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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2023-000421

Southern First Bank……. Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, The Federal Housing Commissioner, The Department of the Treasury – Internal Revenue Service, and The South Carolina Department of Revenue……..... Respondents.

RECORD ON APPEAL

CERTIFICATE OF COUNSEL

Pursuant to and in compliance with South Carolina Appellate Court Rule 201, the undersigned hereby certifies that the Record on Appeal contains all material proposed to be included in the Record by the Parties in compliance with South Carolina Appellate Court Rule 209 and no other materials. The undersigned reserves the right to amend and/or supplement the Record on Appeal as necessary to include any materials necessary as agreed to by the Parties or requested, or otherwise ordered by the Court.

SMITH HUDSON LAW, LLC

s/ Joseph O. Smith
Joseph O. Smith (S.C. Bar No. 77475)
Joshua J. Hudson (S.C. Bar No. 100311)
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Greenville, SC 29601
Phone: (864) 248-4708
aaron@angellmolony.com
Attorneys for Appellant

February 2, 2024
Greenville, South Carolina

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ELECTRONICALLY FILED - 2021 Mar 02 8:28 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiff(s), v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendant(s).	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT County C/A No.: 2012-CP-07-04253 **ORDER OF REFERENCE**

IT IS ORDERED, that, pursuant to §15-39-390, Code of Laws of South Carolina, 1976, as amended; and Rule 53, SCRCP, the Honorable Marvin H. Dukes, III, Master-in-Equity for Beaufort County, will entertain and rule upon all motions necessary to dispose of this matter, to include, but not limited to, motions to dismiss, motions to appoint Receiver, motions to continue the matter, and motions to sell all or certain property of the judgment debtor in satisfaction of the Defendants' debt, and has authority to enter a Final Order, with any appeal directly to the South Carolina Supreme Court, or Court of Appeals of South Carolina, as appropriate.

IT IS FURTHER ORDERED, that, the Plaintiff is entitled to have an examination of Defendants, Kenneth J. Vilcheck and Renee M. Vilcheck, in supplemental proceedings to ascertain and discover any and all property and assets, real, personal, or mixed, and whatsoever situated, belonging to Defendant or in which Defendant could claim any interest, solely or in conjunction with any person, firm, or corporation or entity and any or all of which is or should be made applicable by the Court to the payment of said debt; entitled in addition to the appointment of a receiver of Defendant for any and all of the aforesaid property, assets, or affects which are so discovered or revealed in order to carry said judgment into effect; and entitled, pending such

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proceeding and until further order of the Court, to an order forbidding and restraining Defendant, and if applicable, officers, directors stock holders and employees, agents and all other persons, firms, corporations and entities connected with the Defendant, from transferring or disposing of any of the aforesaid discovered or revealed property, assets, or effects whatsoever situated, not exempt from levy, and accepted in the usual course of trade.

The Plaintiff is responsible for paying the Reference fee set forth in South Carolina Code of Laws Section 14-11-310; however, if the Plaintiff's case has ended, any remaining party seeking Affirmative Relief shall be responsible for the fee. If the case is a Partition Action of Lien Foreclosure the fee amount is $100.00; for all other types of cases the fee is $50.00. The Reference Fee shall be paid to the Office of the Master in Equity for Beaufort County within 30 days of the date of this Order or the Master will dismiss the case for non-payment of the Reference Fee without further Notice.

AND IT IS SO ORDERED.

[ELECTRONIC SIGNATURE TO FOLLOW]

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Beaufort Common Pleas

Case Caption: Southern First Bank VS Kenneth J Vilcheck

Case Number: 2012CP0704253

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jerri Ann Roseneau, Beaufort County Clerk of Court

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 **CP**-07-04253

Southern First Bank, et al.
PLAINTIFF(S)

Kenneth J, Vilcheck, et al.
DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY	**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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

Plaintiff withdrawls their Petition for Supplemental Proceedings, filed March 5th, 2021, with leave to refile. See attached email as Exhibit A.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk :

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)**
N/A	N/A	$N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

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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.**

	3069	
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Aaron J. Angell
Luke R. Hoopes

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

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Exhib A

McLeod, Heather

From: Aaron Angell <aaron@angellmolony.com>
Sent: Friday, July 9, 2021 9:46 AM
To: McLeod, Heather
Cc: Luke Ragan Hoopes (luke@angellmolony.com); Browne, Jared
Subject: Re: 12-4253 Southern First Bank et al vs Kenneth J Vilcheck et al

No problem, works just fine for us.

thanks,

On Fri, Jul 9, 2021 at 9:45 AM McLeod, Heather <hmcleod@bcgov.net> wrote:

Are you okay with withdrawing the motion with leave to refile?

Please contact us immediately if you are:

1. **Waiting on a ruling and it has been more than 30 days.**
2. **Ready to schedule a Trial date.**
3. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

P. (843) 255-5710

F. (843) 255-9505

hmcleod@bcgov.net

Beaufort County Courthouse

ELECTRONICALLY FILED - 2021 Jul 09 11:46 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Post Office Drawer 1228

Beaufort, SC 29901

Beaufort County Courthouse

102 Ribaut Road, 2nd Floor

(across the hall from the Clerk of Court)

Beaufort, SC 29902

Disclaimer: Neither this office, nor its staff gives legal, financial or other advice. Any information obtained from this office or its staff, regardless of form, should not be taken as legal or financial advice. Persons seeking to purchase properties from foreclosures or other sales should obtain independent advice as to value, sufficiency of title, tax consequences, other liens, and all other matters related to said purchase. Persons involved in litigation should obtain counsel and may not rely on any information obtained from this office as legal advice. Do not rely on this office for legal advice- always obtain independent legal advice.

From: Aaron Angell <aaron@angellmolony.com>
Sent: Friday, July 9, 2021 9:41 AM
To: McLeod, Heather <hmcleod@bcgov.net>
Cc: Luke Ragan Hoopes (luke@angellmolony.com) <luke@angellmolony.com>; Browne, Jared <jbrowne@bcgov.net>
Subject: Re: 12-4253 Southern First Bank et al vs Kenneth J Vilcheck et al

Thanks Heather,

We've actually filed a separate foreclosure action in this matter and expect to be mediating that matter in the coming weeks. As for supplemental proceedings, we're going to hold off for now so please just let us know what you need on our end to cancel/pause the proceedings.

thanks,

On Fri, Jul 9, 2021 at 9:31 AM McLeod, Heather <hmcleod@bcgov.net> wrote:

> Good Morning:

ELECTRONICALLY FILED - 2021 Jul 09 11:46 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

I am reaching out in regards to the above-named case. I see Plaintiffs filed a Petition for Supplemental Proceedings on March 5th, 2021. I am reaching out to see if parties are ready to move forward with scheduling.

Please contact us immediately if you are:

1. **Waiting on a ruling and it has been more than 30 days.**
2. **Ready to schedule a Trial date.**
3. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

P. (843) 255-5710

F. (843) 255-9505

hmcleod@bcgov.net

Beaufort County Courthouse

Post Office Drawer 1228

Beaufort, SC 29901

Beaufort County Courthouse

102 Ribaut Road, 2nd Floor

(across the hall from the Clerk of Court)

Beaufort, SC 29902

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--

Aaron J. Angell

Angell Molony, LLC

18 East North St. Suite 302

Greenville, SC 29601

Ph: (864)-

248-4708

Fx: (864)-752-1422

www.angellmolony.com

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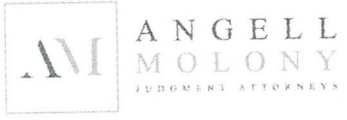
IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of

(1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

DEBT COLLECTOR: This firm collects debts for creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

--

Aaron J. Angell
Angell Molony, LLC
18 East North St. Suite 302
Greenville, SC 29601
Ph: (864)-
248-4708
Fx: (864)-752-1422
www.angellmolony.com



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IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

DEBT COLLECTOR: This firm collects debts for creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

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Beaufort Common Pleas

Case Caption: Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2012CP0704253

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2022 May 09 2:25 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0700944

Southern First Bank N A et al
PLAINTIFF(S)

Kenneth J Vilcheck et al
DEFENDANT(S)

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

Plaintiff Southern First Bank N A's Motion to Strike Jury Demand of Kenneth J. & Renee M., filed March 3, 2022, was heard by this Court on April 28, 2022. Plaintiff Southern First Bank N A's Motion to Strike Jury Demand of Kenneth J. & Renee M. is hereby GRANTED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/06/2022 .

Greenville First Bank
Department Of Revenue South Carolina
Greenery Inc The
Portfolio Recovery Associates Llc
Federal Housing Commissioner

RECEIVED
Jul 11 2022
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ELECTRONICALLY FILED - 2022 May 09 2:25 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

Beaufort Common Pleas

Case Caption: Southern First Bank N A , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2021CP0700944

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0700944

Southern First Bank N A et al
PLAINTIFF(S)

Kenneth J Vilcheck et al
DEFENDANT(S)

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

Plaintiff Southern First Bank N A's Motion for Order of Reference, filed March 3, 2022, was heard by this Court on April 28, 2022. This Court hereby finds that this action should be referred to the Master-in-Equity for Beaufort County pursuant to S.C. R. CIV. PRO. 53(b).

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/06/2022 .

Greenville First Bank
Department Of Revenue South Carolina
Greenery Inc The
Portfolio Recovery Associates Llc
Federal Housing Commissioner

RECEIVED
Jul 11 2022
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 May 10 9:14 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ELECTRONICALLY FILED - 2022 May 10 9:14 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

Beaufort Common Pleas

Case Caption: Southern First Bank N A , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2021CP0700944

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

ELECTRONICALLY FILED - 2022 May 10 10:04 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiff(s), vs. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendant(s).	**IN THE COURT OF COMMON PLEAS** **FOR THE FOURTEENTH JUDICIAL CIRCUIT** County C/A No.: 2012-CP-07-04253 **RULE TO SHOW CAUSE/ORDER**

TO: DEFENDANTS, KENNETH J. VILCHECK AND RENEE M. VILCHECK

It appearing to the Court that a Judgment has been entered against you, the Execution upon the Judgment has been issued to the Sheriff of Beaufort County, that the Sheriff made a *Nulla Bona* return to the Execution; that the Plaintiff, Southern First Bank, has moved the Court for your examination under oath in Supplementary Proceedings, pursuant to the provisions of Section §15-39-310 et. Seq. of the Code of Laws of South Carolina (1977); and the Court having satisfied itself that the Plaintiff is entitled to this Order,

IT IS, ACCORDINGLY, ORDERED that you, Defendants, Kenneth J. Vilcheck and Renee M. Vilcheck, appear before the Honorable Marvin H. Dukes, III, Master in Equity for Beaufort County, on **Monday, July 25, 2022 at 1:30 p.m.**, at the Beaufort County Courthouse on the Second Floor, 102 Ribaut Road, Beaufort, South Carolina, 29901, to answer under oath concerning your assets, and to show cause why your property should not be applied toward satisfaction of the Judgment herein.

IT IS FURTHER ORDERED, pursuant to *Section §15-39-440 of the Code of Laws of South Carolina (1977)*, that you are temporarily restrained and enjoined from alienating, selling, transferring, liquidating, disposing of, or otherwise encumbering your non-exempt personal

ELECTRONICALLY FILED - 2022 May 10 10:04 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

property, as well as your stock, shares, and distributional interests in all business associations, including but not limited to the following:

a) GCMK, LLC
b) RMV, LLC
c) RMV HAIG, LLC
d) Vilcheck Group, LLC
e) The Vilcheck Team, LLC
f) Centillion Partners, LLC
g) Bald Eagle 2, LLC

YOU ARE FURTHER ORDERED to provide Plaintiff's counsel, Luke R. Hoopes, whose address is **18 E. North Street, Suite 302, Greenville, SC 29601**, the following documents **within fifteen (15) days of service hereof**:

1. Current checkbooks and/or bank or other financial institution accounts in the name of said Defendant or to which Defendant has signatory authority, including but not limited to, checking, IRA's, Roth IRA's, 401(K), money market, savings accounts, credit accounts, along with bank statements and check images on said accounts from January 1, 2017 to the present day.
2. Detailed statements of accounts received belonging to Defendant, whether or not the same may be pledged or hypothecated.
3. Any certificates of deposit, savings account passbooks, stock certificates in any publicly held or closely held corporations as well as any bonds owned by Defendant either separately or jointly held with others.
4. Any balance sheets, profit and loss statements, or financial statements, audited or unaudited, prepared and issued by or for Defendant since October 1, 2014.

ELECTRONICALLY FILED - 2022 May 10 10:04 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

5. Any and all documents submitted to any bank or financial institution, or any other person or entity, by the Defendant, for any loan or advance, in any capacity (borrower, guarantor, or surety) for the past five (5) years.
6. Any and all documents concerning any interest in, or claimed title to, any certificates of deposit, letters of credit, money orders, cashier's checks, traveler's checks, bank deposits, or escrow funds owned or held by the Defendant in the past three years.
7. Any and all documents related to any account in which any of the Defendant's earnings or other income has been deposited into in the past three years, whether the Defendant continues to have an interest in it or not.
8. Any and all documents evidencing any application signed by the Defendant or on behalf of the Defendant or the Defendant's spouse and/or children, to open a foreign or offshore financial account in the name of the Defendant or any other entity.
9. Copies of any Individual Retirement Account or 401(K)s that were "rolled over".
10. Certificates of title to any vehicles, (including, but not limited to, automobiles, tractors, trucks, motorcycles, ATV's, four-wheelers, golf carts, trailers, or go-carts), mobile homes, water crafts (including motors therefore), agricultural equipment, aircrafts, or construction equipment owned by the Defendant either separately or jointly provided that if there exists a lien on any of said vehicle or mobile homes or water crafts, then in lieu of certificates of title, a written statement detailing a description of each item including year, make, model, serial number, present value, and the amount of any lien therein shall be furnished.
11. Any Deeds, Mortgages, Notes, Contracts of Sale, and Settlement or Closing Statements relating to any real estate transactions involving Defendant since October 1, 2014 or

ELECTRONICALLY FILED - 2022 May 10 10:04 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

relating to real estate currently owned by Defendant, either individually or jointly with others.

12. Any and all documents that refer to, reflect, or relate to encumbrances on any real property owned by the Defendant.
13. Any and all documents evidencing ownership of real property in which the Defendant currently enjoys a direct or indirect beneficial interest.
14. Any and all checks, receipts, deeds, or other evidence of the sale or transfer of any real property in which the Defendant had a legal or equitable ownership interest in, within the past five years.
15. Any and all lease agreements for real property in which the Defendant is the lessor, landlord, or has a beneficial interest in.
16. Any and all lease agreements for real property in which the Defendant is the lessee.
17. Any and all documents that evidence the Defendant's name being on any real property tax records, as payor or trustee for the past three years.
18. Any and all documents evidencing any time-shares of which use the Defendant enjoys.
19. Copies of any appraisals or other forms of valuation for any property that the Defendant has an interest in or had an interest within the past three years.
20. Promissory Notes or Mortgages the Defendant signed during the past three years.
21. Copies of all deeds/mortgages to which the Defendant holds property as tenants by the entireties, tenants in common, or joint tenants.
22. Copies of any life insurance policies owned by Defendant, along with any information pertaining to cash values or any loans outstanding on any of said policies.

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23. A written inventory or any items of jewelry, antiques, guns, paintings, items with fair market value of $1,000.00 or more, or art (collectively "Personal Property") owned by Defendant including a description of each item of Personal Property and its most recent appraised valuation.
24. Any and all note receivables, pledges or security interests in favor of the Defendant now, or in the past five years.
25. Copies of all homeowner's insurance policies and any other insurance policies or riders that have insured any property that the Defendant owns or has the benefit of use of, for the past five years.
26. List of household furnishings and fixtures that have been purchased within the last five years that had a purchase price of $999.00 or more.
27. Copies of all dock slips, deeds, leases, licenses, or other documentation evidencing the right to dock any watercraft, whether the Defendant has a legal or beneficial interest in.
28. Any and all documents that refer to or reflect any livestock owned by the Defendant within the past five years.
29. List and valuation of all collectibles (i.e. stamps, coins, sports cards, etc.) that the Defendant now owns or has owned within the past five years.
30. Any and all documents evidencing any interest the Defendant may have in any patents, trademarks, copyrights, franchises, royalties of any kind, oil and gas rights, timber rights, or mineral rights.
31. Any leases of realty or personally in favor of Defendant either individually or jointly with others.

ELECTRONICALLY FILED - 2022 May 10 10:04 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

32. All documents that identify the name and addresses of any person or entity that has employed the Defendant within the past three years.
33. All documents that identify any person or entity that the Defendant has acted as an independent contractor for the past three years.
34. All documents referring in any way, directly or indirectly, to any and all businesses in which the Defendant is a stockholder, partner, member, officer, director, owner, or registered agent and a description of Defendant's interest in such businesses.
35. Any and all corporate charters, minutes of stockholder meetings, resolutions, or recorded evidence of any kind relating to the affairs of any corporation or business entity owned by the Defendant, or any subsidiary to other entity in which such corporation or business entity hold an ownership interest during the past three years.
36. Lists of all customers, clients, etc. of any kind with which the corporations or other business entities owned by the Defendant does business or has done business during the past three years.
37. All documents referring, relating, or pertaining to any records of salaries, commissions, bonuses, income from employment, wages, pay stubs, dividends, royalties, allowances, expenses, or other sums of money paid to the Defendant within the last three years.
38. Any and all employment contracts that the Defendant has had in the past three years.
39. Any and all documents and records of stocks, bonds, mutual funds, debentures, certificates of deposit, or any other investment vehicle owned or held for the benefit of the Defendant.
40. Any and all documents relating to retirement accounts or annuities, whether individual or employer sponsored, that are owned by the Defendant, or held for the benefit of the Defendant.

ELECTRONICALLY FILED - 2022 May 10 10:04 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

41. Any and all rent rolls for all properties in which the Defendant has had an ownership interest in for the past three years.
42. Copies of all 1099-D's or 1099-I's issued to the Defendant within the past three years.
43. Any and all documents referring to any stock options or profit-sharing plans held by the Defendants or for the benefit of the Defendant.
44. All documents evidencing any trust or amendments to such trusts in which the Defendant is a grantor, settlor, trustee, or beneficiary.
45. Any and all books, recorded documents, or writings concerning the financial status of Defendant not herein before specified.
46. Any tax receipts, tax returns, tax supplement forms, and any and all other documents, forms, or letters filed with the United States Internal Revenue Service, or the South Carolina Tax Commission, including all attachments, schedules, W-2's, K-1's, 1099 and 1098 forms, or the tax authority of any other state within the last three years.
47. All documents evidencing any and all trusts or amendments to trusts that the Defendant has directly or indirectly contributed any assets to within the past three years.
48. Copies of all pre and post-nuptial agreements, to include the list of assets and liabilities to be held separately.
49. Copies of all separate property agreements, to include the list of assets and liabilities to be held separate.
50. Copies of any Wills including all amendments in which the Defendant is or was named as beneficiary.
51. Copies of any and all credit card statements, for all cards in which the Defendant is an authorized user, for the past three years.

52. All documents referring or reflecting the name and address of any storage facility or mini warehouse to which the Defendant has access.
53. Copies of any and all professional licenses that are held by the Defendant.
54. Copies of any and all divorce decrees and any affidavits submitted in those proceedings.
55. All Trust documents related to any domestic or foreign Trust agreement where the debtor is a settlor, trustee, and/or beneficiary.

AND IT IS SO ORDERD.

[SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2022 May 10 10:04 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

ELECTRONICALLY FILED - 2022 May 10 10:04 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Beaufort Common Pleas

Case Caption: Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2012CP0704253

Type: Order/Rule To Show Cause

So Ordered:

s/Marvin H. Dukes III #3069

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP0700944

Southern First Bank N A et al
PLAINTIFF(S)

Kenneth J Vilcheck et al
DEFENDANT(S)

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

Defendants filed a Motion to Reconsider with this Court on May 16, 2022. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). This Court hereby DENIES Defendants' Motion to Reconsider without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/14/2022 .

