS# 13707-02-22

Said property is a portion of the property conveyed to Rosewood Holdings, LLC, by Deed of John Holmes Rainsford dated February 19, 2004, and recorded February 19, 2004, in the Office of the Register of Deeds for Richland County in Record Book 904 at page 1142.

PARCEL #9

921 South Kilbourne Road and adjoining lots on South Kilbourne Street

All that certain piece, parcel or lot of land, situate, lying and being in the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lot 3, Block CE, on a plat of Palmetto Estates prepared by W. H. Miller, CE, dated February 21, 1938, and recorded in the Office of the Register of Deeds for Richland County in Plat Book H page 108, said lot lying on the western side of South Kilbourne Road (formerly known as Milford Road and Sunset Avenue) between Live Oak and Hickory Streets as shown on said plat, and measuring on the northern and southern sides each one hundred thirty-five (135') feet, more or less, measuring on the eastern and western sides fifty (50') feet, more or less, and bounded as follows: North by Lot 2, East by Kilbourne Road, South by Lot 4, and West by a portion of Lot 6 in said Block CE as shown on said plat.

TMS# 13707-24-10

Said property is a portion of the property conveyed to Rosewood Holdings, LLC by Deed of Palmetto

B. page 7.

Property Partners, LLC, dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3185.

ALSO: All those pieces, parcels or lots of land, situate, lying and being near the Southeastern limits of the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lots 4 and 5, Block CE, on a plat of Palmetto Estates prepared by W. H. Miller, CE, dated February 21, 1938, and recorded in the Office of the Register of Deeds for Richland County in Plat Book H page 108, said lots lying on the western side of South Kilbourne Road (formerly known as Milford Road and Sunset Avenue) being the Northwestern corner of Kilbourne Road and Hickory Street as shown on said plat, measuring on the northern and southern sides one hundred thirty-five (135') feet, more or less, and the two lots together and adjoining measuring on the eastern and western sides one hundred (100') feet, more or less, and bounded as follows: North by Lot 3, East by South Kilbourne Road, South by Hickory Street, and West by a portion of Lot 6 in said Block CE as shown on said plat.

TMS # 13707-24-20

Said property is a portion of the property conveyed to Rosewood Holdings, LLC by Deed of Palmetto Property Partners, LLC, dated October 6, 2006, and recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3185.

10. Subject mortgage was given for the purpose of securing funds for the purchase of the above-described property, and therefore it constitutes purchase money first mortgage lien on the subject property.

11. On October 6, 2006, said Mortgage was recorded in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3188.

12. As additional security for payment of the Note described in paragraph seven (7) supra, the Defendant Rosewood Holdings, LLC, executed an Assignment of Rents and Leases to Carolina National Bank and Trust Company dated October 6, 2006, recorded October 6, 2006, in the Office of the Register of Deeds for Richland County in Record Book 1238 at page 3201.

13. By Modification Agreement dated December 21, 2007, the monthly payments were changed to interest only payments for twelve months beginning December 5, 2007, followed by resumption of regular installment payments.

14. On February 18, 2008, Carolina National Bank and Trust Company was merged into First National Bank of the South, as shown by records on file with the Federal Deposit Insurance

*Done
Page 8.*

Corporation.

15. On July 16, 2010, First National Bank of the South was merged into NAFH National Bank, as shown by records on file with the Federal Deposit Insurance Corporation; by virtue of said mergers, the Plaintiff is the owner and holder of the Note, Guaranty, Mortgage, and Mortgage subject of this action.

16. Among other things, said mortgage provides as follows:

In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it constitutes or happens again.

17. The Plaintiff has not agreed to participate in the Home Affordable Modification Program (HMP), and the loan subject of the above-captioned action is not subject to modification under the HMP because the loan is not a FHLMC loan or a FNMA loan, the amount of the loan exceeds the program limitations, and the real estate is not owner-occupied.

18. The installments of principal and interest which became due on the fifth days of April, 2009, and of subsequent months have not been paid although demand for the payment thereof has been made and the plaintiff, as the holder of the said note and mortgage, after giving all required notices, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; there is now due and owing and unpaid upon the said note and mortgage the sum of \$1,661,011.40 together with interest thereon at the rate of 7.65% per annum from the thirtieth day of

*B. - -
Page 9.*

June, 2009, together with a reasonable sum as attorney's fees and the costs of this action.

FOR A SECOND CAUSE OF ACTION:

19. The allegations of paragraphs 1 through 18 supra., are incorporated herein as if fully restated.

20. Heretofore, on November 7, 2007, the Defendant D. Christopher Twitty made, executed and delivered to Carolina National Bank and Trust Company a certain Mortgage Note in writing, wherein and whereby he promised to pay to the order of the principal sum of \$203,291.00, together with interest at the initial rate of 7.75% per annum on the unpaid balance; said principal being payable in monthly installments of \$1,129.30 together with all accrued interest, commencing on the seventh day of December, 2007, and on the seventh day of each month thereafter until said note is fully paid; among other things the said Note provides as follows:

If I am in default on this note you have, but are not limited to, the following remedies: (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges). (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "Set-Off" paragraph herein. (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy. (4) You may refuse to make advances to me or allow purchases on credit by me. (5) You may use any remedy you have under state or federal law.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

21. On November 7, 2007, the Defendant Christopher Twitty executed a Security Agreement securing the payment of the Note described in paragraph twenty (20) supra.

22. In order to secure said note further, the said Defendant Rosewood Holdings, LLC, did, on November 7, 2007, make, execute and deliver to Carolina National Bank and Trust Company,

B. Rosewood 10

its successors and assigns, a certain mortgage covering the premises located in the County and State aforesaid and described in paragraph nine (9) supra.

23. Subject mortgage constitutes a second lien of the subject property subordinate only to the mortgage described in paragraph nine (9) supra.

24. On November 8, 2007, said Mortgage was recorded in the Office of the Register of Deeds for Richland County in Record Book 1374 at page 1773.

25. On February 18, 2008, Carolina National Bank and Trust Company was merged into First National Bank of the South, as shown by records on file with the Federal Deposit Insurance Corporation.

26. On July 16, 2010, First National Bank of the South was merged into NAFH National Bank, as shown by records on file with the Federal Deposit Insurance Corporation; by virtue of said mergers, the Plaintiff is the owner and holder of the Note, Security Agreement, and Mortgage subject of this action.