Greenville First Bank
Department Of Revenue South Carolina
Greenery Inc The
Portfolio Recovery Associates Llc
Federal Housing Commissioner

RECEIVED
Jul 11 2022
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Jun 15 9:44 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2022 Jun 15 9:44 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

ELECTRONICALLY FILED - 2022 Jun 15 9:44 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

Beaufort Common Pleas

Case Caption: Southern First Bank N A , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2021CP0700944

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

ELECTRONICALLY FILED - 2022 Aug 25 12:28 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF BEAUFORT	**Case No. 2012-CP-07-04253**
Southern First Bank, N.A. d/b/a Greenville First Bank, **Plaintiff,** **vs.** **Kenneth J. Vilcheck and Renee M. Vilcheck,** **Defendants.**	**ORDER**

This matter came before me at a hearing held virtually on July 20, 2022, attended by Plaintiff's counsel Luke R. Hoopes, Esquire, and Defendants' counsel Andrew S. Radeker, Esquire. This is a case in which there is a judgment of record against the Defendants, which the Plaintiff is seeking to collect. The hearing was set to address four motions: 1) the Plaintiff's motion for charging orders, 2) the Plaintiff's motion for contempt sanctions, 3) the Defendants' motion for relief from the rule to show cause (for supplemental judgment collection proceedings) and to quash subpoenas, and 4) the Defendants' motion to stay any supplemental proceedings or other judgment collection proceedings.

The court has determined that the motion to stay needs to be heard and decided first, before any of the other motions and before a supplemental proceedings examination or other judgment collection proceedings. The motion to stay is grounded in the fact that there is another action pending between these parties, Southern First Bank, N.A., etc. v. Kenneth J. Vilcheck, et al., Case No. 2021-CP-07-00944, an action seeking to foreclose the lien of the judgment in this matter, in which the parties have joined the issue of whether the judgment is void for lack of personal jurisdiction. The claim that personal jurisdiction is lacking is based upon a lack of service of the summons and complaint in the above-captioned action with case number 2012-CP-07-04253.

Given the factual nature of the dispute about service, the court determines that it would be best to have an in-person hearing with live testimony to make a record from which the court may decide issues about whether the judgment is void or whether to stay the proceedings here until that

ELECTRONICALLY FILED - 2022 Aug 25 12:28 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

is determined in the other action. If the judgment is determined to be void, that would appear to moot the remaining motions, as well as the supplemental proceedings.

Further, the parties have consented as to some matters, as is reflected in what is ordered below:

It is therefore hereby ORDERED that:

1) The hearing at which there was scheduled to be a supplemental proceedings examination on July 25, 2022, has been cancelled, possibly to be rescheduled, depending on the outcome of the hearing set below;
2) The court hereby sets for September 29, 2022, at 9:00 a.m. before the undersigned at the Beaufort County Courthouse an in-person hearing at which live testimony shall be taken to make a record from which the court may decide issues about whether the judgment in this action is void and/or whether to stay the proceedings in this action until the question of the judgment's validity is determined in Case No. 2021-CP-07-00944;
3) The Defendants shall arrange for a court reporter for this in-person hearing, and the parties shall split the cost of the court reporter, unless otherwise ordered later by the court;
4) The other aforesaid motions in this case may be set for a hearing after a decision is made on the issues subject of the hearing set above, depending on the outcome of that hearing; and
5) With the parties' consent, the court directs as follows:
    a. Service of any and all documents, filings, notices, orders, and other papers in this action on the Plaintiff shall be valid and proper if sent via email to Luke R. Hoopes, Esquire, as attorney for Plaintiff, at luke@angellmolony.com;
    b. Service of any and all documents, filings, notices, orders, and other papers in this action on the Defendants shall be valid and proper if sent via email to Andrew S. Radeker, Esquire, as attorney for the Defendants, at drew@harrisonfirm.com;
    c. The Defendants shall produce by email on or before August 19, 2022, to Plaintiff's aforesaid counsel the Defendants' tax returns for the last three years and the most recent statements for all bank accounts of the Defendants or for which the Defendants have signature authority;

d. The parties shall cooperate to permit the Plaintiff to take the Defendants' depositions (through remote technology or in-person, whichever is convenient and agreed) before September 9, 2022;

e. For any entity for which either of the Defendants is the registered agent for service of process, such Defendant shall accept service of process issued in this action if such process is sent to Defendants' aforesaid counsel by email; and

f. Email is the preferred method of written communication for correspondence between counsel in this matter.

6) Time is of the essence with regard to deadlines and dates in this order, and those dates may be changed or reset only be agreement of counsel, by order of the court, or in the event of a higher-priority court event under Rule 601, SCACR.

And IT IS SO ORDERED.

The Honorable Marvin Dukes
Master-in-Equity for Beaufort County

ELECTRONICALLY FILED - 2022 Aug 25 12:28 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

ELECTRONICALLY FILED - 2022 Aug 25 12:28 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Beaufort Common Pleas

Case Caption: Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2012CP0704253

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2022 Oct 21 2:38 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiff(s), v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendant(s).	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT County C/A No.: 2012-CP-07-04253 **ORDER DENYING DEFENDANT'S MOTION**

This matter came before the Honorable Marvin H. Dukes, III at a hearing held in person on Monday, October 17, 2022, attended by Plaintiff's counsel Luke R. Hoopes, Esquire, and Defendants' counsel Andrew S. Radeker, Esquire, along with the Defendants (Kenneth J. Vilcheck and Renee M. Vilcheck), and Pamela J. Jezewski. The hearing was set to address Defendants' Rule 60 motion to have the Judgment declared void due to non-service of the Summons and Complaint, leading to this Court lacking personal jurisdiction. After hearing the testimonies of the Defendants and Pamela J. Jezewski, and the arguments of Counsel, the Court determined the service of the Summons and Complaint on the Defendants was proper.

IT IS THEREFORE ORDERED that the Defendant's Rule 60 motion is denied, that there is personal jurisdiction over the Defendants, that the Judgment is not void, and that supplemental proceedings may continue before this Court.

AND IT IS SO ORDERED.

[ELECTRONIC SIGNATURE TO FOLLOW]

ELECTRONICALLY FILED - 2022 Oct 21 2:38 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Beaufort Common Pleas

Case Caption: Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2012CP0704253

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 **CP-**07-04253

RECEIVED
Nov 28 2022
SC Court of Appeals

Southern First Bank, et al.
PLAINTIFF(S)

Kenneth J, Vilcheck, et al.
DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY	**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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

This came before me November 4th, 2022 on Defendants' Motion to Reconsider; filed October 31st, 2022. After hearing from paties, I hereby deny the motion.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

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)
N/A	N/A	$N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

ELECTRONICALLY FILED - 2022 Nov 07 8:20 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

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.**

	3069	
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Luke R. Hoopes	Andrew Sm Radeker
Aaron J. Angell	Sarah M. Larabee
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter: N/A

ELECTRONICALLY FILED - 2022 Nov 07 8:20 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

ELECTRONICALLY FILED - 2022 Nov 07 8:20 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Beaufort Common Pleas

Case Caption: Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2012CP0704253

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2022 Nov 07 3:19 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiff(s), v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendant(s).	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT County C/A No.: 2012-CP-07-04253 **ORDER JOINING: PORTFOLIO RECOVERY ASSOCIATES, LLC; LONGBRIDGE FINANCIAL, LLC; THE FEDERAL HOUSING COMMISSIONER; THE DEPARTMENT OF THE TREASURY – INTERNAL REVENUE SERVICE; AND THE SOUTH CAROLINA DEPARTMENT OF REVENUE**

WHEREAS, this matter is before the Court pursuant to Plaintiff's Notice of Motion and Motions Applying Defendants' Real Property to Execution and to Join Relevant Parties. Plaintiff has moved for a Judicial Sale of the Defendants' real property in Beaufort County located at 318 Bamberg Drive, Bluffton, SC 29910, and bearing Beaufort County Parcel # R600 023 00F 0112 0000 (hereinafter the "Property").

WHEREAS, Portfolio Recovery Associates, LLC has or may have an interest in the Property by its judgment numbered 2013-CP-07-02756;

WHEREAS, Longbridge Financial, LLC has or may have an interest in the Property by its being assigned TowneBank Mortgage's Adjustable Rate Home Equity Conversion Mortgage secured by the Property;

WHEREAS, the Federal Housing Commissioner has or may have an interest in the Property by its Adjustable Rate Home Equity Conversion Second Mortgage secured by the Property;

WHEREAS, the Department of the Treasury – Internal Revenue Service has or may have an interest in the Property by its Notice of Federal Tax Lien recorded in Beaufort County; and

WHEREAS, the South Carolina Department of Revenue has or may have an interest in the Property by its filed state tax liens numbering 863513, 802729, and 949023;

IT IS THEREFORE ORDERED that pursuant to Rule 19, SCRCP, Portfolio Recovery Associates, LLC; Longbridge Financial, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue are made parties to this matter, as defendants and not as Judgment Debtors, and the Clerk of Court is directed to change the Defendant(s) in the caption to "Kenneth J. Vilcheck; Renee M. Vilcheck; Portfolio Recovery Associates, LLC; Longbridge Financial, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue".

AND IT IS ORDERED.

[MASTER-IN-EQUITY'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2022 Nov 07 3:19 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

ELECTRONICALLY FILED - 2022 Nov 07 3:19 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Beaufort Common Pleas

Case Caption: Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2012CP0704253

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

The South Carolina Court of Appeals

Southern First Bank, N.A. d/b/a Greenville First Bank,
Respondent,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury - Internal Revenue Service, Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc., a South Carolina Corporation, Defendants,

Of Whom Kenneth J. Vilcheck and Renee M. Vilcheck are the Appellants.

Appellate Case No. 2022-000958

The Honorable Jennifer B. McCoy
Beaufort County
Trial Court Case No. 2021CP0700944

ORDER

The time for serving and filing the appellants' initial brief and designation of matter is hereby extended until December 21, 2022. No further extensions shall be granted absent extraordinary circumstances.

FOR THE COURT

BY Catherine Harrison, deputy
CLERK

FILED
Nov 17 2022

Columbia, South Carolina

cc:
Andrew Sims Radeker, Esquire
Sarah Megan Larabee, Esquire
Paul Knapp Simons, Jr., Esquire
Aaron J. Angell, Esquire

ELECTRONICALLY FILED - 2022 Nov 22 10:37 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 **CP-**07-04253

Southern First Bank, et al.
PLAINTIFF(S)

Kenneth J, Vilcheck, et al.
DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY	**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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

This came before me on Defendants' Motion to Reconsider; filed November 17, 2022. After review of the file, I hereby deny the motion.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

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)
N/A	N/A	$N/A
		$
		$

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.**

	3069	
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Luke R. Hoopes	Andrew Sm Radeker
Aaron J. Angell	Sarah M. Larabee
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter: N/A

ELECTRONICALLY FILED - 2022 Nov 22 10:37 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

ELECTRONICALLY FILED - 2022 Nov 22 10:37 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Beaufort Common Pleas

Case Caption: Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2012CP0704253

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

The South Carolina Court of Appeals

Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck, Appellants.

Appellate Case No. 2022-001678

ORDER

After careful consideration, Appellants' motion to stay the lower court proceedings is denied. *See* Rule 241(a), SCACR ("The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal . . . ."); *C-Sculptures, LLC, No. 3 v. Brown*, 393 S.C. 27, 31, 709 S.E.2d 705, 707 (Ct. App. 2011) ("[T]he execution of a judgment is not generally stayed by the denial of a Rule 60(b) motion because the denial of such a motion grants 'no relief' to the movant so that there is nothing to stay."); *Edgefield Cnty. Hosp. Trustees v. Cannon Const. & Supply Co.*, 273 S.C. 500, 501, 257 S.E.2d 501, 501 (1979) (order making a third party a defendant is not directly appealable); *Duncan v. Gov't Emps. Ins. Co.*, 331 S.C. 484, 486, 449 S.E.2d 580, 580 (1994) ("An order granting a motion to intervene is not immediately appealable.").

FOR THE COURT

Columbia, South Carolina

cc:

FILED
Feb 01 2023

Andrew Sims Radeker, Esquire
Sarah Megan Larabee, Esquire
Luke Ragan Hoopes, Esquire

The South Carolina Court of Appeals

Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck, Appellants.

Appellate Case No. 2022-001678

ORDER

Appellants have filed a petition for rehearing from this court's February 1, 2023 denial of their motion to stay the lower court proceedings pending appeal. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Moreover, Appellants' appeal as to the November 7, 2022 order joining relevant parties is dismissed as not immediately appealable.

C.J.

J.

J.

Columbia, South Carolina

FILED
Feb 06 2023

cc:
Andrew Sims Radeker, Esquire
Sarah Megan Larabee, Esquire
Luke Ragan Hoopes, Esquire

ELECTRONICALLY FILED - 2023 Feb 09 4:08 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Southern First Bank,

Plaintiff(s),

v.

Kenneth J. Vilcheck; Renee M. Vilcheck; Portfolio Recovery Associates, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

County C/A No.: 2012-CP-07-04253

ORDER DENYING MOTION FOR JUDICIAL SALE

RECEIVED
Mar 10 2023
SC Court of Appeals

Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned Master in Equity, Marvin H. Dukes, III, to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause. Pursuant to a Pending Motion discussed on a Status Conference held via phone call on January 31, 2023, a hearing was held by this Court on February 3, 2023, by WebEx with the parties' consent. At the hearing, evidence was presented and from the documents and records received into evidence by this Court, I find, conclude and order as follows:

FINDINGS

1. Plaintiff obtained a Judgment in the above captioned matter against the Defendants, Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter "the Defendants"), in the principal amount of Three Hundred Ninety-One Thousand, Two Hundred Eighty-Four Dollars and Forty-

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Six Cents ($391,284.46), plus post judgment interest at the legal rate for judgments in the State of South Carolina, entered in Beaufort County on March 27, 2013 (the "Judgment").

2. Upon its entry into Beaufort County, Plaintiff's Judgment immediately attached to any of the Defendants' real property in Beaufort County, and would immediately attach to any new real property acquired by Defendants in Beaufort County.

3. Defendants own non-exempt real property in Beaufort County, South Carolina with the address 318 Bamberg Dr., Bluffton, SC 29910 and bearing Beaufort County Parcel # R600 023 00F 0112 0000 (the "Property"). The Deed for the Property to Renee M. Vilcheck was recorded with the Lexington County Register of Deeds Office on November 25, 2020 in Book 20907 at Page 3747. The Description of the Property is as follows:

> ALL that certain lot, piece or parcel of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat Phase of VI-A Belfair (Lots 313-319, 319A-368)(416 -417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1996, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.
>
> This being the same property conveyed to Kenneth J. Vilcheck and Renee M. Vilcheck by deed of Renee M. Vilcheck a/k/a Renee Marsh Vilcheck and Kenneth Joseph Vilcheck, dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019 in Book 3760, at Page 1585.
>
> TMS# R600 023 00F 0112 0000
>
> Street Address: 318 Bamberg Drive
> Bluffton, SC 29910

4. On January 16, 2014, a judgment was entered in favor of Portfolio Recovery Associates, LLC and against Kenneth J. Vilcheck in the amount of Twenty-Six Thousand, Four

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Hundred Ninety-Six Dollars, and Twenty-Seven Cents ($26,496.27) at Judgment Roll 2013-CP-07-02756.

5. On July 8, 2015, the Beaufort County Register of Deeds recorded in Book 3412 at Page 2628 a deed dated June 26, 2015 conveying the Property from Bald Eagle 2, LLC (with Renee M. Vilcheck signing as Sole Member) to Renee M. Vilcheck as Trustee of the Bermuda Trust Agreement UAD November 9, 2012.

6. On July 8, 2015, the Beaufort County Register of Deeds recorded in Book 3412 at Page 2631 a deed dated June 26, 2015 conveying the Property from Renee M. Vilcheck as Trustee of the Bermuda Trust Agreement UAD November 9, 2012 to Renee M. Vilcheck.

7. On February 5, 2019, the Beaufort County Register of Deeds recorded in Book 3735 at Page 2438 a Quitclaim Deed dated February 5, 2019 conveying the Property from Renee Marsh Vilcheck to Kenneth Joseph Vilcheck and Renee Marsh Vilcheck.

8. On May 16, 2019, the Beaufort County Register of Deeds recorded in Book 3760 at Page 1585 a deed dated May 9, 2019 conveying the Property from Renee M. Vilcheck a/k/a Renee Marsh Vilcheck and Kenneth Joseph Vilcheck to Kenneth J. Vilcheck and Renee M. Vilcheck.

9. On May 16, 2019, the Beaufort County Register of Deeds recorded in Book 3760 at Page 1588 MERS for TowneBank Mortgage's Adjustable Rate Home Equity Conversion Mortgage secured by the Property dated May 9, 2019.

10. On May 16, 2019, the Beaufort County Register of Deeds recorded in book 3760 at Page 1607 the Federal Housing Commissioner's Adjustable Rate Home Equity Conversion Second Mortgage secured by the Property, dated May 9, 2019.

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11. On October 8, 2019, the Beaufort County Register of Deeds recorded in Book 141 at Page 951 the Department of the Treasury – Internal Revenue Service's Notice of Federal Tax Lien on the Property in the amount of Two Hundred Eighty-Five Thousand, Seven Hundred Ninety-Nine Dollars and Zero Cents ($285,799.00).

12. On June 12, 2020; April 10, 2020; and June 10, 2022 the South Carolina Department of Revenue filed state tax liens against both Defendants as follows:

LIEN ID:	LIEN AMOUNT:	DATE FILED:
863513	$1,373.93	06/12/2020
802729	$18,723.30	04/10/2021
949023	$2,084.34	06/10/2022

13. On July 7, 2021, the Beaufort County Register of Deeds recorded in Book 4034 at Page 1582 an assignment of TowneBank Mortgage's mortgage to Longbridge Financial, LLC.

14. On October 21, 2022, the Plaintiff moved for this Court to issue an order applying the Property towards satisfaction of the Judgment by selling such property at auction according to South Carolina Law, as well as to have joined all necessary parties for such an order.

15. On November 7, 2022, the Court issued an order joining as parties Portfolio Recovery Associates, LLC; Longbridge Financial, LLC; The Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue.

16. On November 28, 2022, a Notice of the Defendants' Appeals of this Court's Order denying the Defendants' Rule 60 Motion and Order to Join parties was filed in this matter.

17. On December 15, 2022, Defendant, the United States of America, by and though its agency, the Internal Revenue Service, filed an answer in which it stated "This Defendant

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consents to reference to a Master-in-Equity or Special Referee of Plaintiff's choosing under such terms as Plaintiff deems appropriate. WHEREFORE, the defendant, United States of America, on behalf of its agency, Internal Revenue Service, prays that its lien(s) be prioritized and satisfied from the sale proceeds, that its statutory right of redemption, 28 U.S.C. § 2410(c), be protected."

18. On December 21, 2022, Defendant, the South Carolina Department of Revenue ("Department") filed an answer in which it stated that "The Department consents to reference to a Master-in-Equity or Special Referee of Plaintiff's choosing under such terms as Plaintiff deems appropriate"; that "the Department requests notice of any surplus funds"; and that "the Department, having fully answered the Complaint, prays that the Court protect any interest the Department might have in the subject property".

19. On December 28, 2022, Longbridge Financial, LLC filed a motion to be dismissed from the matter.

20. On January 20, 2023, Defendant, the United States of America, by and through its agency, the Department of Housing and Urban Development, filed an answer in which it stated: "the defendant, United States of America, on behalf of its agency, Department of Housing and Urban Development, prays that: (1) That this Court inquire into the matters set forth herein and protect the interest of the United States of America as set forth in this Answer; (2) That the mortgage lien of the United States of America be afforded its proper priority as provided by law; and (3) That this court inquire into the matter set forth herein and if the property herein be sold, it be sold for free and clear of all liens and encumbrances. Since the mortgage lien of the United States of America derives from issuance of insurance under the National Housing Act, any federal right of redemption under 28 U.S.C. § 2410(c) is deemed waived by 12 U.S.C. 1701k, and (4) That the United States be afforded such other and further relief as the Court deems just and proper."

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21. On February 3, 2023, the Court held a hearing on all pending motions in this case, and the Court granted the motion of Longbridge Financial, LLC, such that they are not now a party to this case.

22. Pursuant to S.C. Code § 30-7-10, et seq., the Plaintiff's Judgment lien on the property is senior to all other defendants made a party hereto.

23. The Property is Defendants' primary residence, and, if sold, Defendants are therefore entitled to the Homestead Exemption provided in S.C. Code §15-41-30, which as of the date the Property is to be sold will be One Hundred Thirty-Four Thousand, One Hundred Seventy-Five Dollars and Zero Cents ($134,175.00).

24. Other than as discussed below, neither Defendants nor any other party have shown cause as to why Defendants' real property should not be applied toward satisfaction of the Judgment by selling such property at auction according to South Carolina law.

25. Defendants contend that this proceeding is barred because "there is (1) another action pending, (2) between the same parties, (3) for the same claim" when the claim is precisely or substantially the same in both proceedings[.]" Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 531-32 (Ct. App. 2009). This is the same argument the Defendants offered in opposition to the Plaintiff's motion to join parties, and the court ruled against that argument.

26. Defendants contend, as a result of their appeal of the order joining parties, that the hearing should not have been held and that the Plaintiff's motion for the sale subject of this order is stayed. The Defendants moved before the Court of Appeals for an order directing this Court not to proceed with the hearing on the Plaintiff's motion. The Honorable H. Bruce Williams, Chief Judge of that court, denied that motion. The Defendants sought review of that denial by the full

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Court of Appeals, which denied their motion seeking full review on February 6, 2023, and concurrently dismissed their appeal as to the order joining parties.

27. The Plaintiff seeks sale of the Property in execution of its judgment. The Court rules that, but for the imminent expiration of the judgment and the inability to complete the execution during the judgment's period of active energy, the Plaintiff would be entitled to have the Property sold in execution to be conducted as provided in S.C. Code Ann. §§ 15-39-610 through -900. For the reasons discussed below, the execution sought by the Plaintiff cannot be completed during the time in which the judgment has active energy.

28. Our state Supreme Court has made it plain that judgments in South Carolina cannot be enforced more than 10 years[1] after they are rendered, even if that time limit expires during the pendency of proceedings to enforce the judgment. Gordon v. Lancaster, 425 S.C. 386, 823 S.E.2d 173 (2018). "The lien of a judgment is absolutely extinguished and ended after the expiration of ten years from the date of entry." Garrison v. Owens, 258 S.C. 442, 446-47, 189 S.E.2d 31 (1972). If a judgment's 10-year duration expires before the collection proceedings are complete, no matter how close they might be to complete, the collection proceedings stop because the expiration of the judgment has made collection efforts moot. Garrison, 258 S.C. at 446-47.

29. Property taken in execution of a judgment has to be sold, absent consent of the judgment debtor, and the proceeds applied to the judgment debt. S.C. Code Ann. §§ 15-39-610 & -630. In a sale in execution of a judgment, the law provides as follows:

> **In *all*** judicial sales of real estate for the foreclosure of mortgages and ***sales in execution*** **the bidding shall not be closed upon the**

[1] Section 15-39-30 provides: "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, without any renewal or renewals thereof , and this whether any return may or may not have been made during such period on such executions." Gordon v. Lancaster, 425 S.C. 386, 823 S.E.2d 173 (S.C. 2018)

ELECTRONICALLY FILED - 2023 Feb 09 4:08 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

> **day of sale but *shall* remain open until the thirtieth day after such sale,** exclusive of the day of sale.
>
> . . .
>
> The **bidding *shall* be reopened by the officer making the sale on the thirtieth day after the sale**, exclusive of the day of the sale, at eleven o'clock in the forenoon and **the bidding *shall* be allowed to continue until the property *shall* be knocked down in the usual custom of auction to the successful highest bidder complying with the terms of sale. The sales officer *shall* announce the sales about to be closed and *shall* receive the final bids in such sales** in the order determined by him.

S.C. Code Ann. § 15-39-720 (emphasis added). "Ordinarily, the use of the word 'shall' in a statute means that the action referred to is mandatory." S.C. Dept. of Hwys. & Pub. Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134 (1986). A plain reading of S.C. Code Ann. § 15-39-720 reveals that its provisions concerning holding the bidding open for 30 days to receive upset bids are mandatory. Id.

30. Here, the lien and active energy of the judgment at issue expires on March 27, 2023. The next judicial sales day is March 6, 2023, and there is time to advertise the sale for three weeks before that sales day, as required by S.C. Code Ann. § 15-39-650. Accordingly, the key question before this Court is whether the contemplated judicial sale would be completed on March 6, 2023 – before the judgment expires – or on April 5, 2023, which would be after the judgment expires. If the judgment expires before the completion of the sale, the execution process simply ends without the sale being completed. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47.

31. Only one case appears to speak directly to the question of when a sale with required upset bidding under S.C. Code Ann. § 15-39-720 is completed, In re: Riverfront Properties, LLC, 405 B.R. 570 (Bankr. S.C. 2009). Riverfront Properties notes the established rule that a judicial

ELECTRONICALLY FILED - 2023 Feb 09 4:08 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

sale "is over when the hammer falls." Id. at 573. As the court there explains, in a sale with upset bidding, the sale is complete when the upset bidding period closes. Id. at 574.

> Because the bidding is reopened, **the hammer does not fall** on a foreclosure sale when deficiency judgment is not waived **until the sales officer closes the sale on the thirtieth day**. The high bidder on the first day of sale has no right that cannot be extinguished by a subsequent bidder and thus no rights or obligations arise in the first day bidder that diminish the title of the mortgagor [or judgment debtor].

Id. (emphasis added).

32. Here, because the judgment's lien and active energy will expire before the sale can be completed, the execution cannot be completed and the judicial sale process cannot be carried to its conclusion. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47; Riverfront Properties, 405 B.R. at 574; S.C. Code Ann. § 15-39-720.

33. Courts do not ordinarily issue orders permitting futile acts, even when the requesting party would otherwise be entitled to what is requested. Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 182, 826 S.E.2d 585 (2019) (proper to deny request to amend pleadings when amendment would be futile). It would be futile to grant the Plaintiff's motion here. The expiration of the judgment will make the execution sales proceedings moot before the hammer can fall on the requested sale. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47; Riverfront Properties, 405 B.R. at 574; S.C. Code Ann. § 15-39-720.

IT IS, ACCORDINGLY, ORDERED that the Plaintiff's motion for a sale of the Property is denied.

AND IT IS SO ORDERED.

[ELECTRONIC SIGNATURE TO FOLLOW]

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Beaufort Common Pleas

Case Caption: Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2012CP0704253

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2023 Feb 15 1:14 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	)	**IN THE COURT OF COMMON PLEAS** **CASE NO:** 2012-CP-07-04253
Southern First Bank, et al., **Plaintiff(s)**, vs. Kenneth J. Vilcheck, et al, **Defendant(s).**	)	**ORDER DENYING RECONSIDERATION**

RECEIVED
Mar 10 2023
SC Court of Appeals

This came before me February 15th, 2023, for a WebEx hearing on Plaintiff's Motion to Reconsider, filed February 14th, 2023. The Motion sought reconsideration of my Order Denying Sale, filed February 9th, 2023. The hearing was expediated by consent.

Attorneys Aaron Angell and Luke Hoopes appeared for the Plaintiffs and Attorney Andrew Radeker appeared for the Defendants, Kenneth J. Vilcheck and Renee M. Vilcheck.

After hearing from parties, I hereby respectfully deny the motion.

IT IS SO ORDERED:

_____

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

February _____, 2023
Beaufort, South Carolina

ELECTRONICALLY FILED - 2023 Feb 15 1:14 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Beaufort Common Pleas

Case Caption: Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2012CP0704253

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2023 Mar 09 11:17 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	)	**IN THE COURT OF COMMON PLEAS**
Southern First Bank, et al., **Plaintiff(s)**,	)	**CASE NO:** 2012-CP-07-04253
vs.	)	**ORDER DENYING MOTION TO ESTABLISH SALES PROCEDURES**
Kenneth J. Vilcheck, et al, **Defendant(s).**	)	

RECEIVED
Mar 10 2023
SC Court of Appeals

This came before me March 3rd, 2023, for a WebEx hearing on Plaintiff's Motion to Establish Sales Procedures for Sale of Property; filed February 17th, 2023.

Attorneys Aaron Angell and Luke Hoopes appeared for the Plaintiffs and Attorney Andrew Radeker appeared for the Defendants, Kenneth J. Vilcheck and Renee M. Vilcheck.

After hearing from parties, I hereby respectfully deny the motion.

IT IS SO ORDERED:

_____

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

March _____, 2023
Beaufort, South Carolina

ELECTRONICALLY FILED - 2023 Mar 09 11:17 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Beaufort Common Pleas

Case Caption: Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2012CP0704253

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2021 Feb 09 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiff, v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendant(s).	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT County C/A No.: 2012-CP-07-04253 **EXECUTION**

TO: P.J. TANNER, SHERIFF OF BEAUFORT COUNTY

WHEREAS, the Judgment Creditor, Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., obtained its Judgment against the Defendant(s), Kenneth J. Vilcheck and Renee M. Vilcheck, in the amount of Three Hundred Ninety-One Thousand Two Hundred Eighty-Four Dollars and Forty-Six Cents ($391,284.46), as it appears at Judgment Roll No. 2012-CP-07-04253, filed in the Office of the Clerk of Court for Beaufort County on March 27 2013;

WHEREAS, the Judgment remains unpaid in its entirety;

Therefore, I request that you satisfy the Judgment out of the personal property of the Defendant(s), Kenneth J. Vilcheck and Renee M. Vilcheck, or if sufficient non-exempt personal property cannot be found, then out of the real property in your County belonging to such Judgment Debtors on the day when the Judgment was so docketed in your County or at any time thereafter in whose hands whomsoever this property may be and return this Execution according to law to the Clerk of Court of Beaufort County.

NOW THEREFORE, we command that you satisfy this Judgment in the above amount.

WITNESS the Honorable Clerk of Court for Beaufort County, South Carolina on this _____ day of _____, 2021.

_____
Clerk of Court for Beaufort County

Submitted by:

s/Aaron J. Angell
Aaron J. Angell
Angell Molony, LLC
SC Bar No. 80867
200 N. Main Street, Suite 301
Greenville, SC 29601
(P) 864.248.4708
(F) 864.752.1422

ELECTRONICALLY FILED - 2021 Feb 09 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

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Common Pleas

Case Caption: Southern First Bank VS Kenneth J Vilcheck

Case Number: 2012CP0704253

Type: Motion/Execution of Judgment

So Ordered

s/Jerri Ann Roseneau, Beaufort County Clerk of Court

ELECTRONICALLY FILED - 2021 May 17 5:39 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT SOUTHERN FIRST BANK, N.A. d/b/a GREENVILLE FIRST BANK, Plaintiff, v. KENNETH J. VILCHECK, RENEE M. VILCHECK, PORTFOLIO RECOVERY ASSOCIATES, LLC, UNITED STATES OF AMERICA, acting through its agency, DEPARTMENT OF TREASURY - INTERNAL REVENUE SERVICE, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as nominee for LONGBRIDGE FINANCIAL, LLC, FEDERAL HOUSING COMMISIONER, THE SOUTH CAROLINA DEPARTMENT OF REVENUE, BELFAIR PROPERTY OWNERS' ASSOCIATION, INC., and THE GREENERY, INC., a South Carolina corporation, Defendants.	IN THE COURT OF COMMON PLEAS SUMMONS (NON-JURY MORTGAGE FORECLOSURE) C/A NO.: 2021-CP-07-_____ DEFICIENCY REQUESTED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint upon the subscribers, at their office, 111 Park Avenue, SW, Aiken, South Carolina 29801, within thirty (30) days, after service hereof, exclusive of the day of such service, except the United States of America which shall have sixty (60) days from the date of service; and if you fail to answer the Complaint in the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

ELECTRONICALLY FILED - 2021 May 17 5:39 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

S/ Paul Simons, Jr.
Paul Simons, Jr.
South Carolina Bar No. 76883
111 Park Avenue, SW
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(803) 641-7809
psimons@hullbarrett.com

S/ Aaron Angel
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ELECTRONICALLY FILED - 2021 May 17 5:39 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT SOUTHERN FIRST BANK, N.A. d/b/a GREENVILLE FIRST BANK, Plaintiff, v. KENNETH J. VILCHECK, RENEE M. VILCHECK, PORTFOLIO RECOVERY ASSOCIATES, LLC, UNITED STATES OF AMERICA, acting through its agency, DEPARTMENT OF TREASURY - INTERNAL REVENUE SERVICE, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as nominee for LONGBRIDGE FINANCIAL, LLC, FEDERAL HOUSING COMMISIONER, THE SOUTH CAROLINA DEPARTMENT OF REVENUE, BELFAIR PROPERTY OWNERS' ASSOCIATION, INC., and THE GREENERY, INC., a South Carolina corporation, Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. 2021-CP-07-_____ COMPLAINT DEFICIENCY REQUESTED (Non-Jury)

SOUTHERN FIRST BANK, N.A. d/b/a GREENVILLE FIRST BANK ("**Southern First**"), alleges as follows:

1. Southern First is a national banking association and submits itself to the jurisdiction of the Court.

2. Upon information and belief, Defendant Kenneth J. Vilcheck is a resident of Beaufort

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County, South Carolina.

3. Upon information and belief, defendant Renee M. Vilcheck is a resident of Beaufort County, South Carolina.

4. Upon information and belief, defendant Department of Treasury – Internal Revenue Service is an agency of the United States of America.

5. Portfolio Recovery Associates, LLC is a limited liability company doing business in Beaufort County, South Carolina.

6. Upon information and belief, Mortgage Electronic Registration Systems, Inc., as nominee for Longbridge Financial, LLC, a Delaware limited liability company, conducts business in Beaufort County, South Carolina.

7. The Federal Housing Commissioner is an agent of the Federal Housing Administration, an agency of the United States of America.

8. The South Carolina Department of Revenue is an agency of the State of South Carolina.

9. Upon information and belief, The Greenery, Inc. is a corporation organized and existing under the laws of the State of South Carolina and is doing business in Beaufort County, South Carolina.

10. Belfair Property Owners' Association, Inc. is a non-profit corporation formed and existing under the laws of the State of South Carolina and, upon information and belief, conducts business in Beaufort County, South Carolina.

11. Southern First is the owner and holder of that certain Judgment (defined below) covering real property that is the subject of this foreclosure action, located in Beaufort County, South Carolina.

12. Any Defendant(s) described herein as Judgment Creditor(s) have by filing

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Judgment(s) designated the attorney(s) entering the Judgment(s) as their agent for service of process pursuant to the provisions of § 15-35-840 of the *South Carolina Code of Laws* (1976), as amended.

13. Jurisdiction and venue are proper in this Court.

FOR A FIRST CAUSE OF ACTION
Judicial Lien Foreclosure

14. The foregoing paragraphs are reiterated and realleged as fully as if set forth herein verbatim.

15. The real property that is the subject of this action is located in Beaufort County, South Carolina and is described as follows ("**Property**"):

> ALL that certain lot, piece or parcel of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat Phase of VI-A Belfair (Lots 313-319, 319A-368)(416 -417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1996, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.
>
> This being the same property conveyed to Kenneth J. Vilcheck and Renee M. Vilcheck by deed of Renee M. Vilcheck a/k/a Renee Marsh Vilcheck and Kenneth Joseph Vilcheck, dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019 in Book 3760, at Page 1585.
>
> TMS# R600 023 00F 0112 0000
>
> Street Address: 318 Bamberg Drive
> Bluffton, SC 29910

16. On or about April 6, 2006, for value received, Kenneth J. Vilcheck and Renee M. Vilcheck (collectively, "**Vilcheck**"), executed and delivered to Southern First a certain Home Equity Line of Credit Note ("**Note**") wherein and whereby Vilcheck promised to pay to the order of Southern First the sum of $385,000.00, together with interest thereon at the rate of Prime + .25%. A

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true and correct copy of the Note is attached hereto as Exhibit "A".

17. The Note provides, among other things, that Southern First is entitled to recover all costs and expenses in enforcing the Note, including court costs and reasonable attorneys' fees.

18. On or around December 19, 2012, Southern First instituted an action to collect under the Note in Beaufort County, South Carolina bearing C/A No.: 2012-CP-07-4253 ("**Action**").

19. On or around December 21, 2012, Vilcheck, jointly or severally, caused Bald Eagle 2, LLC, a Wyoming limited liability company ("**Bald Eagle**"), to be organized.

20. On or about March 27, 2013, an Order for Judgment by Default against Vilcheck ("**Judgment**") was filed in the Action. A true and correct copy of the Judgment is attached hereto as Exhibit "B".

21. The Judgment was entered and duly indexed in the Beaufort County Clerk of Court's Office against Vilcheck in favor of Southern First, in the amount of $391,284.46, together with reasonable attorneys' fees, costs of collection, and interest at the legal rate until paid in full.

22. The lien of the Judgment constitutes a first priority lien against the Property.

23. Upon its entry, the Judgment became a lien against all real and personal property then or subsequently owned by Vilcheck located in Beaufort County, South Carolina.

24. On April 15, 2013, Bald Eagle became the title holder to the Property by virtue of that deed of Linda A. Delcher dated April 11, 2013, and recorded in the Register of Deeds Office for Beaufort County, South Carolina on April 15, 2013, in Deed Book 3231, at Page 1843.

25. On or around June 26, 2015, for nominal consideration, Bald Eagle transferred title to the Property to its sole member, Renee M. Vilcheck, as Trustee of the Bermuda Trust Agreement UAD November 9, 2012 ("**Bermuda Trust**"), by virtue of that deed dated June 26, 2015, and recorded in the aforesaid records on July 8, 2015, in Deed Book 3412, at Page 2628.

26. On or around June 26, 2015, for nominal consideration, Bermuda Trust transferred

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title to the Property to Renee M. Vilcheck by virtue of that deed dated June 26, 2015, and recorded in the aforesaid records on July 8, 2015, in Deed Book 3412, at Page 2631.

27. Thereafter, for nominal consideration, Renee M. Vilcheck transferred title to the Property to Kenneth J. Vilcheck and Renee M. Vilcheck, as joint tenants with rights of survivorship, either (i) by virtue of that deed dated February 5, 2019, and recorded in the aforesaid records on February 5, 2019, in Deed Book 3735, at Page 2438, or (ii) by virtue of that deed dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019, in Deed Book 3760, at Page 1585.

28. On or around May 9, 2019, Vilcheck closed on a reverse mortgage loan with Longbridge Financial, LLC, successor in interest by assignment to TowneBank Mortgage, which reverse mortgage loan is secured by the Property.

29. On or around October 28, 2019, the IRS Lien (as defined below) was filed with the Register of Deeds Office for Beaufort County, South Carolina.

30. The Defendant Mortgage Electronic Registration Systems, Inc., as nominee for Longbridge Financial, LLC, has an interest in the Property by virtue of that Adjustable Rate Home equity Conversion Mortgage dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019, in Book 3760, at Page 1588; however, the lien of such defendant is junior and subordinate to the Judgment lien.

31. The Defendant Federal Housing Commissioner has an interest in the property by virtue of that Adjustable Rate Home Equity Conversion Second Mortgage dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019, in Book 3760, at Page 1607; however, the lien of such defendant is junior and subordinate to the Judgment lien.

32. The Defendant United States of America, acting through its agency, the Department of Treasury – Internal Revenue Service has an interest in the Property by virtue of that Notice of Federal Tax Lien filed with the Beaufort County Register of Deeds Office on October 8, 2019, in the

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amount of $285,799.00 ("**IRS Lien**"), however, the lien of such defendant is junior and subordinate to the Judgment lien.

33. Defendant Portfolio Recovery Associates, LLC has an interest in the Property by virtue of that judgment filed with the Beaufort County Clerk of Court's Office on January 16, 2014, in the amount of $26,496.27, however, the lien of such defendant is junior and subordinate to the Judgment lien.

34. Defendant The South Carolina Department of Revenue has an interest in the Property by virtue of the following tax liens:

Lien ID:	**Lien Amount**	**Date Filed**
794136	$4,927.39	12/11/2020
802729	$14,390.28	04/10/2021
863513	$3,682.54	06/12/2020

However, the lien of such defendant is junior and subordinate to the Judgment lien.

35. Defendant Belfair Property Owners' Association, Inc. has or may claim to have an interest in the Property by virtue of liens and assessments created under the Declaration of Covenants and Restrictions for Belfair and Provisions for the Belfair Property Owners' Association, Inc. recorded in the Beaufort County Records Book 787 at Page 390; as amended by those Supplemental Declarations recorded in Book 790 at Page 777; as amended by those Supplemental Declarations recorded in Book 813, at Page 2476; as amended by that First Supplement recorded in Book 1311, at Page 2182; as amended by that Second Supplement recorded in Book 869, at Page 2019; as amended by that Third Supplement recorded in Book 869, at Page 260; as amended by that Fourth Supplement recorded in Book 918 at Page 1390; as amended by that Fifth Supplement recorded in Book 918 at Page 1411; as amended by that Sixth Supplement recorded in Book 1058 at Page 1474; as amended by that Seventh Supplement recorded in Book 1220 at Page 2487; as amended by those

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Amendments recorded in Book 1311 at Pages 2162, 2166, 2170, 2174, 2178 and 2182; as amended by that First Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association, Inc., recorded in Book 1412 at Page 1803; as amended by that First Amendment recorded in Book 1667 at Page 523; as amended by that Second Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association Inc., recoded in Book 2014 at Page 1007; as amended by that First Amendment recorded in Book 2113 at page 706; as amended by that Second Amendment recorded in Book 2406 at Page 1120; and all further amendments thereto; and to the Supplemental Land Use Covenants, Conditions, Easements and Restrictions for the Belfair Golf Cottages, a Portion of Belfair, recorded in the Beaufort County Records in Book 832 at Page 1743, as amended in Book 1058 at Page 1474 and all further amendments or supplements thereto. However, the lien of such defendant is junior and subordinate to the Judgment lien.