27. Among other things, said mortgage provides as follows:

In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it constitutes or happens again.

28. The Plaintiff has not agreed to participate in the Home Affordable Modification Program (HMP), and the loan subject of the above-captioned action is not subject to modification under

*B.N.W.
Page 11*

the HMP because the loan is not a FHLMC loan or a FNMA loan and the real estate is not owner-occupied.

29. The installments of principal and interest which became due on the seventh days of October, 2009, and of subsequent months have not been paid although demand for the payment thereof has been made and the plaintiff, as the holder of the said note and mortgage, after giving all required notices, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; there is now due and owing and unpaid upon the said second note and mortgage the sum of \$195,213.88 together with interest thereon at variable rates from the seventh day of September, 2009, together with a reasonable sum as attorney's fees and the costs of this action.

FOR A THIRD CAUSE OF ACTION

30. The allegations of paragraphs 1 through 29 supra., are incorporated herein as if fully restated.

31. The property described in paragraph none (9) supra. includes rental units currently producing rents which are not being paid to the Plaintiff to be applied to the mortgage debts.

32. Pursuant to the Assignments of Rents and Leases described in paragraph twelve (12) supra., the Plaintiff is entitled to an accounting of all rental income received by the Defendants Rosewood Holdings, LLC, and D. Christopher Twitty during the period of the loan defaults and to the appointment of a receiver in this case to receive the rental income and manage the subject property.

WHEREFORE, Plaintiff prays judgment:

(1) That the amount due upon said notes and mortgages held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

(2) That the said Plaintiff's mortgages be declared first and second liens on the subject property and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable

B.N.W.
Page 12

sum as attorney's fees, and for the costs of this action.

(3) That a receiver be appointed to obtain an accounting of rents received by the Defendants Rosewood Holdings, LLC, and D. Christopher Twitty during the period of loan payment default and to collect rents and manage the subject property.

(4) That the mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said sale.

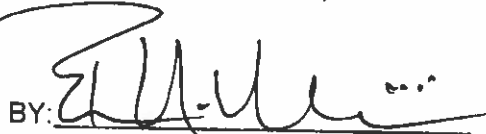
Second, to the payment and discharge of the amount due on Plaintiff's notes and mortgages, together with attorney's fees as aforesaid, and

Third, the surplus, if any, be distributed according to law.

(5) Plaintiff have judgment against the Defendants Rosewood Holdings, LLC, and D. Christopher Twitty for the full amount found to be due Plaintiff on the notes and mortgages with the right to enter a personal judgment against the Defendants Rosewood Holdings, LLC, and D. Christopher Twitty for any deficiency in this action remaining after the sale of the mortgaged premises.

(6) For such other and further relief as may be just and proper.

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, L.L.P.

BY: 

BEN N. MILLER III

Attorneys for the Plaintiff
P. O. Box 58
Columbia, South Carolina 29202
(803) 252-0500

Columbia, South Carolina

March 28, 2011

B. -
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND)

NAFH National Bank, doing business as First)
 National Bank of the South, successor in interest)
 to Carolina National Bank and Trust Company,)
)
 Plaintiff,)
)
 vs.) ANSWER OF DEFENDANTS
)
 Rosewood Holdings, LLC, D. Christopher Twitty,)
 and First Citizens Bank and Trust Company, Inc.,)
)
 Defendants.)

2011 MAY -3 AM 11:12
 JENNIFER W. BURRIDGE
 C.C.P. & G.
 2011-CP-40-02052

THE DEFENDANTS, ROSEWOOD HOLDINGS, LLC AND D. CHRISTOPHER TWITTY, RESPECTFULLY ALLEGE:

FOR A FIRST DEFENSE:

1. The Defendants admit the allegations of Paragraph 1 of the Complaint.
2. The allegations of Paragraph 2 constitute a legal conclusion which the Defendants can neither admit nor deny.
3. The allegations of Paragraph 3 constitute a legal conclusion which the Defendants can neither admit nor deny.
4. The Defendants lack information sufficient to form a belief as to the allegations of Paragraph 4 of the Complaint and therefore deny the same.
5. The Defendants lack information sufficient to form a belief as to the allegations of Paragraph 5 of the Complaint and therefore deny the same.
6. Paragraph 6 requires no response.
7. The Defendants admit the allegations of Paragraph 7 of the Complaint.
8. The Defendants deny the allegations of Paragraph 8 of the Complaint.
9. The Defendants admit the allegations of Paragraph 9 of the Complaint.
10. The Defendants admit the allegations of Paragraph 10 of the Complaint.
11. The Defendants admit the allegations of Paragraph 11 of the Complaint.

12. The Defendants admit the allegations of Paragraph 12 of the Complaint.
13. The Defendants admit the allegations of Paragraph 13 of the Complaint.
14. The Defendants lack information sufficient to form a belief as to the allegations of Paragraph 14 of the Complaint and therefore deny the same.
15. The Defendants lack information sufficient to form a belief as to the allegations of Paragraph 15 of the Complaint and therefore deny the same.
16. The Defendants lack information sufficient to form a belief as to the allegations of Paragraph 16 of the Complaint and therefore deny the same.
17. The Defendants lack information sufficient to form a belief as to the allegations of Paragraph 17 of the Complaint and therefore deny the same.
18. The Defendants deny the allegations of Paragraph 18 of the Complaint.
19. Paragraph 19 requires no response.
20. The Defendants admit the allegations of Paragraph 20 of the Complaint.
21. The Defendants admit the allegations of Paragraph 21 of the Complaint.
22. The Defendants admit the allegations of Paragraph 22 of the Complaint.
23. The Defendants admit the allegations of Paragraph 23 of the Complaint.
24. The Defendants admit the allegations of Paragraph 24 of the Complaint.
25. The Defendants lack information sufficient to form a belief as to the allegations of Paragraph 25 of the Complaint and therefore deny the same.
26. The Defendants lack information sufficient to form a belief as to the allegations of Paragraph 26 of the Complaint and therefore deny the same.
27. The Defendants lack information sufficient to form a belief as to the allegations of Paragraph 27 of the Complaint and therefore deny the same.
28. The Defendants lack information sufficient to form a belief as to the allegations of Paragraph 28 of the Complaint and therefore deny the same.
29. The Defendants deny the allegations of Paragraph 29 of the Complaint.
30. Paragraph 30 requires no response.
31. The Defendants admit so much of the allegations of Paragraph 31 of the Complaint as alleges tat the properties are rental units, but the Defendants deny that there are any excess funds over and above the operating expenses of the properties and

therefore the Defendants deny the remaining allegations of Paragraph 31 of the Complaint.

32. The allegations of Paragraph 32 constitute a legal conclusion which the Defendants can neither admit nor deny.

FOR A SECOND DEFENSE:

33. The Defendants deny each and every allegation of the Complaint.

FOR A THIRD DEFENSE:

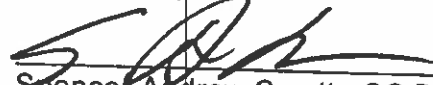
34. The Complaint fails to state a Cause of Action.

FOR A FOURTH DEFENSE:

35. The Complaint and Motion as drafted fail to comply with the requirements of Rule 10, SCRCP, and should not have been accepted for filing by the Clerk.

WHEREFORE DEFENDANTS PRAY:

1. That the Complaint be dismissed.
2. For such other and further relief as may be just and proper.


Spencer Andrew Syrett SC BAR 05459
Attorney for the Defendants
Rosewood Holdings, LLC and D.
Christopher Twitty
712 Richland Street, Suite E
P.O. Box 7403
Columbia, SC 29202
803-765-2110
FAX ONLY 803-765-9950

May 2, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Capital Bank, N.A., formerly known as)
 NAFH National Bank, successor in interest)
 to Carolina National Bank and Trust)
 Company and to First National Bank of the)
 South,)
)
 Petitioner,)
)
 v.)
)
 Roswood Holdings, LLC, and)
 D. Christopher Twitty,)
)
 Respondents.)
 _____)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO. 2011-CP-40-02052

**MOTION FOR ORDER IN AID
 OF SUPPLEMENTAL PROCEEDINGS**

First Horizon Bank, the successor to the Petitioner/Judgment Creditor Capital Bank, N.A. (hereinafter the "Petitioner" hereby moves for an order of the court determining that the judgment previously entered against the Respondents Rosewood Holdings, LLC and D. Christopher Twitty is and remains a judgment with "active energy" from July 23, 2015. In support of its Motion, the Petitioner would show as follows:

1. The Master in Equity entered a Judgment of Foreclosure and Sale, together with a Form 4, on July 23, 2012. A copy of the Decree with the Form 4 are attached as Exhibit A.
2. The foreclosure decree made a determination of the "Total Debt" owed to the Petitioner but did not direct the entry of a money judgment against any defendant.
3. The section of the Form 4 provided for the purpose of identifying the parties against whom a judgment would be entered and specifying the dollar amount of a money judgment, was left blank.

4. S.C. Code Section 29-3-650 gives the trial court the discretion to render a money judgment against obligors and to direct the sale of the mortgaged property in the foreclosure decree. In such instance, the judgment is to be credited by the amount recovered by the plaintiff upon the sale of the premises. Id. Petitioner’s counsel suggests that the “immediate judgment as reduced by sale proceeds” is not the customary approach.
5. More significantly, the court in the present case did not follow the optional procedure contemplated by Section 29-3-650 but instead followed the “standard” approach in that the foreclosure decree made the necessary finding of the “Total Debt” secured by the mortgage, directed the sale of the property, and anticipated the entry of a deficiency judgment at a later date.
6. The court thereafter entered an Order for Deficiency Judgment on July 23, 2015, a copy of which is attached as Exhibit B. The Order for Deficiency Judgment recites the calculation of the deficiency after application of the proceeds of sale. The Order contains the following language:
 - a. “I have determined the existence of a deficiency after sale of the property....it is **now** proper for this amount [the deficiency after application of the foreclosure sale bid] **to be entered as a money judgment**” [emphasis added];
 - b. Ordering the entry of a money judgment in a specific amount against the defendants Rosewood Holdings, LLC and D. Christopher Twitty; and
 - c. Specifically ordering “that the Clerk of Court **amend the Form 4 previously filed** in this action **to reflect this monetary judgment.**” [emphasis added].
7. The Petitioner engaged the undersigned to pursue collection or other resolution of the judgment. An Execution was entered in August 2018 that was returned nulla bona. Instead

- of immediately filing a request for supplemental proceedings, Petitioner's counsel served Requests for Production, to which the Respondents have served some responses while other documents sought have not been produced.
8. The Respondents' counsel now takes the position that the judgment has expired, since ten years have elapsed since the entry of the foreclosure decree on July 23, 2012. The Respondents state that they will not respond further to discovery requests.
 9. The Petitioner concedes that a judgment is enforceable for ten years under South Carolina law. The Respondents' position that the ten year period began upon the entry of the foreclosure decree, however, ignores the facts and misstates the legal standard.
 10. The ten year "life" of a judgment lien "begin[s] from the time of such entry on the book of abstracts and indices..." S.C. Code Section 15-35-810. Similarly, Section 15-39-30 provides that "Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period..."
 11. As the Form 4 accompanying the foreclosure decree makes clear, no judgment in any amount was entered against Rosewood Holdings or Mr. Twitty in any amount in 2012. In the absence of entry of a judgment, there was no judgment lien against those defendants' real property and no ability on the part of the Petitioner to execute on a judgment.
 12. The Order for Deficiency Judgment is markedly different in that it establishes the amount of the deficiency, identifies the parties against whom the money judgment is to be issued, and (perhaps most significantly), directs the Clerk of Court to amend the prior Form 4 (which did not direct entry of judgment in any amount, against any defendant) to reflect the entry of a money judgment.

13. There being no entry of judgment for purposes of a judgment lien until July 23, 2015, the Order for Deficiency Judgment remains a valid judgment with “active energy” through July 23, 2025.

14. Petitioner further requests that the court enter such additional orders as may be appropriate in supplemental proceedings including an order directing the Respondents to produce records and appear for examination under oath.