36. Defendant The Greenery, Inc. has an interest in the Property by virtue of that judgment filed with the Beaufort County Clerk of Court's Office on April 14, 2015, in the amount of $3,403.70, however, the lien of such defendant is junior and subordinate to the Judgment lien.

37. Southern First, as the owner and holder of the Judgment lien, has elected to foreclose upon its security, by selling the Property pursuant to law.

38. As of April 29, 2021, there is due and owing under the Judgment the sum of $643,389.57 together with interest at the South Carolina judgment rate to the date of full payment, plus the costs of this action, including court costs and attorneys' fees.

FOR A FIRST CAUSE OF ACTION
Judicial Lien Foreclosure

39. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

40. On or about February 9, 2021, an Execution was ordered by the Clerk of Court for Beaufort County, which execution was returned *Nulla Bona* by the Beaufort County Sheriff's Office

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on February 18, 2021.

41. Vilcheck refuses to apply his property (including the Property) in satisfaction of the Judgment.

42. Plaintiff seeks the appointment of a receiver to market and dispose of the Property according to the Judgment and the laws of South Carolina.

WHEREFORE, having fully set forth its complaint, Southern First prays that this Court inquire into the matters set forth herein and enter an Order finding:

i. That the amount due upon the Judgment held by Southern First be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

ii. That the Judgment be declared a first priority judgment lien against the Property, and that Southern First have judgment of foreclosure for the amount so found to be due and owing thereon, together with a reasonable sum as attorney's fees and for the costs of this action.

iii. That the Property be sold under the direction of this Court, the equity of redemption be barred, and the proceeds of sale be applied as follows:

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

Second, to the payment and discharge of the amount due on the Judgment, together with attorney's fees and costs as aforesaid, and

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

iv. For an order directing and empowering the Sheriff of Beaufort County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the Property should the same become necessary.

v. For an order for the ejectment of others in possession herein.

vi. That the interests, if any, of the Defendants in and to the Property, be extinguished and that this Court enter supplemental orders with respect to the same.

vii. In the alternative, for the appointment of a to market and dispose of the Property according to the Judgment and the laws of South Carolina.

viii. For such other and further relief as may be just and proper.

S/ Paul Simons, Jr.
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Aiken, South Carolina
May 17, 2021

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STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **Case No. 2021-CP-07-00944**
Southern First Bank, N.A. d/b/a Greenville First Bank, **Plaintiff,** **vs.** **Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Mortgage Electronic Registration Systems, Inc. as nominee for Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc. a South Carolina corporation,** **Defendants.**	**ANSWER OF VILCHECK DEFENDANTS (JURY TRIAL DEMANDED)**

Defendants Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter "Defendants" or "the Defendants"), in answer to the Plaintiff's Complaint, answer and assert as follows:

FOR A FIRST DEFENSE

1. Any allegation of the Complaint not herein admitted, qualified, or explained is denied. Any allegations of the Complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the Complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

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2. Answering the allegations of paragraph 1 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief as to the same.

3. Answering the allegations of paragraphs 2 and 3 of the Complaint, Defendants admit the same.

4. Answering the allegations of paragraph 4 of the Complaint, Defendants admit the same upon information and belief.

5. Answering the allegations of paragraph 5 of the Complaint, Defendants admit the same upon information and belief.

6. Answering the allegations of paragraph 6 of the Complaint, Defendants admit the same upon information and belief.

7. Answering the allegations of paragraph 7 of the Complaint, Defendants admit the same upon information and belief.

8. Answering the allegations of paragraph 8 of the Complaint, Defendants admit the same upon information and belief.

9. Answering the allegations of paragraph 9 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief as to the same.

10. Answering the allegations of paragraph 10 of the Complaint, Defendants admit the same upon information and belief.

11. Answering the allegations of paragraph 11 of the Complaint, Defendants deny the same. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

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12. Answering the allegations of paragraph 12 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief as to the same.

13. Answering the allegations of paragraph 13 of the Complaint, Defendants answer that they were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

14. No separate answer is required to the allegations of paragraph 14 of the Complaint.

15. Answering the allegations of paragraph 15 of the Complaint, Defendants admit the same to the extent they accurately describe the property at issue.

16. Answering the allegations of paragraph 16 of the Complaint, Defendants admit the same upon information and belief.

17. Answering the allegations of paragraph 17 of the Complaint, Defendants admit that the note states what it states and deny any allegation inconsistent with what it states.

18. Answering the allegations of paragraph 18 of the Complaint, Defendants deny the same. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

19. Answering the allegations of paragraph 19 of the Complaint, Defendants admit the same.

20. Answering the allegations of paragraph 20 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

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21. Answering the allegations of paragraph 21 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

22. Answering the allegations of paragraph 22 of the Complaint, Defendants deny the same. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

23. Answering the allegations of paragraph 23 of the Complaint, Defendants deny the same. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

24. Answering the allegations of paragraph 24 of the Complaint, Defendants admit the transfer occurred.

25. Answering the allegations of paragraph 25 of the Complaint, Defendants admit the transfer occurred.

26. Answering the allegations of paragraph 26 of the Complaint, Defendants admit the transfer occurred.

27. Answering the allegations of paragraph 27 of the Complaint, Defendants admit the transfer occurred.

28. Answering the allegations of paragraph 28 of the Complaint, Defendants admit to the extent consistent with land records.

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29. Answering the allegations of paragraph 29 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief as to the same.

30. Answering the allegations of paragraph 30 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

31. Answering the allegations of paragraph 31 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

32. Answering the allegations of paragraph 32 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

33. Answering the allegations of paragraph 33 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

34. Answering the allegations of paragraph 34 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

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35. Answering the allegations of paragraph 35 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

36. Answering the allegations of paragraph 36 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

37. Answering the allegations of paragraph 37 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

38. Answering the allegations of paragraph 38 of the Complaint, Defendants deny the same.

39. No separate answer is required to the allegations of paragraph 39 of the Complaint.

40. Answering the allegations of paragraph 40 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

41. Answering the allegations of paragraph 41 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported

judgment is void for lack of personal jurisdiction over the Defendants. Defendants do refuse to have their property applied toward a nonexistent, void judgment.

42. Answering the allegations of paragraph 42 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants. Plaintiff is not entitled to the appointment of a receiver.

FOR A SECOND DEFENSE
(Judgment is Void)

43. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

44. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case.

45. That purported judgment is void for lack of personal jurisdiction over the Defendants.

46. Plaintiff cannot maintain this suit.

FOR A THIRD DEFENSE
(Rule 12(b)(6), SCRCP)

47. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

48. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action.

49. No statute, rule, or other law provides for the suit here brought by the Plaintiff or the remedy here sought by the Plaintiff.

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FOR A FOURTH DEFENSE
(Statute of Limitations)

50. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

51. Plaintiff's claim on the note at issue is barred by the statute of limitations.

WHEREFORE, the Defendants pray for the court to:

(a) Issue an order dismissing the Complaint with prejudice;

(b) Deny Plaintiff the relief it seeks in this action;

(c) Enter judgment for Defendants for the costs and expenses of this action; and

(d) Grant Defendants such other and further relief as the court deems just and proper.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR DEFENDANTS
KENNETH J. VILCHECK AND RENEE M. VILCHECK

Columbia, South Carolina
November 18, 2021

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT Case No.: 2012-CP-07-04253

SOUTHERN FIRST BANK,N.A.
d/b/a GREENVILLE FIRST
BANK, N.A.,

Plaintiff,

v.

KENNETH J. VILCHECK and
RENEE M. VILCHECK,
Defendants.

HEARING BEFORE THE HONORABLE
MARVIN H. DUKES, III

DATE: February 3, 2023
TIME: 9:34 a.m.
BY: Counsel for the Plaintiff
LOCATION: Virtually via Webex
REPORTED BY: MICHELLE BAKER LEE,
Certified Court Reporter

APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF:

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jimkoutrakos@callisontighe.com

ALSO PRESENT:

Ashley Prieto, Court Reporting Intern (via VTC)

(INDEX AT REAR OF TRANSCRIPT)

P R O C E E D I N G S

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THE COURT: Good morning. We're here in 2012-CP-07-04253. This is Southern First versus Vilcheck, et al. And we've had a number of motion hearings on this already, and today I think we had set for all outstanding motions. So what motions do we have outstanding?

MR. ANGELL: Good morning, Your Honor. Aaron Angell on behalf of Southern First. We have our motion to sell property that was filed back in October of '22, October 21st of '22, and I believe Mr. Koutrakos has another motion that he's bringing.

MR. KOUTRAKOS: Correct, I have a motion to dismiss.

MR. RADEKER: It's my understanding those are all the motions that are before the court right now.

THE COURT: Are y'all still getting that feedback? Because I had mine turned completely off.

MR. RADEKER: Some.

MR. KOUTRAKOS: I'm not hearing it, Your

Honor.

THE COURT: Okay. All right. Is there a logical order in which to hear these motions?

MR. KOUTRAKOS: Your Honor, I think it's logical for my motion to dismiss to go first because it's a motion to dismiss whatever was served on me, which would be the motion for the sale of the property.

THE COURT: All right. Any objection to that? I don't know if it matters.

MR. ANGELL: No, I don't have any objection, Your Honor.

THE COURT: Okay. Mr. Koutrakos, I'm happy to hear from you, sir.

MR. KOUTRAKOS: Yes, Your Honor. May it please the Court. I represent Long Bridge Financial, LLC. We have a mortgage lien on the property. On December 1st, 2022 I got served with two documents. One was a notice of motions and motions applying Defendants' real property to execution and to join relevant parties, and an order joining all the parties. So I got that. My client, Long Bridge, was served with that. I didn't know what to do with it. Didn't know how to respond to it. We were not served with a

summons or comparable document. There was no deadline to respond to any of the documents served. There was no mention of the ramifications for not responding to the documents that were served on me. We were never notified whether we needed to respond to the motion, the order, or the complaint filed in 2012.

And so as Your Honor knows, the way a court acquires personal jurisdiction over a party in this state is by the service of a summons, and there is case law on that which I cited in our motion. Rule 3(a) provides a civil action is commenced by the filing and service of a summons and complaint. I also cited the case of Brown v. Evatt which is a 1996 case where the Supreme Court held that a summons is not a mere notice but a means for giving jurisdiction to the court, and unless it is waived, the court cannot otherwise obtain personal jurisdiction. And so the case law is pretty clear that in order for the court to obtain personal jurisdiction over the parties, it's got to serve a summons saying, Hey, here is something being served on you. You have to respond to it. And if you don't respond to it, this is what's going to happen.

I got served with a motion and order joining parties. That's it. It doesn't tell me what to do, what to respond to, when to respond to it, what's going to happen. I think under the clear case law, the court does not acquire -- the court has not acquired jurisdiction.

I'll be happy to discuss in detail and share with you on the screen some of the case law that I've highlighted. Maybe it's been a while since Your Honor looked at those cases, but it's abundantly clear in those cases, Brown versus Evatt, State ex rel. Wolf, First (indiscernible) Citizens and Southern City (indiscernible) versus Palmetto State Bank that the court has not acquired jurisdiction over my client.

The second basis for my motion is that I've already made -- my client's already been sued by Southern First Bank. Southern First Bank filed an action, as Your Honor knows, in 2021 seeking to foreclose its judgment lien. My client was named as a Defendant. We answered in that case. Another party chose to appeal some pre-trial rulings in that case, but this is the second time my client's been sued for the same relief. They're trying to sell the property in a 2021

case. They've added me as a Defendant. I was not added, I was initially -- my client was initially named as a Defendant in that case. In the 2012 case, they're seeking the same relief, I suspect. They're seeking to sell the property. So my client's being sued twice over the same thing.

And what's kind of odd about this, Your Honor -- this whole process has been odd -- there's been a casual acquiescence to avoiding any rules. For example, we're having a hearing today. There was no notice of hearing provided to all parties of record. There was two days' notice provided. And it appears in this case there's been an ignoring the rules through the insistence of the judgment creditor, some basic rules, and the most basic rule is you can't sue a party twice. And if you're going to sue somebody, you've got to tell them why you're suing them, what they've got to respond to, and what happens if they don't respond to it. I didn't create this situation, I'm here representing my client, but some things have to happen. The court does not have jurisdiction over my client. So for those reasons, Your

Honor, my client Long Bridge, Long Bridge Financial, LLC, moves to dismiss this case. Thank you, Your Honor.

THE COURT: Thank you so much. I'm happy to hear from the Plaintiff on this.

MR. ANGELL: Thank you, Your Honor.

Well, for starters, Jim's client hadn't been sued. We're suing the Defendant, and Long Bridge, we believe, is a party, as Jim's already admitted. They have a reverse mortgage. They're an interested party in the property. Jim hasn't in any way shown how he is prejudiced by being joined. And this motion to dismiss Long Bridge -- I'm reading it, to dismiss Long Bridge from this action, he's saying they should -- we should have Long Bridge dismissed from this action, but he doesn't have the authority to dismiss the action between the Plaintiff and the Defendant.

And so Jim was served with that motion -- that order and the motion for the judicial sale really in November. I believe it was November 8th, the day after your order came in. And it took a month for them to accept service, then another month for Jim to finally file a

motion to dismiss on a jurisdictional issue. And furthermore, if he doesn't want to be joined, I don't see how -- what the argument is in terms of where his prejudice is, where he's lost by being joined, and how that would -- and if he wants to be dismissed from this case and get out and not have a claim to the property -- I mean, we clearly are first in line in this matter based on the deed from 2019 -- 2018, I believe, where our judgment attached.

So while that's -- you know, while it's -- we're not required to necessarily have strict compliance under Rule 19. In fact, I've got some case law exacting -- under BB&T v. Taylor exacting compliance with the rules is not required to effect service of process. The court must inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings. Well, furthermore, the trial court can consider the timing of the motion for relief, whether the defendant has a meritorious defense, and the degree of prejudice to the plaintiff is granted.

And so Jim is stating that we've been casual with the rules and that we -- and he's pointing the finger at us as if we've created any of this. All we've done is to try to resolve this through a run-of-the-mill foreclosure and bring everybody in, and just had to fight off appeal after appeal after appeal. That's what we're dealing with here. Nothing has been raised on the merits. There is no defense to this case that's been raised. And I know we'll get to that motion for the sale in a minute.

But in sum, Judge, I mean, I don't know what he wants us to do. Dismiss him from the case? Is he not an interested party? Do you not have authority to bring them in? Are they not doing business in Beaufort County? To me it just -- it's just -- it's just all a bunch of semantics so --

THE COURT: Well, let me make sure I understand. I thought the motion had to do with the fact that no summons and complaint was served on them. Is that -- is that a fair summary?

MR. ANGELL: I think that's the basis.

THE COURT: Okay.

MR. KOUTRAKOS: Yes, Your Honor, that's

exactly the basis.

MR. ANGELL: And if Your Honor would like us to cure it, we can cure it. I'll give him a summons with an order to show cause, as they want, why they should be joined. And so it's just -- it's just yet another effort -- his client stands to benefit with the expiration of our judgment because they're going to be in first position. I mean, I think we all know that so --

THE COURT: Nevertheless, I mean, is Jim not right that there's no jurisdiction if there's no service of a summons and complaint?

MR. ANGELL: I don't think he's right. I think that there's -- that he's already -- I mean, he's been in this case and he's responded to our -- to that order and our motion, and he's availed -- his client is availed to your jurisdiction, Your Honor.

MR. KOUTRAKOS: Your Honor, I don't know how that's the case. I get a call -- you know, I get this document. I didn't know what it was. I was trying to figure it out. All this stuff that you-all were doing in 2002 [sic], I had no idea about it. I was involved in the other case that was on appeal. All this stuff that y'all did in

2022 that was the motion, I believe, to set aside the service, all this stuff that was happening, I had no idea about it until I got, out of the blue, this document, which I quite frankly didn't understand and had to figure out what is this and what's going on. I had to pull up all the documents, try to figure out what was going on. I was served with this document, I was asked to accept service, I had to figure out what it was, try to explain to my client what's going on. I was authorized to accept service, which doesn't -- doesn't waive jurisdiction, and then I didn't know when to respond. I didn't know when to calendar it, Your Honor. If you were practicing law, how would you -- what would you tell your staff to calendar in response? I didn't know. I used 30 days and I tried to figure out what to do. And I said, I don't know what's going on and I filed the motion.

And just because, you know, some statements were made, Hey, you know, what's their defense, you know, they're -- you know, all these things, just go ahead and throw them in, Your Honor, you can take care of it, I mean, there's some rules that need to be followed. They weren't followed

here. And my participation in conference calls that y'all scheduled certainly did not waive jurisdiction. What was I going to do, not attend? So I don't think the court has jurisdiction over my client.

MR. ANGELL: Your Honor, notwithstanding that ruling, I think that that doesn't preclude us from moving forward for a judicial sale.

THE COURT: No, it might not. I --

MR. ANGELL: I don't see the prejudice here. That's -- I mean, we're arguing -- I mean, there's no prejudice to his client. Does he not want to be joined? Are they not an interested party?

MR. RADEKER: Your Honor, I would just like to say on behalf of the Vilchecks, we think Mr. Koutrakos has put it very well. We join in Long Bridge's arguments to the extent that they apply to us, as we've talked about before. There's no summons or rule to show cause issued to Long Bridge or any of the other parties.

All of the parties who have or may claim an interest in the real estate have to be parties to the proceeding in order for us to get to this point where we're talking about selling the

subject property. That's the necessary requirement, so it absolutely does matter. And, like, of course it matters to Mr. Koutrakos's client. I mean, we're talking about whether there's going to be a judicial sale that if it's carried out to its conclusion will wipe out his client's interest in the property. So the argument of, like, oh, there's no prejudice to him, I mean, I guess I just -- I really don't understand where that's coming from.

MR. KOUTRAKOS: Well, in essence, if -- yeah, the property could be sold with my client not a party, it just would be sold subject to.

MR. ANGELL: And who's to say that here is not enough for his client? We're dealing with a 1.5-million-dollar piece of property, Your Honor.

MR. KOUTRAKOS: There certainly -- there certainly -- you know, when you talk about the numbers and things like that but --

MR. ANGELL: Yeah, but that's relevant, Jim.

MR. KOUTRAKOS: Well, it's not relevant to this motion. I mean, that's relevant to a discussion outside the scope of this hearing, which we've had.

But for the purposes of this motion --

because I have no choice but to proceed with it; under the circumstances I have nothing else at this point -- if you look at the case law, prior use is not a factor and due process is not prejudice and acquiring jurisdiction is not prejudice. You can argue that in every case, Your Honor.

THE COURT: I think you're right on the -- on the non-service of the summons and complaint. I don't think there's jurisdiction. Again, I think the property can be sold. I mean, honestly, in the foreclosure world we all have all seen -- and this is less and less because of a lot of things coming out of Columbia, but HOAs selling properties subject to first mortgages, second mortgages, equity lines. I mean, you know, and the priority gets sorted out on the back end sometimes, so I don't know if that's fatal to the whole thing or not.

But I think your motion has merit. I think if you didn't get served with a summons and complaint, the court doesn't have any jurisdiction over you. And I think I'm right on that so I'll grant the motion. And you're welcome to stick around with us or --

MR. KOUTRAKOS: I'll stick around, but I'm not waiving jurisdiction by sticking around.

THE COURT: No, no.

All right. What next?

MR. ANGELL: Next is our motion for the judicial sale, Your Honor. We filed that motion, like I said, back in October with corresponding exhibits. Our client's judgment was entered in 2000 -- on March 27th, 2013. The Vilchecks have been served with notice of that motion through us serving their attorney. We've laid out the reasoning here and ultimately we think it's lawful, Your Honor. We haven't -- I haven't heard any defense yet, but under subsection -- Title 15-39-410, property which may be ordered to be applied to execution. And, Your Honor, you know the law better than any of us here. And so we're eager to do -- to get this done. We've been fighting and scrapping to have our day in court. And between the status conference and this morning I think we've had two more appeals filed and other -- and other things have happened as well.

So, Your Honor, we ask that you grant our motion to dismiss because on its face it's clear

you have full authority to do that -- or motion to sell the property, sorry, and based on state statute.

THE COURT: Now, let me ask. I think Mr. Radeker sent the Homestead Exemption -- I think you or somebody sent those to me a minute ago. And this is an owner-occupied residence, I assume, since it's got a reverse on it.

MR. ANGELL: Yes.

THE COURT: And it's owned by -- is it two debtors? We've got both debtors?