WHEREFORE, having set forth the basis of its Motion, the Petitioner requests that the court enter an order determining that the money judgment remains a valid and enforceable judgment through July 23, 2025.

s/Weyman C. Carter
Weyman C. Carter / S.C. Bar No. 15255
Burr & Forman, LLP
Post Office Box 447
Greenville, SC 29602
(864) 271-4940
wcarter@burr.com

*Attorneys for Petitioner First Horizon Bank,
successor to Capital Bank, N.A.*

August 9, 2022

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Capital Bank, N.A., formerly known as)
 NAFH National Bank, successor in interest)
 to Carolina National Bank and Trust)
 Company and to First National Bank of the)
 South,)
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 Petitioner,)
)
 v.)
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 Rosewood Holdings, LLC, and)
 D. Christopher Twitty,)
)
 Respondents.)
 _____)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO. 2011-CP-40-02052

**SUPPLEMENTAL MEMORANDUM
 IN SUPPORT OF PETITIONER'S
 MOTION FOR ORDER IN AID
 OF SUPPLEMENTAL PROCEEDINGS**

First Horizon Bank, the successor to the Petitioner/Judgment Creditor Capital Bank, N.A. (hereinafter the "Petitioner") submits this supplemental memorandum in support of its Motion for Order in Aid of Supplemental Proceedings.

The issues raised in this case are markedly similar to those in Independence National Bank v. Buncombe Professional Park, LLC and David DeCarlis s/a David D. DeCarlis, Greenville County Civil Action No. 2010-CP-23-03860. In that case, the Honorable Charles B. Simmons, Jr. entered a Foreclosure Decree on May 13, 2011 that contemplated that a deficiency judgment would be entered after application of the proceeds of sale. An Order for Deficiency Judgment was entered on August 2, 2011.

In the course of supplemental proceedings before Judge Simmons, the court appointed a receiver. On May 27, 2021, the receiver filed a Motion to Establish Sales Procedures for Sales of Property. The defendants filed a Memorandum in Opposition asserting that the underlying judgment had expired on the ten year anniversary of the entry of the Foreclosure Decree.

Judge Simmons issued an Order on June 11, 2021 overruling the Defendants' Objection, holding that the ten year life of the judgment ran not from the date of the Foreclosure Decree, but from the date of entry of the Order for Deficiency Judgment. A copy of Judge Simmons' Order is attached to this Supplemental Memorandum.

Judge Simmons' order contains a finding that the "Law of the Case Doctrine" precluded the Defendants from arguing the date of the judgment, since a prior Order for Repatriation of Assets had found that the judgment date was August 2, 2011, the date of the Order for Deficiency Judgment. That is not applicable to this case, however, Judge Simmons further found that no money judgment had been established or determined in the Foreclosure Decree.

Judge Simmons held:

Section 29-3-660 [titled "Deficiency judgment"] "is an independent statute that does not relate back to S.C. Code 29-3-650. Specifically, section 29-3-660 does not provide that the deficiency amount established following a sale be then credited against the amount determined in section 29-3-650. To the contrary, section 29-3-660 provides that deficiency judgments are themselves judgments that may be enforced as in other cases. If DeCarlis' construction of section 29-3-650 were correct, i.e., that the amount due following a sale of property at foreclosure is a "credit", then there would be no need for section 29-3-660 and the statute-which itself is captioned "Deficiency judgment"-would be a nullity. See generally Federal Land Bank v. Davant, 292 S.C. 172, 355 S.E.2d 293 (1987).

Although Judge Simmons' decision is not binding precedent, it is well reasoned and consistent both with the applicable statutes and with the customary procedure in the South Carolina courts of equity.

s/Weyman C. Carter
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August 17, 2022

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Capital Bank, N.A., formerly)
known as NAFH National Bank,)
successor in interest to Carolina)
National Bank and Trust)
Company and to First National)
Bank of the South,)

Plaintiff,)

vs.)

Rosewood Holdings, LLC,)
D. Christopher Twitty, and)
First Citizens Bank and Trust)
Company, Inc.,)

Defendant.)

MEMORANDUM IN OPPOSITION TO MOTION

2011-CP-40-02052

The Plaintiff seeks to establish the date for the ten years active energy on a judgment lien as being the date the deficiency judgment was entered in 2015. Defendant Twitty takes the position that the date is the date of the entry of the Masters Report and Judgment of Foreclosure and Sale on July 23, 2012.

The facts of the case are not at issue.

§29-5-630 provides that the mortgaged property cannot be sold unless the amount of the debt is established by "the judgment of some court of competent jurisdiction."

§29-5-650 provides that the Court "may" enter judgment and order sale at the same time. After the sale, the amount paid to the Plaintiff is credited against the judgment amount.

Plaintiff argues that §29-5-660 contemplates a deficiency judgment to be rendered after sale and argues that the judgment runs from the entry of that deficiency judgment. Plaintiff provides an order by Judge Simmons, Master in Equity for Greenville County in support of its position.

Both Plaintiff and Judge Simmons are in error.

When a judgment is entered in a case, it is rendered in favor of someone and against someone else. In a successful mortgage foreclosure, the judgment is rendered in favor of the Plaintiff and against each of the Defendants. Since the debt must be established prior to sale, that finding is a judgment against the mortgagor regardless of how the Form 4 is filled out.

The sale serves only to reduce the amount of the deficiency judgment debt by the proceeds of the sale.

Entry of Judgment is governed by Rule 58, SCRCP.

Rule 58(a)(1) provides:

...upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall **promptly prepare the form of the judgment, or direct counsel to promptly prepare the form of judgment, to which may be attached the decision, order or opinion of the court, and after review and approval by the court, the clerk shall promptly enter it.** (Emphasis supplied).

Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record. Entry of the judgment should not be delayed for the taxing of costs.

here the entry of the deficiency judgment was delayed because the Plaintiff was waiting on the Receiver's report. This is not a valid reason to delay the entry of the judgment for three years.

Judge Simmons finds that §29-5-660 is an independent statute and stands on its own. An examination of the legislative history finds that all of the cited statutes all date back to the same act in 1870 and each subsequent act amending one or more provisions of the 1870 act apply to all of the statutes.

In addition, were the Plaintiff's position correct, no judgment would be rendered until the entry of the deficiency judgment. This wrong for several reasons: the finding of the debt is immediately appealable. If the Judgment of foreclosure were an interlocutory order, it could not be appealed until the entry of the declaratory judgment, which would be after the sale. This would create a chill on the bidding process.

There are few abstractors who would not consider the entry of the Judgment of Foreclosure and Sale not be a money judgment.

Finally, this interpretation would allow a foreclosing party to withhold filing the deficiency judgment for an indefinite period of time, perhaps as long as 10 to 20 years. This is an absurd result.

I have attached a copy of an Order issued by the Honorable Joseph Strickland in CIT v. Cann (2005-CP-40-1842). In similar circumstances, Judge Strickland found that the date of the Order of sale controls.

CONCLUSION

The Court should find that the lien of the judgment lapsed no later than 30 days after July 23, 2022.



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August 23, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
02052)

COURT OF COMMON PLEAS
C/A No. 2011-CP-40-

Capital Bank,)
Plaintiff,)
v.)
Rosewood Holdings, et al,)
Defendants.)
-----)

COPY

HEARING

Wednesday, August 24th, 2022
11:19 a.m. - 11:40 a.m.

The hearing before the Honorable Joseph M. Strickland, Master-In-Equity for Richland County, was taken at 1701 Main Street, Suite 212, Columbia, South Carolina on the 24th day of August, 2022 before Megan Hicks, Court Reporter and Notary Public in and for the State of South Carolina.



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0052

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EXHIBITS

(Exhibits were marked prior to the hearing.)

Plaintiff's Exhibit Number 1	4
(July 23rd, 2012, Foreclosure Decree)	
Plaintiff's Exhibit Number 2	4
(July 23rd, 2015, Order for Deficiency Judgement)	



CALL TO ORDER:

1 **THE COURT:** This is Civil Action Number 2011-CP-40-
2 2052. NAFH National Bank and others versus
3 Rosewood Holdings, LLC, Defendant, and others.
4 I notes indicate this as a proceeding in the
5 nature of Supplemental Proceedings,
6 Supplementary Proceedings, however you want to
7 -- want to call it. The issue, I believe, is
8 whether or not the Judgement is valid or is
9 expired by now. Is that -- is that correct,
10 Mr. Carter?
11

12 **MR. CARTER:** Yes, Your Honor.

13 **MR. SYRETT:** Yes, Your Honor.

14 **THE COURT:** All right. Well, tell me your position,
15 Mr. Carter.

POSITION STATEMENT BY MR. CARTER:

17 **MR. CARTER:** Weyman Carter, Your Honor, with Burr
18 and Forman, representing the Plaintiff, which
19 in the caption of the underlying case is
20 Capital Bank, formerly, etcetera. That bank is
21 now First Horizon Bank, but it's the same
22 entity. So, we can just refer to them as the
23 Plaintiff. And Jane Trinkley of my firm's
24 Columbia office is here with me today.

25 Exactly so, Your Honor, this is, as you



1 may know or may recall, this is a foreclosure
2 action that came before you in a previous order
3 of reference. And in that action, there were
4 two Orders entered. The first, a Foreclosure
5 Decree entered on July 23 of 2012, which is
6 more than 10 years ago. And then,
7 subsequently, the Order for a Deficiency
8 Judgement was entered on July 23rd, 2015; three
9 years to the day after the entry of the
10 Foreclosure Decree. And I've attached copies
11 of those to my Motion in aid of supplemental
12 proceedings, but I think it might be
13 appropriate, since we have a court reporter, to
14 go ahead and put those into the record. So, I
15 believe those have been pre-marked as
16 Plaintiff's Exhibits 1 and 2.

17 **(Plaintiff's Exhibit Numbers 1 and 2 were referenced**
18 **at this time.)**

19 **MR. CARTER:** And I ask that those be received into
20 evidence. But you might be able to take
21 judicial notice of your own Order, but just to
22 make a record.

23 So, in that case, this is my parlance. I
24 mean, we have, under South Carolina Statutory
25 Law, two different Code sections that deal with



1 the way that deficiency judgement is rendered
2 in a foreclosure action. The first is Section
3 29-3-650, which is entitled, Court can render
4 judgement and order sale at the same time. And
5 then the following Code section is 29-3-660,
6 which is entitled, deficiency judgment. And
7 it's been my understanding that the -- perhaps
8 the more common method of doing a foreclosure
9 decree and judgement is under the latter Code
10 section, 29-3-660. And my position is, that's
11 what happened in this case. The foreclosure
12 happened in, what I call, the usual way in that
13 there's a decree of foreclosure, which makes
14 the findings that are necessary in any
15 foreclosure action, whether the deficiency is
16 even available or at all, as it would be in the
17 case of a non-recourse loan or -- and whether
18 a deficiency judgment has not been waived.
19 There are two ways that it can be done. And
20 under the way it was done in this case, and
21 what's contemplated by 29-3-660, is that there
22 are two Orders here. The decree of foreclosure
23 makes those findings that are necessary for any
24 foreclosure decree. That being, the existence
25 of the mortgage, the priority of the mortgage,



1 what the mortgage covers, the existence of the
2 defendant in default, the title into the lender
3 to a decree of foreclosure and the amount due.
4 All of those things have to be found in any
5 foreclosure action, and, of course, ordering
6 the sale. And that was done in this Court's
7 Judgement of Foreclosure and Sale in 2012. And
8 the -- that Order does not direct the entry of
9 a money judgment. It finds the total debt,
10 which is something that always has to be done.
11 And on the Form 4, which directs how the order
12 is to be entered, the boxes, information for
13 the public index, which would show -- and the
14 instructions to that box where you complete
15 this section below when the judgement affects
16 title to real or personal property, or if any
17 amount should be enrolled. Those sections and
18 the headings are: judgment in favor of; second
19 heading is judgement against; and the third,
20 judgement amount to be enrolled. Completely
21 blank; that was not filled in. So, my position
22 is, there was no judgement enrolled, no money
23 judgement enrolled as a result of the entry of
24 the Foreclosure Decree.

25 Then subsequently, after the sale had been



1 completed, and -- there was a three year delay
2 in this case, but usually the delay, of course,
3 of at least a couple of months for the sale to
4 be advertized, bid to be complied with, and the
5 paper -- just the paperwork to be filed, to do
6 the math, to determine the amount of the
7 deficiency judgement. And, sometimes it's more
8 than simple math, but in most cases, it's just
9 that.

10 And the Order for Deficiency Judgement is
11 the second Order, is contemplated by 29-3-660.
12 And that is the amount, in that Order, The
13 Court finds and determines the existence of
14 deficiency after the sale of the property in
15 the amount of -- and it has the amount, which
16 is about a little under 1.9 million dollars.
17 It is now proper for this amount to be entered
18 as a monetary judgement. Then, it orders the
19 information that was not put in the Form 4 on
20 the Foreclosure Decree, that is the name of the
21 judgement creditor, the names of the defendants
22 against whom the judgement was rendered, the
23 borrower and the guarantor, not all defendants,
24 because, obviously, sometimes we have junior
25 lien holder defendants and others against whom



1 there's no monetary remedy to be entered. And,
2 further ordered that the Clerk of Court amend
3 the Form 4 previously filed in this action to
4 reflect this monetary judgement.