MR. ANGELL: That's correct.

THE COURT: So is there any issue other than -- any dispute other than the fact that the Homestead Exemption would be, what is it, 167 or something? Y'all had it on here. My printer printed on both sides.

MR. RADEKER: I'm looking at --

THE COURT: No, I'm sorry, one --

MR. RADEKER: Yeah, I'm looking at something that says it's 134,175, so that would (indiscernible audio) Vilchecks. So, I mean, I have some other arguments about it, but I did want to make sure that, like, if the sale is ordered that it protects their --

THE COURT: No, no, no, you're right. I mean, this is not selling it --

MR. RADEKER: (Indiscernible audio.)

THE COURT: -- on the mortgage, this is selling it on the judgment debt so they would be entitled to that.

By the way, I'm impressed with your drawing in your most recent filing to the appeals court. That was -- that was a bold move with the --

MR. RADEKER: I was just like --

THE COURT: -- arrows.

MR. RADEKER: -- this is the best that I can do was draw it so -- I'm no Michelangelo.

THE COURT: Gotcha. Let me get back to the Plaintiff for a second.

How would you envision the sale be done? A three-times advertising --

MR. ANGELL: Yes.

THE COURT: -- referencing --

MR. ANGELL: Yes, sir, Your Honor. Just the three preceding weeks to the first Monday in March. But certainly you have authority to sell it in any way you see fit under 15-39-410, and so that's how we would see it proceeding. We've got our notices ready, we're in touch with the

newspaper and just think that we could get that done and resolved before our case is expired.

MR. RADEKER: And, Your Honor, I'd like to note some stuff for the record in --

THE COURT: Oh, absolutely.

MR. RADEKER: -- in opposition with those.

THE COURT: Yeah, I was just --

MR. RADEKER: Sure.

THE COURT: -- trying to figure out exactly what the Plaintiff wanted, which I think I know. So that would be a master sale, not a sheriff's sale that y'all would be looking for.

MR. ANGELL: Yes, sir.

THE COURT: And -- okay.

MR. RADEKER: And then we're looking at that for the March sales day; is that right?

THE COURT: Which would be -- I think it's the 6th, but I'm not --

MR. ANGELL: Yeah, that's right, it'd be the 6th. So 17th, 24th of February and the 3rd of March would be those three preceding Fridays, Your Honor.

THE COURT: Gotcha. All right. Mr. Radeker, happy to hear from you, sir.

MR. RADEKER: Thank you, Your Honor.

If Your Honor grants them the sale, it would be a sale pursuant to Code Section 15-39-720, you know, the -- it's not like a mortgage where the deficiency can be waived or anything like that. Just, again, incorporating the same argument that Long Bridge made earlier, just so I don't repeat that. Also, we believe this is stayed on appeal. We'd ask for the Court to at least wait until the appellate court rules on our motion for review by the full court of the stay motion. We've noted the exemptions that apply. In addition to what was talked about earlier, you know, they didn't go through a supplemental proceedings procedure after examining the debtors to do this so I'm not sure that's proper to go forward.

As to calculation of interest, I think this is a Turner Coleman situation where this is a suit on a note, and so the note rate would control the calculation, because I'm not sure exactly, like -- because I don't know exactly what they're claiming, is what the Plaintiff is saying like the total amount of the interest is on their judgment. So, I mean, I guess I'd just like an opportunity to review that, which will probably be in some proposed order or something

that's sent up to you.

So far there has not been any compliance with Code Section 18-9-130(A)(2), which we think that there would need to. We don't think any sale should be had at all for several reasons that we've already talked about, but if one is to happen that they'd need to comply with that section to do that which governs the circumstances under which real property can be sold in execution of a judgment while an appeal is pending.

THE COURT: And what specifically have they failed to do?

MR. RADEKER: All right. Hold on a second. I had this open earlier. Now I've got to open it up.

THE COURT: See, this question will give me enough time to open it myself so I'll know what you're talking about.

MR. RADEKER: All right.

MR. ANGELL: Is that 18-9-130; is that what you said, Drew?

MR. RADEKER: Right, 18-9-130(A)(2). And it says, "A plaintiff may not enforce a sale of property after a notice of appeal is filed

without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed."

THE COURT: Okay. And I'm happy to hear from the Plaintiff on that.

MR. ANGELL: Thank you, Your Honor.

I believe that's -- I mean, we're in a position to post that bond. I believe that that's not -- that's not necessary to receive your order for sale today. We've got plenty of time to work -- to post that bond prior to the actual sale going in. I read that as -- under subsection -- a plaintiff may not enforce a sale of the property after notice of -- enforce a sale of the property after notice of appeal is filed without giving an undertaking or bond to the defendant. Well, we -- today, if you were to grant our motion to sell the property, we still haven't enforced it yet. We still have -- we have to follow the statutory requirements for the advertisement, we still have to post a bond. There's still many steps to be taken at this

point, but we can't do that until we at least get an order from you. And I think that's just a chronological issue. It's not something that we're unwilling to do or unwilling to meet, it just isn't the time to do that just yet.

THE COURT: Right.

MR. RADEKER: And the statute does say enforce so, you know -- and I don't think there's any cases that say that means this undertaking has to be done at X point in time or something like that. So we're all just kind of flying blind, looking at the language in the statute on that one.

THE COURT: Yeah. I mean, there's -- before the sale can take place, right?

MR. ANGELL: Yeah, that's how I read it.

THE COURT: So -- okay. All right. Anything else, Mr. Radeker?

MR. RADEKER: I guess I would just say as -- if none of the added parties were added in a way that actually confers personal jurisdiction on the court, any sale of this property might have to be subject to all of their interests. I mean, I know I can't raise arguments that other people have, but it's -- like, it's difficult to tell

whether this is my client's argument or those creditor's argument. So for the record, here I am making it. Someone may tell me later that wasn't your argument to make so --

THE COURT: Let us assume for a moment that I granted the Plaintiff's motion today and we sold the property. I would think that any notice of sale would have language in it, that sort of general cautionary language about, you know, this is being sold subject to possible prior liens, taxes, you know, et cetera. We give a general warning at each of the sales, the foreclosure sales about watch out, there's -- you know, it's caveat emptor and that kind of thing.

But I would think that if I were to grant the motion, if we were to -- this isn't stopped by the current appeal if we went -- if the bond were posted, if the property were sold, then upon compliance with the bid, of course the first hundred and -- whatever that number was -- $34,000 would go to the Vilchecks, right? Actually, I think, probably the Master's commission of $2500. I can't remember. But anyway, somehow that would come out. And then it would be the 134 go to the Vilchecks. And then I

would presume we would then have a hearing on the balance and let the parties or interested parties -- Mr. Koutrakos's client, for instance -- come in and make claim, if they wanted to, over what is left. And I would think that would be basically the only way to do this.

Now, buyers, in theory -- I'm thinking out loud here -- would take subject to unsatisfied liens of record. So Mr. Koutrakos's client is not a party. Their lien on the property is not satisfied. I don't know. I don't want to think out loud too much, but I'd be interested to know how the Plaintiff would want the order in those sale worded because I'm not sure with Mr. Koutrakos's client and other similarly situated not being parties, if their liens on the property would be affected by the sale on this judgment even though it's prior. So, again, just thinking out loud trying to come up with solutions to problems that maybe don't exist.

All right. Anything else from the Defendant on this, Mr. Radeker?

MR. RADEKER: No, Your Honor. We oppose the Plaintiff's motion, in case we didn't make that clear earlier.

THE COURT: I understand. Mr. Koutrakos said something a minute ago about notice and when we were doing the motions and all that, and I apologize, I thought we -- everybody said this was a good time to do this so --

MR. KOUTRAKOS: Your Honor, on your previous ruling, do you want me to prepare an order, number one? And number two, you clearly, you said it yourself, granted the motion for lack of personal jurisdiction because of lack of service of a summons. But also under 12(b)(8) is there a ruling on that or do you not want me to mention 12(b)(8)?

THE COURT: I just think it's -- there's no jurisdiction.

MR. KOUTRAKOS: Okay. I'll prepare an order and send it to you via the court's efiling system or --

THE COURT: That would be fine. Copy everybody else first. I'm sure it'll be a fairly simple one.

MR. KOUTRAKOS: Yes, Your Honor.

THE COURT: What else? Anything else for this record?

MR. ANGELL: Nothing from us, Your Honor.

THE COURT: I've got a whole other hour. Wow. All right. Well, let me do this --

MR. RADEKER: Your Honor, we can talk about some other stuff, if you want, but I think those are (indiscernible audio).

THE COURT: Yeah. Let's -- so I keep a fire under me and I don't forget about this -- and I won't; I'll think about it over the weekend -- but I think what I'm going to do is go ahead and get the Plaintiff to draft an order. This is by no means a ruling. But I understand time for all the parties is of the essence. So go ahead and draft a proposed order, if you would. I would think a bond in double -- is there an appraised value of the property?

MR. ANGELL: We haven't had a --

MR. RADEKER: We haven't, like, exchanged appraisals and --

MR. ANGELL: I'm happy to do that whenever.

MR. RADEKER: We haven't done that yet, Your Honor, no.

THE COURT: If y'all can agree on an appraised value, great, if not --

MR. RADEKER: I'll ask my people what they think the value is and we may be able to shortcut

that by saying, like, the Vilchecks say it's this, do y'all agree that's what it is?

THE COURT: If not, of course, the county has come up with an appraised value, which is probably much greater than the judgment amount but probably less than the value of the property. So if y'all can agree, great. I don't know if I'll put them through the burden of having an appraiser kicking around their house and counting the fireplaces and doing all that stuff they like to do. But for purposes of the draft, make it double the appraised value and see if y'all can figure it out for the bond, and put in the Homestead stuff. And advertise three times, you know, et cetera, just the usual language. And, again, I'm not saying I'm going to sign it but -- and at least that will be done if I do.

Let's see. Let's talk next week and, Jim, you wouldn't need to join, of course, although you're welcome to if you want. Do y'all have time for a quick phone conference on -- let's see. The advertisement date, the first would need to be February 17th, right?

MR. ANGELL: That's correct, Your Honor.

THE COURT: So if we were able to talk

Tuesday, the 7th, next week, that would -- it's still well ahead of that. How do y'all -- do y'all have any time -- is anyone doing a deposition all day or mediation or anything or in court on the 7th?

MR. RADEKER: I've got a few client meetings, conference calls. I can move those around if I need to.

THE COURT: Are those morning or afternoon?

MR. RADEKER: I've got --

(Technical difficulties.)

THE COURT: -- 9:30?

MR. ANGELL: I'm available, Your Honor, at that time.

THE COURT: Okay. Hold on a second. Let me put this down. And who knows, maybe the court in Columbia will have given us more guidance by then. I doubt it but --

So here's the call-in number. It's going to be 202-926-1130. The access code is 577627 pound. And I'll read it one more time. 202-926-1130. The access code is 577627 pound.

MR. ANGELL: Thank you, Your Honor.

THE COURT: If you get a chance to knock something out in the way of a rough draft before

that, great. Just send it around marked, you know, draft. I don't want it accidentally going in some queue and getting signed so --

All right. Anything else we can do for today? Does that cover everything?

MR. ANGELL: Nothing for us.

THE COURT: All right. Thank y'all so much.

(The hearing concluded at 10:08 a.m.)

CERTIFICATE OF REPORTER

I, MICHELLE BAKER LEE, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my signature this 6th day of February, 2023, at Taylors, Greenville County, South Carolina.

_____

Michelle Baker Lee
Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
October 29, 2028

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT

SOUTHERN FIRST BANK, N.A.
D/B/A GREENVILLE FIRST BANK,
Plaintiff,
vs. CASE NO. 2012-CP-07-04253
KENNETH J. VILCHECK; RENEE M. VILCHECK; PORTFOLIO RECOVERY ASSOCIATES, LLC; THE FEDERAL HOUSING COMMISSIONER; THE DEPARTMENT OF THE TREASURY – INTERNAL REVENUE SERVICE; AND THE SOUTH CAROLINA DEPARTMENT OF REVENUE,

Defendants.

BEFORE: THE HONORABLE MARVIN DUKES III
MASTER-IN-EQUITY
(Appearing by VTC)
DATE: February 15, 2023
TIME: 9:31 a.m.
LOCATION: 1301 Second Ave.
Conway, SC 29526

REPORTED BY: Renee H. Tollison, CVR
(Appearing by VTC)

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ALSO PRESENT:
JACQUELINE GREY, LAW CLERK

(INDEX AT REAR OF TRANSCRIPT)

* * * * * * * * * * *

THE COURT: Good morning. We're here in 2012-CP-07-04253. This is Southern First Bank doing business as Greenville First versus Vilcheck. We're here on plaintiff's motion to reconsider order denying motion for judicial sale that was filed yesterday, February 14th, at 11:40 a.m. I'm not sure who's going to argue it, but I'm happy to hear from the plaintiff.

MR. ANGELL: Thank you, Your Honor. Aaron Angell on behalf of Southern First.

Your Honor, I know it was a ten-page motion. I'm not sure how much time you've had to review that. As you stated, it was filed less than 24 hours ago, and today is essentially our last day to bring a notice to the newspaper for an ad to be run on Friday and the next three weeks after that.

Our argument, Your Honor, in sum is that we are asking you to review the exact facts of Gordon and to understand that from the Court's ruling in that case was a reaction to a previous ruling in Linda Mc. And those cases -- I don't want to try to teach everybody here, but it's important to flesh out the very detailed facts in both matters. And the Court of Appeals and the

Supreme Court granted an exception for creditors to pursue their judgments post expiration in Linda Mc. In that matter, as we're all familiar, the final order -- not the final order, but an order for execution was entered ten years after -- ten years and a day after the judgment had expired after the initial judgment was entered.

And so the court said, well, you know, that's a narrow exception we're going to apply and live with when the creditors have at least initiated some form of supplemental proceedings and had at least a hearing. Maybe not a final order but at least a hearing and it had created active energy in the judgment by so doing. And the court said that under that narrow exception that in Linda Mc, the creditor could continue to pursue enforcement of their judgment past the ten-year rule.

And so what happened is several cases came out, and ultimately Gordon v. Lancaster was the next case put in front of the Supreme Court. And in that case, it was essentially an extension of that bright-line exception where a creditor could pursue judgment proceedings after the ten-year deadline so long as there was active

energy.

Well, in the Gordon case, the judgment creditor did not have a hearing at all on the merits until well after a year from the ten-year mark, well after its -- over 11 years since the judgment was initially entered. And so the Supreme Court said no.

First of all, that doesn't fall within the Linda Mc exception. And I certainly think certainly Justice Few's dissent really sheds a lot of light in the Gordon v. Lancaster case. It's about a two-paragraph dissent. He speaks to dictum and says that we shouldn't have overturned Linda Mc. We should have just said this case, Gordon v. Lancaster, doesn't apply to Linda Mc as it's even -- it's even further extension of what we granted on that narrow issue because the hearing on the merits was ten years after -- over ten years, eleven years after the judgment was initially entered.

And so the Supreme Court in effect reacted to that and said, well, this is a statute of repose. And as much as Georgia and North Carolina and our sister states have those options to renew, they have those options to file fieri

facias or scire facias in Georgia, that's not what the Legislature has intended here. The Legislature has intended for all judgment creditors to pursue their liens, to create and have entered a final order with a hearing on the merits before the ten years. Because otherwise in Lancaster and even in Linda Mc, there is no deadline once you have active energy. That's open to interpretation, and those cases could go on years and years.

And so while I agree with Justice Few's dissent and that, hey, we shouldn't have overturned Linda Mc necessarily, I certainly agree with the Supreme Court in stating that this is out of our hands. And if the Legislature wants to change it and create a renewal statute, then they can do that.

And so I think that the analysis here is that in this case on these facts with all that has happened, we're not simply making -- you're not simply making a decision based on is the judgment dead on March 27th and we've got a traditional sale on March 6th, and is it done on March 6th or is it done on April for 5th or 30 days after? You're making a decision on the totality of these circumstances. And the totality of these

circumstances is, Your Honor, in a court of equity. And I said this the other day. Equity rewards the diligent and the vigilant. Equity rewards those who seek equity must do equity. And equity follows the law. And we're not asking you to do anything other than follow the law.

While we understand this is somewhat of a novel issue, somewhat of a very technical argument, we've been here before in other cases with other masters across the state where we have dealt with the defendants simply orchestrating delays and hindrances through appeals. They're entitled to do that, Your Honor. I'm not saying that they're not entitled to bring an appeal, they're not entitled to delay and to create obstacles and hindrances, but there has been no defense on the merits at all in any way outside of get it to the ten years, and then we're going to live with, hey, apply this bright-line rule of Gordon v. Lancaster. And that's not a fair assessment of Gordon v. Lancaster. That's not a fair view of the facts in this case.

And so it's our position -- and we've held this position since the start. And, in fact, we had a case in Charleston about four years ago.

It was whenever the Gordon v. Lancaster case came down in November. And we had a hearing. And we said, Judge, you know, we filed assets and this is what we want to do, and we scheduled another hearing to complete that order and have Judge Scarborough enter a final order.

Well, between that hearing and our final hearing, this case came down, Gordon v. Lancaster. And we said, Judge Scarborough, based on the case law and the decision, we have no choice but to withdraw our motion and to go home because based on the language of Gordon v. Lancaster, we fall within the analysis there that we have no recourse, that our judgment is dead, we have no final order entered. And we've abided by that. So I'm not asking -- we're not asking for you to apply this in any special way other than how we've applied it.

And so our contention is that the order for judicial sale is a final order on the merits. There's no other assets in which we are seeking to attach. There are no other supplemental proceedings that we want to take on. There is no other ham to secure at this point regardless of what the defendant's assets are. We still don't

know. He's never -- he never complied with the order to turnover tax returns and turn over documents. He still hasn't done that. And that's germane to this case.

So we're not asking to go fishing. We're done fishing. We are asking for that final order to be entered, that judicial sale to be entered. And when that final order is entered, we have secured the ham, got the fish in the boat, and we're not seeking to do anything in Gordon v. Lancaster or Linda Mc to extend the active energy of the judgment. So that's our primary argument.

Secondarily, we believe that under § 15-39-720 that that is holding us, as the plaintiff creditor, a little bit hemmed in. And the reason being is because -- and I just had a chance to look at Drew's motion that was filed this morning in prep for here. And he's right. I stated Goethe when I should have said Wachesaw. So that's -- but there's -- on his third page. But the bottom line is the reason I bought forth those cases is, first of all, there is not a ton of case law on § 15-39-720 or § 15-39-760. You have discretion. You have the authority to enter a final order however you want. And that's -- if you

want to convey a deed, you can do that. You have full authority via the order of reference to do that when it comes to assets of the defendant.

And so the purpose of me bringing in those -- us bringing in those cases is to show that if we waive a deficiency judgment, how can we even have a deficiency judgment? In Wachesaw, that was a judicial lien. And the language there says if you waive the deficiency judgment, then there is no reason to hold the case open for 30 days which would obviate or reduce the need to even have an analysis postjudgment expiration.

So one of two things. If you think, hey, I've got authority for you guys to put the notice in the newspaper under § 15-39-760, and under Rule 71, we can expressly waive it in writing that this is not merely a foreclosure of a mortgage but a foreclosure of a judicial lien or a foreclosure of a mechanics lien. It can follow under all of that. And frankly, the statute, and under all of Title 15, is pretty vague when it comes to the application of the foreclosure meaning § 15-39-760. It says foreclosure or any other case.

So notwithstanding your analysis there,

we're not hanging our hat on whether necessarily the 30 days can be waived. We think it can. We think that that would reduce any appeal based on active energy. And we think you have full authority to say that's fine.

And in the end, what's the harm done? Where's the harm? The defendant has nine years, eleven months, and twenty-one days to pay his debt by the time March 6th comes. And the defendant is entitled to bid on March 6th or thereafter depending on how you rule. But we argue that on March 6th, his equitable -- his equitable interest in the property is waived the moment a bona fide bidder, whether it be us, the creditor, enters that bid or some other third party bids on that date. And the only way that the defendant can gain that equitable title is to get in line as a bona fide bidder and to overbid, out bid. And the 30 days isn't to determine whether the defendant has equitable title or not; it's to determine who's the highest bidder.

So by that analysis, even if you keep it open for the 30 days, I still contend that we're asking for a final order which would be an order on the merits for the judicial sale. We still think

that we don't have to keep it open 30 days, but regardless if we do, that is an administrative act relative and relating back to an original final order being entered in before the judgement has expired.

We haven't asked to be put into this position. We've been kicked into this position. We've been thrown into this position. We had hearing after hearing after hearing after delay after delay after delay appeal after appeal. And everybody's asserted their rights. And they have them. Creditors have rights. Third parties have rights. Defendant debtors have rights. But, Your Honor, it's lawful for you to enter this order. It's just and it's right for you to enter this order. And to just review Gordon v. Lancaster as a bright-line nothing can be done without examining those facts of that case is improper. And so we ask that you assess the facts of this case. Yes, the Court of -- I know the defendant will likely appeal this if you were to grant us our motion.

And I spoke on a conference call with you and said we're happy to take it to the Court of Appeals. And that was no means me puffing my chest at you, Your Honor, to say I dare you. It was with

the understanding that Your Honor grant us relief of what we're seeking. And if we have to fight it out in the Court of Appeals, I'm sure they're going to appeal it. They've got seven or eight appeals, but at least preserve our rights and preserve our judgment here. And the tools and the means that the defendant has used over the last two years is not in contemplation from the statute or the Supreme Court to be afforded such protections by simple delays and mechanisms to continue this case.

So that's the summation of our argument, Your Honor. We think it's cogent. We think that absolutely it is necessary to examine the very facts and the very details. And we think that the final order will be your judicial sale, and frankly we need -- we pray you grant it.

THE COURT: Thank you very much.

Let's see. Mr. Radeker, happy to hear from you, sir.

MR. RADEKER: Thank you, Your Honor. Yes, we submitted a memorandum this morning. And I don't know if Your Honor has had time to read it at all, but in any event, we'd ask you to do so. And that set up our arguments here, but I'll try to hit some highlights and speak to a couple of things I

heard Mr. Angell say.

What we've got here -- what they're trying to do, Your Honor, is to extend the happening of the sale beyond the duration of the lien. They already have a personal money judgment. They can't waive deficiency judgment. They've got a personal money judgment. That's what creates the lien that we're here talking about is the existence of that. The opportunity to not seek a personal money judgment passed many, many years ago. That's done, so they can't waive deficiency judgment in this. This isn't a suit to foreclose a mortgage. It's not a suit to foreclose an HOA lien which is what the Wachesaw plantation case. It's a suit to execute a judgment lien by foreclosing its lien. As such the bidding is required to stay open for 30 days. Plaintiff seeks to have the sale conclude at a time when the lien no longer exists. It's the conclusion of the sale when the 30 days for upset bids are up. That's when you know who the bona fide bidder is. It's the successful bidder. And if Your Honor looks at the Wachesaw Plantation case, it tells you that's who it is. If you look at the Goethe case, it tells you that's who it is. The law is quite clear.

In Gordon, the court went out of its way to say, hey, Garrison versus Owens -- which has been criticized in Linda Mc for overruling. Garrison is good law. Garrison says that a judgment lien is absolutely extinguished ten years from the entry of the judgment. That means on March 27th, the judgment lien will be absolutely extinguished. So we can't have a proceeding in which the equity of redemption is still out there waiting unforeclosed past the existence of the lien that the plaintiff is trying to use to foreclose. The lien no longer exists. There won't be anything to foreclose at that time. There's no point in going through the sale because the sale can't be completed.

It's really just a simple as that. We think that Your Honor got it right. We'd ask you to deny the plaintiff's motion. The law is what it is. All of this stuff that they talk about equity, it doesn't matter. I mean, the law determines how long the duration of judgment collection efforts can go. The law determines how long the lien is. And, no, they don't just have to get to a hearing. You can look at the Gordon case and what it did with Linda Mc. If all you had to do was get to a

hearing, there wouldn't be any reason to overrule Linda Mc or for the court to have ever created the exception at Linda Mc because they had the hearing in Linda Mc within the ten-year period. It was the stuff that happened later that was the problem there. But the court in Gordon overruled the Linda Mc case making it abundantly clear that to cease the collection efforts, the sale would have to be completed within the time period.

Now, Your Honor could issue the deed later because the law is the sale is completed when the hammer falls. And the hammer falls when the successful bid is in. That can't happen until the upset bid period expires. It's just -- this is just the law. It's just a tough break for Southern First. I mean, I have found it interesting to hear them saying we've been trying to work this out. Our last settlement offer to them went unreturned, just rejected. Invited them to make a counter offer including very recently. That hasn't happened. But none of that really matters. Equity follows the law. The court can't use equity to help the plaintiff out like the plaintiff wants to get around what the law is. The duration of the lien will expire before the judicial sale process

that the plaintiff seeks to have happen will. It shows that it can occur. It doesn't work like that. Thank you.

THE COURT: Thank you. Last word from the plaintiff if you want it.

MR. ANGELL: Yes, Your Honor. We would argue that on the date of the judicial sale, March 6, that arguably our lien would be extinguished at that point. Our judgment would be extinguished. And now all that we have is a bona fide bid. And thereafter, even if it is -- I mean, even March 27th comes and goes, our bid has held our right there.

And so I know it's frustrating to hear me bring an equitable argument in a court of equity and we're trying to apply the law, but the law does provide for the final order being entered. Again, the analysis in Linda Mc and what they overturned was an execution one day past the ten-year deadline. That wasn't a final order. There was an execution that just opened up the rest of the supplemental proceedings. That was not a final order. And so they overturned it and said you've got to be done, you've got to be done with supplemental proceedings, you've got to have a

final order.

And so the entire hinge of this case, the entire hinge of this case, regardless of whether you want to allow us to waive our deficiency under § 15-39-760 or keep it open under § 15-39-720 for 30 days, regardless of that, the final order is the dictating order. The case has been heard on the merits. We're not extending this case for further supplemental proceedings and fishing expeditions. Yes, the minuscule acts to bring that order into effect would perhaps go beyond the March 27th date. But it's a final order.

It's not an execution for further orders. It's not an execution for further supplemental proceedings ad nauseam for the next two, three, four years or whatever. It's not. It's a final order on the merits of the case unlike in Gordon v. Lancaster, unlike in Garrison which we're bringing up Garrison. The hearing on the merits was had after the judgment expired. Linda Mc there was a hearing. There was an execution, but it wasn't a specific execution. It was a special referee and then a circuit court did the order entering an execution to go pursue the

judgment debtors non exempt assets. It wasn't a final order.

And so this case is totally different from those. It applies. These rules and the law and the ten-year statute of repose applies here. We're not trying to get around that. We don't think we need to get around that. We have fought tooth and nail to get to this point, and we are entitled to a final order for the judicial sale regardless of what the miniscule effects and acts afterwards have to -- are. We've been put in this position. We've been a vigilant and diligent creditor.

And so that's the clarity here. It's not that 30 days or anything else. It's a final order on the merits, one that wasn't had with Linda Mc, one that wasn't had with Gordon v. Lancaster.

And so, Your Honor, we respectfully ask that you grant our order for a judicial sale.

THE COURT: Let me ask you this though. Let's assume that this had occurred five years ago and it was a $300,000 judgment or whatever it is. And let's assume that the property that was seized had sold not pursuant to a foreclosure because this is just an execution on a judgment. This is just a

judgment. But let's assume that property was only worth $50,000 or only brought $50,000. The balance of the judgment would still remain. Right?

MR. ANGELL: I suppose so.

THE COURT: So, I mean, that wouldn't have ended the process at that point. I mean, there would have been an execution on whatever that property is, but that execution -- I mean, execution to me means final. I mean, the finality of that and the redetermination of the value of the judgment wouldn't have occurred until that entire process had been gone through, and then you would still have a deficiency in that judgment that would be the balance of the 300 minus whatever, the 50 or whatever hypothetical we're talking about. So it wouldn't have ended.

And it does seem -- and I'll look at it again. But the judgment -- the Code treats the ability to waive a deficiency in a foreclosure and the ability to waive a deficiency in a judgment differently. I don't have it pulled up, but it seems like it's even titled differently. But I'll take a look at it.

Anyway, I don't disagree with you about the equity part. The Vilchecks owe this money, and

my current ruling, they're not going to get paid, the creditors aren't going to get paid, and that seems unfair to me. I'll agree with you there. And I will look at it again.

I understand you need to know something today probably by -- I don't know what time, but I'll try to let you know something before I go to lunch. I've got to do some warrants and things after this, but as soon as I can, I'll take a look at, first of all, the memo that came in this morning which I haven't looked at and the rest of it and see what I can figure out.

Anything else for this record?

MR. ANGELL: One more, Your Honor. When you give that hypothetical about five years ago and 50,000, would it be -- would it be -- still remain a deficiency judgment, that hypothetical wouldn't apply to us in this case because, first of all, the plaintiff in that case could satisfy the judgment depending on if they're happy with $50,000 because depending on how many more non exempt assets existed. If that's all the non exempt assets that existed against that debtor, then perhaps the plaintiff would satisfy the judgment after the 50,000. Regardless in this case, we

would send to recover all of our judgment amount plus interest, and it would totally satisfy the judgment in this scenario, would completely satisfy versus just a portion as in your hypothetical. So I just wanted to clarify that.

THE COURT: Right. And my hypothetical is a very poor one that I came up with in the moment.

MR. ANGELL: I'm not --

THE COURT: I guess my point was the execution can't be completed until you know how much of the judgment is left at the very end of that process, not at the beginning. But, again, that was a poor example. But I'll take a look at these things and see what I can do. And I'll try to shoot y'all an email before I go to lunch and see what we can figure out. And I'm cognizant of the fact this is a huge amount of money and a big deal for the plaintiff and the defendant and all of you.

So anything else for today's record?

MR. RADEKER: No, Your Honor.

THE COURT: Thank you very much. That will conclude the record.

(The hearing was concluded at 9:58.)

CERTIFICATE OF REPORTER

I, Renee H. Tollison, Certified Verbatim Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 15th day of February, 2023, at Anderson, Anderson County, South Carolina.

_____

Renee H. Tollison, CVR
Court Reporter
My Commission expires
August 15, 2032

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IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA, COUNTY OF BEAUFORT

SOUTHERN FIRST BANK, N.A.,
D/B/A GREENVILLE FIRST BANK,
Plaintiff,
v. Case No.
KENNETH VILCHECK, ET AL., 2012-CP-07-04253
Defendants.

VIDEOCONFERENCE HEARING

DATE: Friday, March 3, 2023
TIME: 10:00 a.m.
BEFORE: Honorable Marvin H. Dukes, III
LOCATION: Remote Proceeding
102 Ribaut Road, 2nd Floor
Beaufort, SC 29902
REPORTED BY: Ashley Manini, Notary Public
JOB NO.: 5785824

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF SOUTHERN FIRST BANK, N.A.:

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
Plaintiff:		
	(None marked.)	
NO.	DESCRIPTION	ID/EVD
Defendant:		
	(None marked.)	

P R O C E E D I N G S

THE COURT: Good morning, then. We are here in 2012-CP-07-04253. This is Southern First D/B/A Greenville First versus Vilcheck. We're here for plaintiff's motion to establish sales procedures for sale of property.

And I'm happy to hear from the plaintiff.

MR. HOOPES: Good morning, Your Honor. Thank you.

Just making sure everyone can hear me well?

THE COURT: Yes.

MR. HOOPES: So we submitted a motion to establish sales procedures because, as everyone is well aware, we requested a judicial sale, and that was denied.

We are confident that, given the nature of this being an equitable matter and having been referred to you, Judge Dukes, in this situation, it makes sense for you to come up with a way to have the property sold in order to have funds put toward the satisfaction of the debt.

And therefore, there's relatively broad authority for you to create a sale procedure that

makes sense in order for this sale to go forward.

And so while the specifics of a judicial sale that was laid out before were deemed to be unable to be completed before the time ran out -- which we still contest, but understand that you've entered your order on that matter -- we think that instead it would be possible to have an independent third auctioneer sell the property.

And so we've been in touch with an auctioning association that would be able to carry it out. There are some things that need to be discussed, but in short, we believe that if you order that and if the closing -- we think it was under contract before March 27th, that would be fine.

But if the property was closed on by March 27th, the expiration date of the judgment then would be acceptable, and we'd be able to move forward and have the property sold.

So we're before you requesting the option to do that. Again, we understand you may completely shut it down from the outset, but we think that this is a fine way to go forward and take care of this matter and get it all resolved before the judgment expires.

THE COURT: Thank you so much. Happy

to hear from you, sir.

Mister --

MR. RADEKER: Thank you, Your Honor. Yes. Drew Radeker here for the Vilcheck defendants.

I can understand why the plaintiff is trying to do this, but there's no law that supports the motion. In fact, the authority is against it. Property that's taken in execution of a judgment is required to be sold. That's what the statutes say.

There's a specific process for that which requires it to be done through a public auction conducted by the appropriate selling officer, who here would be Your Honor. And the bids have to be held -- the bidding period has to be held open for 30 days to receive upset bids.

And Your Honor has already ruled that there's not enough time to complete that process during the remaining life of the judgment.

And so we just ask you to deny this motion. There's not authority for it. Thank you.

THE COURT: To the plaintiff's point, it does seem unfair and inequitable, though, doesn't it? That the time has run out.

What is the plaintiff's -- does the plaintiff have an opinion as to the value of the

property?

MR. HOOPES: So as to the value of the property, we've discussed with Drew, and it sounds as though about 1.4 to 1.5 million has been accepted.

Is that correct, Drew? Would you agree with that?

MR. RADEKER: I mean, that's a curbstone opinion by people about how much it's worth.

But it's not like this -- let's imagine a radically different judgment collection scenario in which there are supplemental proceedings. And say the judgment debtor comes into court -- I'm using this example because this really happened to Leo Dryer. He told me about this.

The judgment debtor comes into supplemental proceedings wearing a very expensive piece of jewelry, like a necklace. And then during the supplemental proceedings, they agree on how much that's worth.

And the judgment creditor says, "Well, I want that applied to the judgment. We'll reduce the judgment amount by the amount that the judgment debtor agrees to."

That could happen in a situation like that. Here, we've got a piece of land where there are

other liens on this property. That couldn't be done here. I mean, I don't really know if there was authority for the judge to apply that necklace to the judgment creditor's debt in Leo's case.

THE COURT: That sounds like it was making sense to --

MR. RADEKER: But at least it was practical. At least it was something that could be practically accomplished.

Whereas here, this can't be done. So is this sold, say, subject to Longbridge's mortgage? How about the other judgment creditor lien orders?

There's a reason why the statutes provide for property that's taken in execution to be sold through the same judicial sale process that is normal here. Not only is there no authority for this, there's authority that says what the plaintiff is proposing is not the way that this is done.

THE COURT: If it's 1.4 -- whatever the number is -- how much equity is left over?

I can't remember the value of the other liens, the prior liens.

MR. RADEKER: I don't know. The lien --

MR. HOOPES: I think it's coming very

close to being wiped out.

THE COURT: There's not --

MR. HOOPES: I don't have all of the exact numbers, but Portfolio Recovery Associates, who have not appeared, their lien was -- there's is the next in line behind Southern First Bank's, and that was originally a $26,000 judgment that now about 52, 53,000.

Then the 230,000 to Longbridge, followed by the federal government -- IRS is approximately 280,000 in tax liens that may have had a little bit of an interest accruing since 2019 or so. And the South Carolina Department of Revenue has, I think, in the ballpark of 30,000 in tax liens that have attached to the property.

THE COURT: I've got you. And this is, of course, not a foreclosure action, even though, as I recall, it's a strange situation where it started as a purchase money mortgage or something, and for whatever reason, it was reduced to a judgment and no foreclosure, which I know was long before you all got involved.

And I think I signed the judgment. Maybe somebody explained it to me back ten years ago. But I certainly don't remember it. So it's an odd one

for sure.

Okay. Anything else for this record?

MR. HOOPES: Just as far as the procedure and having it sold subject to other liens, we would request that it be sold with those junior liens being wiped out, apart from Longbridge.

Again, it's already been determined that through these proceedings, they're not a party. And therefore, when the property is sold, that lien is still attached to the property.

But if not, if Your Honor would prefer, at this point, getting the property sold, it could be sold subject to all of the other liens such that those would still be on the property when this is sold.

Which again, we and the company that would be selling the property understand that that's a real risk, understand that that would impact the value that could be obtained at an auction. And so we think, if necessary, it could be sold subject to all of the junior liens.

And again, if the procedures are going to be established, we think it would be fine for it to be under contract before March 27th. But if it's required to be closed by March 27th, we could put that in there.

And so again, beyond that, there are more procedures we can get into if you'd like to hear those. But I don't know if you would like that on the record now or if that's something that you --

THE COURT: Well, this is the motion hearing. So if you want to establish something on the record, go ahead, please.

MR. HOOPES: So essentially, Terry Howe & Associates, Incorporated would be the auctioneers that have said they could get this to work. They have a few questions that they would like settled before they could go through it.

But they say, despite most of these questions, they should be able to have the sale handled and done before March 27th.

So again, the need for whether it needs to be under contract or completely closed on by the execution date, they would like to know that and have a clear answer on that. And they would like to know, again, the question that we were just asking, whether or not it is subject to all the junior liens or if we'll be able to wipe those out.

And I think from our proceedings, it makes sense that equitably, Longbridge would not be wiped out. But from the rest, I think that's up to

Your Honor. So we request that they be wiped out.

But at the same time, we understand if that's what needs to be done to get this sold, then we can leave all of those junior liens attached to the property after the sale. And then -- I apologize. One moment.

As far as the appeals, I understand as of March 1st, it looks like the other appeals in this matter were remitted back to you, Judge Dukes.

I could be wrong about that because the letter from the Court did not include the order that it said it included. Or it said there was a remitter in the appellate court. It wasn't completely precise on how much it was.

But as far as I'm understanding, one appeal was rejected. And so the other one, I assume, would be the part that was remitted if it was remitted back to you. So as far as the appeals affecting it, we don't believe there are any current pending appeals in these proceedings that would affect the sale of the property.

But again, if absolutely necessary in order to ensure that that would not wind up being a problem such that if this order for sale goes through and an appeal is brought up, then the property would

not be returned back.

In order to have a clean title, we can discuss having a bond placed such that it would be a clean -- the fear of appeals would not be impacting the buyers, the bidders. And then, as far as a provision for a credit bid, we request that there would be one.

And then, in order to help mitigate the possibility of a bidder coming in and messing things up if they don't perform, we request a down deposit from the bidders of either 50 or 100,000, just to ensure that if it goes through and something goes wrong with this timeframe -- the judgment expired and somehow the auction gets messed up in some way -- it's not a complete loss of time and money.

And so I think those are the primary issues that need to be addressed.

We think that it would be fine for the Terry Howe & Associates to handle the marketing as much as possible. They market relatively aggressively.

So even though currently there are procedures that require, for a judicial sale, it be published for the three preceding weeks in a local newspaper, on one hand, that is a touch antiquated in

the requirement.

Again, we understand that people look through that because that's where notices of sale will be published.

But at the same time, sufficient notice and advertising to be done such that attention of potential buyers will be grabbed through other means of advertising, trying to make sure that it gets out there.

So that even if the precise three weeks preceding, it's not published in a local paper, the notice of sale can be sufficiently gotten out there through other marketing means that would help potential buyers be aware of it so that it could be sold for a reasonable price.

And so we think that this would be a valid way of covering it. Again, it would be more equitable to have the property sold this way. We can try to mitigate any of the factors.

And even if it does not perfectly align with the statutes for a judicial sale, again, it's an equitable matter.

And we think there are ways to mitigate any issues that were contemplated by the legislature when those statutes were being written such that we

can still have the property sold at a reasonable price in a way that would protect plaintiff's interests here and enable this to go forward.

THE COURT: All right. Thanks.

Drew, any final thoughts? Anything else?

MR. RADEKER: Yes, just briefly.

There's a process for the sale of land to have sales proceeds applied to a judgment. And that's the process that's laid out in the various statutes that we're all familiar with at this point.

What the plaintiff is asking the Court to do is to ignore that process, create a completely new process, without any authority to do so. That would violate the maxim of equity follows the law, but it would also remove certain parts of that process that are required by law.

In what the plaintiff was just describing here, they were saying, "Oh, we want a minimum bid of 50 to 100,000 dollars." Actually, what the statutes require is that the minimum bid be the amount of the homestead exemption.

Another thing that the statutes require is that the bidding be held open for 30 days to receive upset bids.

What they are asking the Court to do is -- they said, "Oh, we've got this auctioneer. They can do it." I guess it's to have an auction without the bidding being held open for 30 days.

They can't do that. That's not the process.

The fact that there isn't enough time for them to complete the process that does exist to do this is not grounds for the Court to create a whole new process for them. It's grounds for the Court to handle it the way that Your Honor already has, by denying their motion to have the process done.

And that's all I've got. Thank you.

THE COURT: All right. Luke, it's your motion. I'll give you the final word if you want it. Or you may be talked out at this point.

MR. HOOPES: Just a quick comment on the 50 to 100,000.

THE COURT: Sure.