5 So, a judgement is created from the time
6 -- a money judgement is created, or any
7 judgement, from the entry on the book of
8 abstracts. That's under 15-35-810, cited in my
9 brief. And then, 15-39-30 speaks to the
10 duration and enforceability of the judgement,
11 and provides that it's ten years from the date
12 of the original entry. So, the money judgement
13 is a creature of statute, the lien is a
14 creature of statute. Our Supreme Court has
15 told us that those are the -- those are
16 bookended dates. It begins on a certain date.
17 And when it ends on the -- at the ten year
18 anniversary of that entry of judgement, that's
19 it. There's no more active energy. We now
20 have a white line rule about what happens when
21 the ten years runs. And I don't think -- I'm
22 not trying to argue that that -- I would love
23 to be able to argue, Your Honor, that that's
24 subject to some sort of equitable extension.
25 I don't think that's available to creditors



1 anymore, we have this bright line rule. The
2 only question in this case it when the ten year
3 period on the money judgement began.

4 Now, the other Code section, which is
5 important, and I think we wouldn't have two
6 Code sections if they didn't have some
7 independent meaning and validity, is the 29-3-
8 650, where The Court may, may, may, not must,
9 may, may render judgement and order sale at the
10 same time. And I have seen, in the smaller
11 number of foreclosure decrees that I've read,
12 that I've either prepared or reviewed that it
13 is certainly possible under that Code section
14 to write a proposed order that says, all the
15 findings that are necessary in any foreclosure
16 action, and further directs that the total debt
17 amount that the court had to find for any
18 foreclosure action, be immediately entered as a
19 monetary judgement against the Defendants,
20 again, who are liable for the debt. It can be
21 done. It's my understanding that there are
22 some Masters that will, in fact, refuse to sign
23 such orders, thinking that the better procedure
24 is the two Orders that we have, such as the one
25 in this case, where you make the findings, you



1 find the total debt, you anticipate that there
2 will -- deficiency's been demanded, so there's
3 a possibility that the deficiency judgement
4 will be entered under a later date, but it's
5 not entered at that time; it's entered at a
6 later date. And I think that all of this is
7 because we have this, perhaps, rather strange
8 concept in South Carolina of a foreclosure
9 action being quasi in rem.

10 There are -- if, assuming of course, that
11 it's a recourse loan, the lender has two
12 remedies. He has -- it has the equitable
13 remedy of the foreclosure, and it has the legal
14 remedy of seeking a money judgement against
15 Defendants that they've named in the action.
16 So, there are -- there are two remedies that
17 are available to the lender; the equitable and
18 the legal. They can be combined; they can be
19 separated. And here, they were separated. And
20 so, the judgement -- the money judgement was
21 not entered into this case until 2015. Until
22 that time, there was no entry of a money
23 judgement on the -- on the index. The lender
24 did not have a lien on other assets of its
25 obligors. Usually, you're incentivized to get



1 that deficiency order entered as soon as
2 possible so that you can create that lien, but
3 there was no such lien created here. So, until
4 the judgement lien, being a creature of
5 statute, there was no money judgement;
6 therefore, no judgement lien on other assets.
7 And, therefore, no ability to execute on that
8 judgement until the Order for Deficiency
9 Judgement was entered on July 23rd, 2015.

10 So, as a result of that, I'm asking that
11 The Court find that the Judgement in this case
12 still exists, and exists for almost another
13 three years. I cited in my materials, there's
14 no Appellant case that I've been able to find
15 in South Carolina on this point. Mr. Syrett
16 has cited to me a prior opinion of this Court.
17 I cited an opinion of Judge Simmons that really
18 relies, I think, heavily on the existence of
19 these two Statutes. And the only way that they
20 have -- and this is why they exist
21 independently. There are -- there are two
22 options available to the trial judge. And in
23 the way that that order is entered is
24 everything in terms of the commencement,
25 existence of the money judgement.



1 I think that, that's all that I have, Your
2 Honor.

3 **THE COURT:** All right. Mr. Syrett.

4 **POSITION STATEMENT BY MR. SYRETT:**

5 **MR. SYRETT:** Your Honor, the -- if you read Judge
6 Simmon's Order, clear -- closely, you will see
7 that all of this discussion about 650 and 660
8 are actually dictum because there was a finding
9 in the Order that the parties had agreed that
10 the Judgement was entered by a particular day.
11 So, all he's saying is simply dicta. It is --
12 you know, it obviously supports Mr. Carter's
13 position, but it's not necessary to the
14 disposition of that case.

15 Now, in my materials I have provided to
16 you, I have given you a copy of the Cann -- CIT
17 versus Cann Case where this same issue came up
18 in front of you. And one of the concerns that
19 I have about the procedure that they're trying
20 to do is, that if they don't file this
21 Deficiency Judgement for 20 years, the result
22 in their argument is they get another 10 years
23 after that to try to collect the money. That
24 just doesn't seem fair to have got this order
25 that has been issued, it finds what the debt



1 is. Any abstractor looking at this is going to
2 say, this is a judgement against the parties.
3 The Form 4 is simply surplusage. The language
4 in the Order says that the -- orders the
5 defendants to pay the money. So, clearly, they
6 found that they are liable, and it is,
7 essentially, a money judgement. I disagree
8 that there are two ways to do this, but, even
9 if there is, you then run into Rule 58 of the
10 Rules of Circuit -- of Circuit Court Rules that
11 says that the judgement has to be entered
12 promptly; and three years is not promptly. In
13 the Cann case, it was eight years. That's not
14 promptly. The reason -- and the reason, and
15 I've included that as an attachment to my memo,
16 the reason Mr. Miller didn't submit the
17 Deficiency Judgement at the time was he was
18 waiting for a report from the receiver that had
19 been appointed to give his -- the amount -- the
20 numbers that he had, you know -- whatever money
21 he had been unable to obtain. But that's not
22 a valid reason to delay entry of the Deficiency
23 Judgement. So, you have a situation where the
24 foreclosure order comes down. They find the
25 debt. And if it's not a money judgement, then



1 it's an interlocutory order and can't be
2 appealed. And I think, you know, that doesn't
3 make any sense either. And so, you wind up
4 with this case in limbo until the Plaintiff
5 simply decides, we're gonna just -- to file our
6 Deficiency Judgment. I don't think that's
7 appropriate. It doesn't -- it gives them an
8 extra 10 years. If we give them an extra 10
9 years, it could get -- you know, they could be
10 doing -- having this thing 20 years down the
11 pipe, and then, oh, we're just going to file
12 the Deficiency Judgment, and now we have 10
13 years to try to collect it. I don't think
14 that's what the Legislature intended. And I
15 think you have to read 650 and 660 together
16 because they were enacted at the same time.