MR. HOOPES: That was intended to be a twist on the notice of sale that says normally a 5 percent down payment. I was intending for that to be the down payment from a bidder, such that there would be funds transferred, even if someone did not follow through.

That would be the deposit, not the minimum bid. So the minimum bid can be the homestead exemption, which I think we've established is 134,000 and I don't know if it's $750 or --

THE COURT: I can't remember.

I have to look at it every time.

MR. HOOPES: But what we've already established in a previous hearing. So we think that would be acceptable.

And again, as far as the procedures and going forward with this, we think that here, we've attempted to have this property sold.

We've tried to go through, and various things have delayed it. Various things have prevented this from going through, essentially none of which have actually been viable arguments from the debtors that they should not have the property sold, apart from running out the clock, and reaching the deadline, and then having it not be viable after the ten-year expiration.

And so we think that this is a validly owed debt, that the debtors should be -- that there should be valid enforcement for the debtors to pay.

And yet, throughout these proceedings, there have been appeals. There have been delays.

Sometimes, just things like hurricanes. Out of everybody's control. Nothing we can do about it.

But it's reached a point where this seems like the only viable way forward for equity to be carried out and Southern First Bank to receive any funds on their debt that is owed.

And so I think that it makes sense here, in a situation like this, given the extreme circumstances, for a sale to be ordered and procedures to be followed through to do their best to mitigate any potential issues that could harm the position of the judgment debtors, the Vilchecks, but still allow Southern First Bank to recover on what they're owed.

THE COURT: Okay. Look, I admire your tenacity, your imagination, your creativity with this.

I've got to say, let me think about it.

It is unfair when a debt goes unpaid. Equity court has brought equitable powers. I get that. But it does have to follow the law.

I'm not sure if what you're suggesting actually violates the law. It doesn't necessarily comply with what we generally consider to be the appropriate law in selling things.

But let me give it a thought and see what I can do. What is today? Friday. I'll

certainly let you all know something Monday, if not today.

Anything else for this record?

All right. You all have a great weekend. Thank you so much.

MR. RADEKER: Thank you. Take care, everybody.

MR. HOOPES: Have a good one.

(Whereupon, at 10:18 a.m., the proceeding was concluded.)

CERTIFICATE OF DEPOSITION OFFICER

I, ASHLEY MANINI, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

ASHLEY MANINI
Notary Public in and for the
State of South Carolina

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I, LAURA K. MILLER, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

LAURA K. MILLER

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ACTION COVER SHEET
2012CP0704253
Southern First Bank VS Kenneth J Vilcheck
Trena Patterson

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-07-4253

Southern First Bank, N.A., d/b/a Greenville First Bank, N.A.
PLAINTIFF(S)

Kenneth J. Vilcheck and Renee M. Vilcheck
DEFENDANT(S)

Submitted by: Paige Phillips Eckles	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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 :

2013 MAR 27

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)
Southern First Bank, N.A., d/b/a Greenville First Bank, N.A.	Kenneth J. Vilcheck and Renee M. Vilcheck	$391,284.46
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order: n/a

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.**

Circuit Court Judge | 3069 Judge Code | 3/27/13 Date

For Clerk of Court Office Use Only

This judgment was entered on the 27th day of March, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 9th day of April, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Rena Jeffcoat Starr
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS
Southern First Bank, N.A., d/b/a Greenville First Bank, N.A., Plaintiff, v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendants.	)	ORDER FOR JUDGMENT BY DEFAULT 2012-CP-07-4253

This matter is before the Court on Motion of plaintiff's attorney for judgment by default.

A. Defendants were served with the Summons and Complaint in this action on January 16, 2013, and as appears by the affidavit of plaintiff's counsel, defendant(s) has/have failed to answer, file responsive pleadings, or otherwise appear within the time provided. Defendant(s) is/are thus in default, and the plaintiff is entitled to the relief prayed for in the Complaint.

B. The amount of the debt owed to the plaintiff is verified in the Complaint. Therefore, there is no need for a damages hearing in this matter.

C. The promissory note calls for the payment of attorney's fees for plaintiff's attorney for the handling of the case.

D. An Affidavit of Attorney's Fees is attached to this Notice of Motion and Motion for Judgment by Default and for attorney's fees.

IT IS ORDERED that the plaintiff have judgment against the defendants, Kenneth J. Vilcheck and Renee M. Vilcheck, in the sum of $389,914.46 plus $1,000.00 for attorney's fees and $370.00 in costs for a total judgment of $391,284.46. This judgment shall accrue interest at the legal rate for judgments in South Carolina from the date of this Order.

IT IS SO ORDERED.

Judge,
Fourteenth Judicial Circuit

Beaufort County, SC

Date: 3/27/13

2013 MAR 27 AM 11:28

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS
Southern First Bank, N.A., d/b/a Greenville First Bank, N.A., Plaintiff, v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendants.	)	MOTION FOR JUDGMENT BY DEFAULT 2012-CP-07-4253

2013 MAR 27 AM 11:27

The plaintiff, by and through its undersigned attorney, hereby moves the Court, pursuant to South Carolina Rule of Civil Procedure 55, for the entry of an order holding the defendant(s) in default and granting judgment. The plaintiff hereby further requests that the Court award attorney's fees and costs to the plaintiff as set forth herein. Notice is hereby given to the defendant(s) pursuant to Rule 55(b)(3), SCRCP, that the Court may award attorney's fees and costs without further notice of hearing unless a written objection is filed with the Clerk of Court and a copy served upon the attorney for the plaintiff within ten (10) days of the service of this Motion, the date of service being as set forth in the attached Certificate of Service.

1. Defendants were served with the Summons and Complaint in this action on January 16, 2013 and as appears by the affidavit of plaintiff's counsel, defendants have failed to answer, file responsive pleadings, or otherwise appear within the time provided. Defendants are thus in default, and the plaintiff is entitled to the relief prayed for in the Complaint.
2. The amount of the debt owed to the plaintiff is verified in the Complaint. Therefore, there is no need for a damages hearing in this matter.
3. The promissory note calls for the payment of attorney's fees for plaintiff's attorney for the handling of the case.
4. An Affidavit of Attorney's Fees is attached to this Notice of Motion and Motion for Judgment by Default and for attorney's fees.

Therefore, the plaintiff requests that the Court enter an Order for Judgment by Default, including an award for attorney's fees to plaintiff's attorney for handling the case.

WE SO MOVE:
LeGrand Law Firm, LLC
Attorneys for the Plaintiff

By: _____
Paige Phillips Eckles

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS
Southern First Bank, N.A., d/b/a Greenville First Bank, N.A., Plaintiff, v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendants.	)	AFFIDAVIT OF NON-MILITARY SERVICE 2012-CP-07-4253

PERSONALLY appeared before me Paige Phillips Eckles of LeGrand Law Firm, LLC, Attorneys for the Plaintiff, who first being duly sworn, deposes and says:

She made an investigation to determine whether or not the defendants, Kenneth J. Vilcheck and Renee M. Vilcheck, are in military service of the United States of America. After such an investigation, she is informed and believes that the defendants are not in the military service; and this affidavit is given in connection with the Soldiers and Sailors Civil Relief Act of 1940, and any amendments thereof.

LeGRAND LAW FIRM, LLC
Attorneys for the Plaintiff

By: _____
Paige Phillips Eckles

SWORN TO before me this
28 day of March, 2013.

_____
Notary Public for South Carolina
My Commission Expires: 5-11-15

2013 MAR 27 AM 11:27

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS
Southern First Bank, N.A., d/b/a Greenville First Bank, N.A., Plaintiff, v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendants.	AFFIDAVIT OF DEFAULT 2012-CP-07-4253

PERSONALLY appeared before me, Paige Phillips Eckles, Attorney for Plaintiff, who, after being duly sworn, states that as appears by the Affidavits of Service of Pamela J. Jezewski the defendants, Kenneth J. Vilcheck and Renee M. Vilcheck, were served with the Summons and Complaint on January 16, 2013;

That the above named defendants, Kenneth J. Vilcheck and Renee M. Vilcheck, have not filed an answer, motion or notice of appearance within the time required by the Summons and Complaint in this action, and that the date for so answering, moving or otherwise appearing has expired and the defendants, Kenneth J. Vilcheck and Renee M. Vilcheck, are now in default.

LEGRAND LAW FIRM, LLC
Attorneys for the Plaintiff

By: _____
Paige Phillips Eckles

SWORN TO before me this
8 day of March, 2013

_____
Notary Public for South Carolina
My Commission Expires: 5-11-15

2013 MAR 27 AM 11:27

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS
Southern First Bank, N.A., d/b/a Greenville First Bank, N.A., Plaintiff, v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendants.	)	AFFIDAVIT OF ATTORNEY'S FEES 2012-CP-07-4253

I, Paige Phillips Eckles, attorney for the plaintiff, hereby state the following facts and move the Court for an award of attorney's fees in the above captioned case:

1. I represent the plaintiff, Southern First Bank, N.A., d/b/a Greenville First Bank, N.A.,, in this collection case.
2. The defendants, Kenneth J. Vilcheck and Renee M. Vilcheck, signed a Promissory Note in favor of the plaintiff on April 6, 2006. The Note provides that if the matter is turned over to an attorney for the collection of this debt, the defendant will pay all costs and expenses incurred, including reasonable attorney's fees equal to 15% of the outstanding principal and interest.
3. In the collection of this debt, I calculated the amount of arrearage owed to the defendant and sent a letter to the defendant demanding repayment of the amounts due under the loan.
4. I prepared and filed a Summons and Complaint. I arranged for service of process on the defendants.
5. I prepared and filed an Affidavit of Default and an Order for Judgment by Default.
6. I will pursue collection of this judgment by searching for assets, arranging for levy and execution, and through supplemental proceedings.
7. I believe that $1,000.00 is a reasonable amount for services performed in the course of this action.
8. The plaintiff has incurred $370.00 in court costs in this action.
9. Attached is a preliminary invoice showing billable time through March 8, 2013.

Paige Phillips Eckles

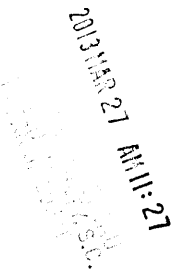
SWORN TO before me this 8 day of March, 2013.

Notary Public for South Carolina
My Commission Expires: 5-11-15

2013 MAR 27 AM 11:27

03/08/2013

LeGrand Law Firm, LLC
310 Mills Ave., Suite 103
Greenville, SC 29605
(864) 242-6461
Fax: (864) 235-0186
www.legrandlaw.com



* indicates work-in-process
Client #:
File #: 2012.354
As of Date: 03/08/2013
Last Billed 02/28/2013

Toni Nusz Whitten
Southern First Bank d/b/a
Greenville First Bank
P.O. Box 17465
Greenville SC 29606

RE: 1 Double Eagle Drive
Bluffton, SC 29910
Greenville First Bank v. Kenneth J.
Vilcheck and
Renee M. Vilcheck
#8019432

For Services Rendered From 11/30/2012 Through 03/08/2013

REGULAR ACCOUNT ACTIVITY

SERVICES RENDERED

	DATE	TKPR	CODE	DESCRIPTION OF SERVICES RENDERED	RATE	HOURS	AMOUNT
*	11/30/2012	JBC	P	Prepare collection data file; prepare draft Complaint and Affidavit re: debt	100.00	1.00	100.00
*	12/13/2012	JBC	WF	Work on file - prepare Summons and Civil Action Cover Sheet	100.00	.25	25.00
*	12/17/2012	PPE	R	Review file and revise complaint	150.00	.75	112.50
*	12/18/2012	JBC	WF	Work on file - copy and collate pleadings; prepare transmittal letter to Clerk of Court	100.00	.50	50.00
*	12/18/2012	PPE	R	Review and revise Complaint; conference with paralegal	150.00	1.00	150.00
*	01/08/2013	JBC	P	Prepare pleadings for service; prepare instructions for process server	100.00	.25	25.00
*	01/29/2013	JBC	WF	Work on file - prepare transmittal letter to Clerk of Court for filing Affidavits of Service	100.00	.25	25.00
*	03/08/2013	PPE	R	Review file and prepare Motion, Order, Affidavits, and Certificate of Service	150.00	1.50	225.00
				TOTAL SERVICES RENDERED:		5.50	$712.50

TIMEKEEPER SUMMARY:

JBC	- Jean B. Claycomb, LA	2.25 HRS @ $ 100.00/HR =		225.00
PPE	- Paige Phillips Eckles, AS	3.25 HRS @ $ 150.00/HR =		487.50
	Totals	5.50		$712.50

COSTS ADVANCED

DATE	CODE	DESCRIPTION	RATE	UNITS	AMOUNT
12/13/2012	FF	Filing fee for Summons and Complaint	150.000	1.00	150.00
12/18/2012	C	Cost of Fed Ex to Beaufort County Clerk of Court	15.000	1.00	15.00
01/08/2013	SOP	Service of Process	150.000	1.00	150.00
02/01/2013	SOP	Service of Process / additional charge for private investigator	15.000	1.00	15.00
02/08/2013	SOP	Service of Process - additional charge for service of process	15.000	1.00	15.00
02/22/2013	C	Cost of filing Motion for Order by Default	25.000	1.00	25.00
		TOTAL COSTS ADVANCED:			$370.00

PAYMENTS

DATE	DESCRIPTION	AMOUNT
01/24/2013	Payment Received - Thank You	165.00
	TOTAL PAYMENTS RECEIVED:	$165.00

PREVIOUS BALANCE:	0.00
CURRENT CHARGES:	1,082.50
LESS PAYMENTS:	165.00
TOTAL AMOUNT DUE:	$917.50

ACCOUNT AGING DETAIL:

Current	Over 30	Over 60	Over 90	Over 120	Over 150	Over 180
$1,082.50	0.00	0.00	0.00	0.00	0.00	0.00

Thank you for allowing us to serve you.
Payment is due upon receipt.

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS
Southern First Bank, N.A., d/b/a Greenville First Bank, N.A., Plaintiff, v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendants.	)	CERTIFICATE OF SERVICE BY MAIL 2012-CP-07-4253

I, Paige Phillips Eckles, counsel for the plaintiff, Southern First Bank, N.A., d/b/a Greenville First Bank, N.A., do hereby certify that I have this day served the Affidavit of Default, Affidavit of Non-Military Service, Notice of Motion and Motion for Judgment by Default, Affidavit of Attorney's Fees, and Order for Judgment by Default upon the defendants, by depositing a copy thereof in the United States mail, postage prepaid, and addressed as follows:

Kenneth J. Vilcheck and Renee M. Vilcheck
1 Double Eagle Drive
Beaufort, SC 29910

Date: March 8, 2013

LeGrand Law Firm, LLC
Attorneys for the Plaintiff

BY: _____

Paige Phillips Eckles
310 Mills Ave., Suite 103
Greenville, SC 29605
(864) 242-6461

SWORN TO before me this
8 day of March, 2013

_____
Notary Public for South Carolina
My Commission Expires: 5-11-15

2013 MAR 27 AM 11:27

LEGRAND LAW FIRM
CHARLES D. LEGRAND
PAIGE PHILLIPS ECKLES
310 MILLS AVE. SUITE 103
GREENVILLE, SC 29605
(864) 242-6461; FAX (864) 235-0186
WWW.LEGRANDLAW.COM

FILED
2013 MAR 12 PM 3:34
CLERK OF COURT
BEAUFORT, S.C.

March 8, 2013

Jerri Ann Roseneau
Clerk of Court
P. O. Drawer 1128
Beaufort, SC 29901

RE: Southern First Bank N.A., dba Greenville First Bank, N.A. v. Vilcheck

Dear Ms. Roseneau:

Enclosed please find the original and one copy of the following documents for filing in your office: Affidavit of Default, Affidavit of Non-Military Service, Motion for Judgment by Default, Affidavit of Attorney's Fees, Order for Judgment by Default, Certificate of Service by Mail, Form 4, and Motion Cover Sheet Please return the clocked copies in the envelope I have provided.

Thank you for your attention to this.

Yours truly,

Jean Claycomb
Legal Assistant

/jbc
Enclosures

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Beaufort) Fourteenth JUDICIAL CIRCUIT
)
) CASE NO.: 2012-CP-07-4253
)
Southern First Bank, N.A., d/b/a Greenville First Bank, N.A.) **MOTION AND ORDER INFORMATION**
Plaintiff,)
vs.) **FORM AND COVERSHEET**
)
Kenneth J. Vilcheck and Renee M. Vilcheck)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Paige Phillips Eckles, Bar No. 073805	_____, Bar No. _____
Address:	Address:
310 Mills Ave., #103, Greenville, SC 29605	_____
Phone: 864.242.6461Fax _____	Phone: _____ Fax_____
E-mail: _____Other: _____	E-mail: _____Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — 3-8-13 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ _____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

2013 MAR 27 AM 11:27

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

ELECTRONICALLY FILED - 2021 Mar 05 2:27 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Petitioner, vs. Kenneth J. Vilcheck and Renee M. Vilcheck, Respondents.	**IN THE COURT OF COMMON PLEAS** **THE FOURTEENTH JUDICIAL CIRCUIT** County C/A No.: 2012-CP-07-04235 **PETITION FOR SUPPLEMENTAL PROCEEDINGS**

TO: THE HONORABLE MARVIN H. DUKES, III, MASTER IN EQUITY FOR BEAUFORT COUNTY

Petitioner, Southern First Bank, through its undersigned counsel, sets forth and alleges as follows:

1. Petitioner was granted a Judgment (bearing Case No: 2012-CP-07-04235) in Beaufort County on March 27, 2013 entered against the above captioned Respondents, Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter referred to as "Respondent"), in the principal amount of $391,284.46, plus post judgment interest at the legal rate.
2. An Execution was signed by the Clerk of Court of Beaufort County and returned *Nulla Bona* by the Beaufort County Sheriff's Office, filed with the Clerk of Court of Beaufort County on February 22, 2021.
3. There is still due and owed on the Judgment the amount of Three Hundred Ninety-One Thousand, Two Hundred Eighty-four Dollars and Forty-Six Cents ($391,284.46), plus reasonable attorneys' fees, costs of collection, and interest at the legal rate until paid in full.
4. Petitioner is informed and believes that Respondent owns nonexempt assets, either titled individually or in the name of a business association in which Respondent holds an interest, which the Respondent unjustly refuses to apply toward satisfaction of the Judgment.
5. Petitioner is informed and believes the Respondent holds membership interest in the following business associations:
    a) GCMK, LLC

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b) RMV, LLC
c) RMV HAIG, LLC
d) Vilcheck Group, LLC
e) The Vilcheck Team, LLC
f) Centillion Partners, LLC
g) Bald Eagle 2, LLC

6. Petitioner is informed and believes that the Respondent owns the following motor vehicles:
   a) 2016 Mercedes GL
   b) 2016 Volvo S60
   c) 2014 Toyota 4Runner

7. Petitioner is informed and believes that for there to be a meaningful examination of Respondent for the purposes enumerated above, that Respondent the following records **within fifteen (15) days from the date of service hereof:**
   1) Current Checkbooks and/or bank or other financial institution accounts in the name of said Respondent or to which Respondent has signatory authority, including but not limited to, checking, IRA's, Roth IRA's, 401(k), money market, savings accounts, credit accounts, along with bank statements and check images on said accounts from January 1, 2017 to the present day.
   2) Detailed statements of accounts received belonging to Respondent, whether or not the same may be pledged or hypothecated.
   3) Any certificates of deposit, savings account passbooks, stock certificates in any publicly held or closely held corporations as well as any bonds owned by Respondent either separately or jointly held with others.
   4) Any balance sheets, profit and loss statements or financial statements, audited or unaudited, prepared and issued by or for Respondent since January 1, 2017.
   5) Any and all documents submitted to any bank or financial institution, or any other person or entity, by the Respondent, for any loan or advance, in any capacity (borrower, guarantor, or surety) for the past three years.
   6) Any and all documents concerning any interest in, or claimed title to, any certificates of deposit, letters of credit, money orders, cashier's checks, traveler's

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checks, bank deposits or escrow funds owned or held by the Respondent in the past three years.

7) Any and all documents related to any account in which any of the Respondent's earnings or other income has been deposited into in the past three years, whether the Respondent continued to have an interest in it or not.

8) Any and all documents evidencing in any application signed by the Respondent or on behalf of the Respondent or the Respondent's spouse and/or children, to open a foreign or offshore financial account in the name of the Respondent or any other entity.

9) Copies of any Individual Retirement Account or 401(k)s that were "rolled over".

10) Certificates of title to any vehicles, (including, but not limited to, automobiles, tractors, trucks, motorcycles, ATV's, four-wheelers, golf carts, trailers, or go-carts), mobile homes, water crafts (including motors therefore), agricultural equipment, aircrafts, or construction equipment owned by the Respondent either separately or jointly; provided that if there exists a lien on any of said vehicle, mobile homes, or water crafts, then in lieu of certificates of title, a written statement detailing a description of each item including year, make, model, serial number, present value, and the amount of any lien therein shall be furnished.