17 So, I think the proper ruling is that they
18 had their judgement in 2012. The 10 years has
19 -- as Mr. Carter admits, has run from that
20 Order. And the only thing the deficiency did
21 -- sale would have done would have been to
22 reduce the amount of the deficiency, possibly
23 to zero, but in this case only by several
24 hundred thousand dollars. And so, the fact
25 that the Deficiency Judgment was not entered



1 for three years is not prompt. And so,
2 therefore, we should go back to the date that
3 the original Judgement of Foreclosure and Sale
4 was entered, and that should be your ten years.

5 **THE COURT:** Mr. Carter?

6 **RESPONSE BY MR. CARTER:**

7 **MR. CARTER:** As to Rule 58, it says with sales, but
8 it also says, their judgement should be set
9 forth on a separate document. Well, that
10 happened in this case. There was a separate
11 document. Separately indexed, Your Honor
12 directed the Clerk of Court to index it as a
13 money judgement, saying it is now appropriate
14 to enter it as a money judgement.

15 As for the delay -- and there could be a
16 lot of reasons. There's always some delay.
17 When this two Order usual process is filed,
18 there's always some delay between the entry of
19 the judgement of foreclosure and sale and the
20 deficiency judgement. At least a couple of
21 months. And that, you know, obviously, can be
22 longer. During that period of time, it's my
23 position that if the -- if either the lender
24 has not chosen to ask for the money judgement
25 as part of the decree or if the court has



1 declined to grant that relief, that the lender
2 is somewhat vulnerable during a period of time
3 during that delay because it doesn't have a
4 money judgement on record that would encumber
5 other assets of its obligors. So, there's some
6 -- there's a balance there, I think there.
7 And, again, it's an incentive for the lender to
8 do it promptly. And in terms of a lender being
9 able to, in a way, manipulate the process by
10 just not submitting the Deficiency Judgement,
11 this is, after all, a court of equity. And
12 there would be nothing to prevent a defendant
13 from saying, you know, with this hanging over
14 my head, I want this 10 year period to start --
15 someone could come and ask the court for the
16 relief. You know, the sale is -- Judge, the
17 sale has happened. There might be some other
18 credits out there, but we want -- they can ask
19 for that relief and prevent that prejudice.
20 So, I don't think we're in a position where
21 recognizing -- and, again, I'm getting back to
22 the reality that we're talking about the
23 Statutory remedy. And that is, the existence
24 and enforceability of the Judgement. And
25 everybody has to sort of live and abide by



1 those rules. It's entered when it's entered.
2 It begins its 10 year life when it's entered.
3 And when that fuse burns out, we know that,
4 that is -- that is it. That is -- that is
5 finality. And, again, if there's some concern
6 that the Defendant is being prejudice by the
7 delay of the entry of the judgement against
8 them, I think that that's mitigated. I think
9 that can be controlled. I think that was...

10 And as far as appealability, again,
11 there's always some delay in between the entry
12 of the Foreclosure Decree and in anything else.
13 And if there's an aggrieved party -- if, for
14 example, a borrower takes the position that,
15 we're not in default, we have a defense, and
16 the trial judge rules against them and says,
17 I'm entering the Foreclosure Decree, those
18 findings are final and can be appealed and
19 sometimes are appealed. So, I -- again, the
20 fact that we had a longer gap between the
21 Decree and the second Order in this case -- and
22 we're not talking about appealability, we're
23 not talking about finality. Nobody has
24 appealed in this case. We're just looking at
25 what was the date of the indexing of the money



1 judgement, which controls then the duration of
2 the money judgement. And, Your Honor's Order
3 -- orders -- Statutes have to mean something.
4 Orders have to mean something. And what was
5 said in this Court's Order, or the Order of
6 Deficiency Judgement, that, on it's face,
7 negates the argument that there was a money
8 judgement. For if there had been, there
9 would've been no reason for the language in the
10 Order to now enter a money judgement and to
11 amend the prior four four (sic) -- Form 4,
12 which expressly did not direct a money
13 judgement. No judgement was entered against
14 these parties of the -- no money judgement. No
15 in-persona remedy. No legal remedy. No legal
16 judgement existed until 2015.

17 **REPLY BY MR. SYRETT:**

18 **MR. SYRETT:** Your Honor, I will -- I will submit to
19 you that every abstractor, every attorney
20 examining the record in this case, if they were
21 looking for a sale from one of these Defendants
22 on another piece of property, would concluded
23 that that was a judgement, at that point, and
24 would not have certified the title. The whole
25 -- if, in fact, that is what the Plaintiff in



1 this case was doing, it needed to speak much
2 more clearly in the -- in the Form -- in the
3 Decree of Foreclosure that it was entering the
4 monetary judgement; not simply leaving Form 4
5 blank, because there are all sorts of finds in
6 that Order that says, this is the amount of the
7 debt, and these are the Defendants that owe it.
8 And so, I think, clearly, they're under the
9 jeopardy of that judgement from the date that
10 the money judgement -- the Order of Foreclosure
11 is entered. And if the Deficiency Judgement
12 had been entered two or three months after the
13 entry of the Foreclosure Order, we probably
14 wouldn't be here, because that would be so
15 close in time that it would make very little
16 difference. But we're talking about three
17 years here. And so, basically, my client is
18 under the gun in terms of the 2012 Order. But
19 now they're saying, oh, we get another -- we
20 get 13 years, not 10. And I think that's
21 stretching the intent of the Legislature to
22 something that they never intended. Ten years
23 is 10 years, and it ought to run from the date
24 that they get their relief to sell the
25 property.



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RULING BY THE COURT:

THE COURT: Based on what's been presented here today, I find that the Judgement has expired.

MR. CARTER: Thank you, Your Honor.

THE COURT: Mr. Syrett, you'll prepare an Order?

MR. SYRETT: Yes, sir.

THE COURT: Okay.

MR. CARTER: Thank you, Your Honor.

THE COURT: Okay. Thank you.

(There being nothing further, the hearing concluded at 11:40 a.m.)



CERTIFICATE

This is to certify that the within hearing, consisting of twenty (20) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on November 7, 2022.

Sarah Costilow

Sarah Costilow
Court Reporter

Notary Public for South Carolina
My Commission Expires: May 29, 2028



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 PLAINTIFF(S)

 DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

McDONALD, McKENZIE, RUBIN, MILLER AND LYBRAND, L.L.P.
ATTORNEYS AT LAW

ROBERT A. McKENZIE
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POST OFFICE BOX 58
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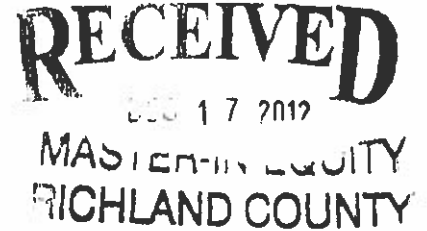
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†CERTIFIED MEDIATOR AND ARBITRATOR
*ALSO ADMITTED IN TEXAS

December 17, 2012



The Honorable Joseph M. Strickland
Master in Equity for Richland County
1701 Main Street
Columbia, South Carolina 29201

Re: Capital Bank, N.A. vs.
Rosewood Holding, LLC, et al.
Docket No. 2011-CP-40-2052

Dear Judge Strickland:

I am enclosing herewith the post-sale documents excluding the Order for Deficiency Judgment which can be prepared after review of the receiver's report.

The properties were sold separately and then in gross for the same total price of \$488,547.00. The Plaintiff would like the court to treat the sale in gross to be the successful bid.

Thank you for your kind assistance in this matter.

Very truly yours,

McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, L.L.P.

A handwritten signature in black ink, appearing to read "Ben N. Miller III".

BY: BEN N. MILLER III

BNM/jfs

cc: Spencer Andrew Syrett, Esquire
Ian D. McVey, Esquire

OFFICE OF
Master In Equity
 FOR RICHLAND COUNTY
 JUDICIAL CENTER
 1701 MAIN STREET
 COLUMBIA, SOUTH CAROLINA 29201



TELEPHONE (803) 748-4811
 JOSEPH M. STRICKLAND
 Master In Equity

TO: Foreclosing Attorneys
 FROM: Fristella Cornelius, Deputy Clerk of Court
 DATE: September 5, 2012
 JUDGMENT ROLL NO. 2011CP4002052

Please complete the information listed below, including the assignment of bid, if appropriate, and return this form to the Master's Office (Ms. Joyce Goodwin), along with your check for the amount of outstanding costs, as calculated below. Judge Strickland desires that plaintiffs comply with their bid within a week after sale.

All future inquiries concerning this foreclosure should be directed to Ms. Joyce Goodwin of our office at 748-4813.

CASE CAPTION: Capital Bank, N.A., vs. Rosewood Holdings, LLC, et al.

PLAINTIFF ATTORNEY: Ben N. Miller III DATE OF SALE: opened August 6, 2012
closed September 5, 2012

SOLD TO: Plaintiff AMOUNT OF BID: \$488,547.00

PLAINTIFF ADDRESS FOR DEED PREPARATION:

COURT COST CALCULATION

GAL Fees	\$	_____	
* Additional hearing(s) (See Below)	+	_____	
Additional deed(s)	+	_____	
1% of Bid Amount	+	<u>2,500.00</u>	(minimum of \$25.00; maximum of \$2500.)

Balance due Master upon compliance \$ 2,500.00

(We assume a \$125.00 reference fee has been paid and is on account.)

ASSIGNMENT OF BID

The above bid is hereby assigned to: NAME: FBSA 1, LLC
 ADDRESS: c/o Capital Bank, N.A., P.O. Box 3508
Spartanburg, South Carolina 29304

and the Master in Equity for Richland County is hereby directed upon compliance to set forth in the judgment of Foreclosure and Sale to execute and deliver the deed unto the assignee.

BY: [Signature]
 As Attorney/Agent for Successful Bidder

**IF AN ADDITIONAL HEARING(S) WAS HELD TO UPDATE YOUR DEBT, YOU NEED TO ADD AN ADDITIONAL \$35.00 FOR EACH HEARING.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

)
)
)

CIVIL ACTION NO: 2011-CP-40-2052
JUDGMENT ROLL #

Capital Bank, N.A., et al.,)

Plaintiff (s),)

vs.)

CERTIFICATE OF MAILING

Rosewood Holdings, LLC, et al.,)

Defendant (s).)

I, the undersigned, a member of the Staff of the Office of the Richland County Master in Equity, do here by certify that the original:

- Master's Order on Sale & Disbursements with Statement Attached
- Master's Final Order
- Master's Report
- Order Confirming Master's Report
- Order of Dismissal
- Order of Dismissal in Supplementary Proceedings BEFORE Exam.
- Order of Dismissal in Supplementary Proceedings AFTER Exam.
- No Assets Available to apply toward debt
- Unable to Serve Defendant
- Judgement has been satisfied
- Provisions have been made to satisfy Judgment
- Defendant has filed Bankruptcy
- Order Confirming Agreement in Supplementary

Other:

Dated _____ was filed in the office of the Clerk of Court for Richland County on _____ and copies of the same, together with a check in the amount of \$ _____ made payable to _____ were/was mailed by U.S. Mail, postage paid/hand-delivered/placed in Attorney's Box in the Clerk's Office to the following Counsel/s of record at their Office Address and the following parties:

B. Miller _____ Esquire _____ Esquire _____

_____, 2012

Susan M. Golston

DATED AT COLUMBIA, SOUTH CAROLINA

MASTER IN EQUITY

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material. I also certify that this Record is in compliance with the August 13, 2007 order of the South Carolina Supreme Court.

RECEIVED

Apr 18 2023

SC Court of Appeals

/s/ Robert L. Widener

Robert L. Widener

Burr Forman, LLP

Post Office Box 11390

Columbia, South Carolina 29211

(803) 799-9800

ATTORNEYS FOR APPELLANT

April 3, 2023