11) Any Deeds, Mortgages, Notes, Contracts of Sale, and Settlement or Closing Statements relating to any real estate transactions involving Respondent since January 1, 2011 or relating to real estate currently owned by Respondent, either individually or jointly with others.

12) Any and all documents that refer to, reflect, or relate to encumbrances on any real property owned by the Respondent.

13) Any and all documents evidencing ownership of real property in which the Respondent currently enjoys a direct or indirect beneficial interest.

14) Any and all checks, receipts, deeds or other evidence of the sale or transfer of any real property in which the Respondent has a legal or equitable ownership interest in, within the past three years.

15) Any and all lease agreements for real property in which the Respondent is the lessor, landlord, or has a beneficial interest in.

16) Any and all lease agreements for real property in which the Respondent is the lessee.

17) Any and all documents that evidence the Respondent's name being on any real property tax records, as payor or trustee for the past three years.

18) Any and all documents evidencing any time-shares of which use the Respondent enjoys.

19) Copies of any appraisals or other forms of valuation for any property that the Respondent has an interest in or had an interest within the past three years.

20) Promissory Notes or Mortgages the Respondent signed during the past three years.

21) Copies of all deeds/mortgages to which the Respondent holds property as tenants by the entireties, tenants in common or joint tenants, or which the Respondent has any interest in.

22) Copies of any life insurance policies owned by Respondent, along with any information pertaining to cash values or any loans outstanding on any of said policies.

23) A written inventory or any items of jewelry, antiques, guns, paintings, items with fair market value of $1,000.00 or more, or art (collectively "Personal Property") owned by Respondent including a description of each item of Personal Property and its most recent appraised valuation.

24) Any and all note receivables, pledges, or security interest in favor of the Respondent now, and in the past three years.

25) Copies of all homeowner's insurance policies and any other insurance policies or riders that have insured any property that the Respondent own or has the benefit of us of, for the past three years.

26) List of household furnishings and fixtures that have been purchased within the last three years that had a purchase price of $999.00 or more.

27) Copies of all dock slips, deeds, leases, licenses, or other documentation evidencing the right to dock any watercraft, whether the Respondent has a legal or beneficial interest in.

28) Any and all documents that refer to or reflect any livestock owned by the Respondent within the past three years.

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29) List and valuation of all collectibles (i.e. stamps, coins, sports cards, etc.) that the Respondent now owns or has owned within the past three years.

30) Any and all documents evidencing any interest the Respondent may have in any patents, trademarks, copyrights, franchises, royalties of any kind, oil and gas rights, timber rights, or mineral rights.

31) Any leases of realty or personally in favor of Respondent either individually or jointly with others.

32) All documents that identify the name and addresses of any person or entity that has employed the Respondent within the past three years.

33) All documents that identify any person or entity that the Respondent has acted as an independent contractor for the past three years.

34) All documents referring in any way, directly or indirectly, to any and all businesses in which the Respondent is a stockholder, partner, member, officer, director, owner, or registered agent and a description of Respondent's interest in such businesses.

35) Any and all corporate charters, minutes of stockholder meetings, resolutions, or recorded evidence of any kind relating to the affairs of any corporation or business entity owned by the Respondent, or any subsidiary or other entity in which such corporation or business entity holds an ownership interest during the past three years.

36) Lists of all customers, clients, etc. of any kind with which the corporations or other business entities owned by the Respondent doing business or has done business during the past three years.

37) All documents referring, relating, or pertaining to any records of salaries, commissions, bonuses, income from employment, wages, pay stubs, dividends, royalties, allowances, expenses, or other sums of money paid to the Respondent within the past three years.

38) Any and all employment contracts that the Respondent have had in the past three years.

39) Any and all documents and records of stocks, bonds, mutual funds, debentures, certificates of deposit or any other investment vehicle owned or held for the benefit of the Respondent.

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40) Any and all documents relating to retirement accounts or annuities, whether individual or employer sponsored, that are owned by the Respondent, or held for the benefit of the Respondent.

41) Any and all rent rolls for all properties in which the Respondent has had an ownership interest in for the past three years.

42) Copies of all 1099'D's or 1099'I's issued to the Respondent within the past three years.

43) Any and all documents referring to any stock options or profit-sharing plans held by the Respondent or for the benefit of the Respondent.

44) All documents evidencing any trusts or amendments to such trusts in which the Respondent is a grantor, settlor, trustee, or beneficiary.

45) Any and all books, recorded documents, or writings concerning the financial status of Respondent not herein before specified.

46) Any tax receipts, tax returns, tax supplement forms, and any and all other documents, forms, or letters filed with the United States Internal Revenue Service, or the South Carolina Tax Commission, including all attachments, schedules, W-2's, K-1's, 1099 and 1098 forms, or the tax authority of any other state within the last three years.

47) All documents evidencing any and all trust or amendments to trust that the Respondent has directly or indirectly contributed any assets to within the past three years.

48) Copies of all pre and post-nuptial agreements, to include the list of assets and liabilities to be held separately.

49) Copies of all separate property agreements, to include the list of assets and liabilities to be held separate.

50) Copies of any Wills including all amendments in which the Respondent is or was named as beneficiary.

51) Copies of any and all credit card statements, for all cards in which the Respondent is an authorized user, for the past three years.

52) All documents referring or reflecting the name and address of any storage facility or mini warehouse to which the Respondent has access.

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53) Copies of any and all professional licenses that are held by the Respondent.

54) Copies of any and all divorce decrees and any affidavits submitted in those proceedings.

55) All Trust documents related to any domestic or foreign Trust agreement where the debtor is a settlor, trustee, and/or beneficiary.

WHEREFORE, Petitioner prays this Court for the following relief:

A. The Court issue it's Orders and Rules to Show Cause directing the Respondent to:

(1) Appear for the purpose of being examined under oath, concerning the assets and property of the Respondent, before the Honorable Marvin H. Dukes, III, Master in Equity for Beaufort County.

(2) Provide Petitioner's counsel, Luke R. Hoopes, located at 200 N Main Street, Suite 301, Greenville, South Carolina 29601, with the information listed in paragraph 7, *supra*, within fifteen (15) days of the date of service hereof;

B. The Court appoint a receiver for the assets of Respondent for the purposes of applying such assets to the satisfaction of Petitioner's Judgment;

C. The Court issue its Order enjoining Respondent from transferring, selling, alienating, liquidating, or otherwise encumbering their distributional interest in **all business associations, including but not limited to those listed in Paragraph 5, *supra***;

D. The Court issue its Order enjoining the Respondent from transferring, spending, alienating, loaning, liquidating, or otherwise encumbering **any of their non-exempt personal property, including but not limited to the motor vehicles listed in Paragraph 6, *supra***;

E. The Court award Petitioner's attorney fees, costs for these proceedings, and compensation for any receiver the Court appoints; and

F. For such other and further relief as the Court may deem just and proper.

[SIGNATURE PAGE TO FOLLOW]

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Respectfully Submitted by:

s/Luke R. Hoopes
SC Bar No: 103644
Angell Molony, LLC
200 N Main St., Ste. 301
Greenville, SC 29601
(P) 864.248.4708
(F) 864.752.1422
Luke@AngellMolony.com

March 5, 2021

Greenville County, South Carolina

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ELECTRONICALLY FILED - 2022 May 03 11:04 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **THE FOURTEENTH JUDICIAL CIRCUIT**
Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Petitioner, vs. Kenneth J. Vilcheck and Renee M. Vilcheck, Respondents.	County C/A No.: 2012-CP-07-04253 **PETITION FOR SUPPLEMENTAL PROCEEDINGS**

TO: THE HONORABLE MARVIN H. DUKES, III, MASTER IN EQUITY FOR BEAUFORT COUNTY

Petitioner, Southern First Bank, through its undersigned counsel, sets forth and alleges as follows:

1. Petitioner was granted a Judgment (bearing Case No: 2012-CP-07-04235) in Beaufort County on March 27, 2013 entered against the above captioned Respondents, Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter referred to as "Respondent"), in the principal amount of $391,284.46, plus post judgment interest at the legal rate.
2. An Execution was signed by the Clerk of Court of Beaufort County and returned *Nulla Bona* by the Beaufort County Sheriff's Office, filed with the Clerk of Court of Beaufort County on February 22, 2021.
3. There is still due and owed on the Judgment the amount of Three Hundred Ninety-One Thousand, Two Hundred Eighty-four Dollars and Forty-Six Cents ($391,284.46), plus reasonable attorneys' fees, costs of collection, and interest at the legal rate until paid in full.
4. Petitioner is informed and believes that Respondent owns nonexempt assets, either titled individually or in the name of a business association in which Respondent holds an interest, which the Respondent unjustly refuses to apply toward satisfaction of the Judgment.
5. Petitioner is informed and believes the Respondent holds membership interest in the following business associations:

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a) GCMK, LLC
b) RMV, LLC
c) RMV HAIG, LLC
d) Vilcheck Group, LLC
e) The Vilcheck Team, LLC
f) Centillion Partners, LLC
g) Bald Eagle 2, LLC

6. Petitioner is informed and believes that the Respondent owns the following motor vehicles:

a) 2016 Mercedes GL
b) 2016 Volvo S60
c) 2014 Toyota 4Runner

7. Petitioner is informed and believes that for there to be a meaningful examination of Respondent for the purposes enumerated above, that Respondent the following records **within fifteen (15) days from the date of service hereof:**

1) Current Checkbooks and/or bank or other financial institution accounts in the name of said Respondent or to which Respondent has signatory authority, including but not limited to, checking, IRA's, Roth IRA's, 401(k), money market, savings accounts, credit accounts, along with bank statements and check images on said accounts from January 1, 2017 to the present day.

2) Detailed statements of accounts received belonging to Respondent, whether or not the same may be pledged or hypothecated.

3) Any certificates of deposit, savings account passbooks, stock certificates in any publicly held or closely held corporations as well as any bonds owned by Respondent either separately or jointly held with others.

4) Any balance sheets, profit and loss statements or financial statements, audited or unaudited, prepared and issued by or for Respondent since January 1, 2013.

5) Any and all documents submitted to any bank or financial institution, or any other person or entity, by the Respondent, for any loan or advance, in any capacity (borrower, guarantor, or surety) for the past three years.

6) Any and all documents concerning any interest in, or claimed title to, any certificates of deposit, letters of credit, money orders, cashier's checks, traveler's

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checks, bank deposits or escrow funds owned or held by the Respondent in the past three years.

7) Any and all documents related to any account in which any of the Respondent's earnings or other income has been deposited into in the past three years, whether the Respondent continued to have an interest in it or not.

8) Any and all documents evidencing in any application signed by the Respondent or on behalf of the Respondent or the Respondent's spouse and/or children, to open a foreign or offshore financial account in the name of the Respondent or any other entity.

9) Copies of any Individual Retirement Account or 401(k)s that were "rolled over".

10) Certificates of title to any vehicles, (including, but not limited to, automobiles, tractors, trucks, motorcycles, ATV's, four-wheelers, golf carts, trailers, or go-carts), mobile homes, water crafts (including motors therefore), agricultural equipment, aircrafts, or construction equipment owned by the Respondent either separately or jointly; provided that if there exists a lien on any of said vehicle, mobile homes, or water crafts, then in lieu of certificates of title, a written statement detailing a description of each item including year, make, model, serial number, present value, and the amount of any lien therein shall be furnished.

11) Any Deeds, Mortgages, Notes, Contracts of Sale, and Settlement or Closing Statements relating to any real estate transactions involving Respondent since January 1, 2012 or relating to real estate currently owned by Respondent, either individually or jointly with others.

12) Any and all documents that refer to, reflect, or relate to encumbrances on any real property owned by the Respondent.

13) Any and all documents evidencing ownership of real property in which the Respondent currently enjoys a direct or indirect beneficial interest.

14) Any and all checks, receipts, deeds or other evidence of the sale or transfer of any real property in which the Respondent has a legal or equitable ownership interest in, within the past three years.

15) Any and all lease agreements for real property in which the Respondent is the lessor, landlord, or has a beneficial interest in.

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16) Any and all lease agreements for real property in which the Respondent is the lessee.

17) Any and all documents that evidence the Respondent's name being on any real property tax records, as payor or trustee for the past three years.

18) Any and all documents evidencing any time-shares of which use the Respondent enjoys.

19) Copies of any appraisals or other forms of valuation for any property that the Respondent has an interest in or had an interest within the past three years.

20) Promissory Notes or Mortgages the Respondent signed during the past three years.

21) Copies of all deeds/mortgages to which the Respondent holds property as tenants by the entireties, tenants in common or joint tenants, or which the Respondent has any interest in.

22) Copies of any life insurance policies owned by Respondent, along with any information pertaining to cash values or any loans outstanding on any of said policies.

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33) All documents that identify any person or entity that the Respondent has acted as an independent contractor for the past three years.

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35) Any and all corporate charters, minutes of stockholder meetings, resolutions, or recorded evidence of any kind relating to the affairs of any corporation or business entity owned by the Respondent, or any subsidiary or other entity in which such corporation or business entity holds an ownership interest during the past three years.

36) Lists of all customers, clients, etc. of any kind with which the corporations or other business entities owned by the Respondent doing business or has done business during the past three years.

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38) Any and all employment contracts that the Respondent have had in the past three years.

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44) All documents evidencing any trusts or amendments to such trusts in which the Respondent is a grantor, settlor, trustee, or beneficiary.

45) Any and all books, recorded documents, or writings concerning the financial status of Respondent not herein before specified.

46) Any tax receipts, tax returns, tax supplement forms, and any and all other documents, forms, or letters filed with the United States Internal Revenue Service, or the South Carolina Tax Commission, including all attachments, schedules, W-2's, K-1's, 1099 and 1098 forms, or the tax authority of any other state within the last three years.

47) All documents evidencing any and all trust or amendments to trust that the Respondent has directly or indirectly contributed any assets to within the past three years.

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49) Copies of all separate property agreements, to include the list of assets and liabilities to be held separate.

50) Copies of any Wills including all amendments in which the Respondent is or was named as beneficiary.

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WHEREFORE, Petitioner prays this Court for the following relief:

A. The Court issue it's Orders and Rules to Show Cause directing the Respondent to:

(1) Appear for the purpose of being examined under oath, concerning the assets and property of the Respondent, before the Honorable Marvin H. Dukes, III, Master in Equity for Beaufort County.

(2) Provide Petitioner's counsel, Luke R. Hoopes, located at 18 E. North Street, Suite 302, Greenville, South Carolina 29601, with the information listed in paragraph 7, *supra*, within fifteen (15) days of the date of service hereof;

B. The Court appoint a receiver for the assets of Respondent for the purposes of applying such assets to the satisfaction of Petitioner's Judgment;

C. The Court issue its Order enjoining Respondent from transferring, selling, alienating, liquidating, or otherwise encumbering their distributional interest in **all business associations, including but not limited to those listed in Paragraph 5, *supra***;

D. The Court issue its Order enjoining the Respondent from transferring, spending, alienating, loaning, liquidating, or otherwise encumbering **any of their non-exempt personal property, including but not limited to the motor vehicles listed in Paragraph 6, *supra***;

E. The Court award Petitioner's attorney fees, costs for these proceedings, and compensation for any receiver the Court appoints; and

F. For such other and further relief as the Court may deem just and proper.

[SIGNATURE PAGE TO FOLLOW]

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Respectfully Submitted by:

s/Luke R. Hoopes
SC Bar No: 103644
Angell Molony, LLC
18 E. North St., Ste. 302
Greenville, SC 29601
P: 864.248.4708
F: 864.752.1422
LUKE@ANGELLMOLONY.COM

April 28, 2022

Greenville County, South Carolina

Drew Radeker

From: Drew Radeker
Sent: Tuesday, January 31, 2023 2:39 PM
To: 'Dukes, Marvin'
Cc: 'Grey, Jacqueline'; 'Browne, Jared'; 'McLeod, Heather'; 'Luke Hoopes'; 'Melissa De Los Santos'; 'Aaron Angell'; Sarah Larabee; Rhonda Schaub; 'robert.sneed@usdoj.gov'; 'kiera.dillon@dor.sc.gov'; 'Kathy Romero'; 'Jim Koutrakos'
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Judge Dukes:

This will confirm that Your Honor has set a hearing for 9:30 Friday morning (February 3) via WebEx on all outstanding motions, including the plaintiff's motion for a sale of real property.

As noted during our phone call right now, we believe that the appeal in this case has stayed these motions and that this court at present lacks jurisdiction to hold this hearing.

Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
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From: Drew Radeker
Sent: Monday, January 30, 2023 5:21 PM
To: Dukes, Marvin <mdukes@bcgov.net>
Cc: Grey, Jacqueline <jgrey@bcgov.net>; Browne, Jared <jbrowne@bcgov.net>; McLeod, Heather <hmcleod@bcgov.net>; Luke Hoopes <luke@angellmolony.com>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; Jim Koutrakos <jimkoutrakos@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Judge Dukes:

The order joining parties is on appeal, and so the automatic appellate stay has stayed the question of whether the added parties are properly before the court. The added parties would need to be properly before the court in order for the relief sought in the plaintiff's motion – a sale that would end those added parties' interests in the property – to be possible. With the addition of the parties being subject of the appeal, proceedings that depend upon them having been added cannot go forward.

The appellate stay is in effect, and the motion cannot go forward right now.

Thank you.

Drew Radeker

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From: Luke Hoopes <luke@angellmolony.com>
Sent: Wednesday, January 25, 2023 10:16 AM
To: McLeod, Heather <hmcleod@bcgov.net>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Grey, Jacqueline <jgrey@bcgov.net>; Dukes, Marvin <mdukes@bcgov.net>; Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; Jim Koutrakos <jimkoutrakos@callisontighe.com>
Subject: Re: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Good morning, Judge Dukes:

Following up on the status conference held last Thursday (January 19, 2023), we are confident that the appeal of the denial of the defendants' Rule 60(b) motion does not stay these proceedings, and neither does the appeal of your Order to Join. Because of this, you have jurisdiction to hear the matters and we may proceed with a hearing on the motion to sell filed back in October.

The first issue the court seemed concerned about was whether the appeal of the denial of Defendants' rule 60(b) motion automatically stays the proceedings under SCACR 241. There is a 2007 SC Supreme Court ruling that directly makes clear that appeals of denials of Rule 60(b) motions do not stay proceedings: "An appeal from a 60(b) denial does not stay the original judgment." Stearns Bank v. Glenwood Falls, 653 S.E.2d 274, 375 S.C. 423 (S.C. 2007). The decision goes on to state that "filing a Rule 60 (b) motion 'does not affect the finality of a judgment or suspend its operation' Rule 60(b). If the debtor wishes to stay enforcement of the judgment pending the trial court's disposition of the debtor's rule 60(b) motion, the burden is on it to make the motion under Rule 62(b), SCRCP". This clears up that issue, so it does not prevent our client from proceeding in the execution and enforcement of its money judgment.

The other issue is whether or not the appeal of the Order to Join stays the proceedings. We maintain that the matter is not currently stayed as the enforcement of the money judgment is not automatically stayed. If it is stayed under SCACR 241 (old 225), we argue that it should not be pursuant to other reasoning in Stearns Bank v. Glenwood Falls, which says:

> “Moreover, when a debtor appeals the denial of its 60(b) motion, Rule 225, SCACR [now Rule 241, SCACR], which governs stays on appeal, comes into play. The general rule is that an appeal acts as an automatic stay of the relief granted below, subject to certain exceptions. Id. Rule 60(b) denials are not subject to an exception, nor is there any logical reason why they would be. The denial of such a motion grants no relief: that "no relief" is automatically stayed leaves the parties in the exact position they were in before the 60(b) motion and appeal, that is, the original judgment is unaffected. Accordingly, absent the grant of some extraordinary relief to the debtor by the appellate court during the pendency of such an appeal, the creditor is entitled to enforce its judgment.”

Stearns Bank v. Glenwood Falls, 653 S.E.2d 274, 375 S.C. 423 (S.C. 2007)

Here, the denials of the Order to Join and subsequent motion to reconsider are similar to those of the Rule 60(b), in that the appeal of the denial of the 60(b) motion and the granting of an order to join parties similarly provide no relief and leave the original judgment unaffected. The biggest difference is that with the denial of a 60(b) motion “absent the grant of some extraordinary relief to the debtor by the appellate court during the pendency of such an appeal, the creditor is entitled to enforce its judgment,” while in this circumstance allowing the appeal of joining parties the simple act of automatically staying proceedings grants extraordinary relief to the debtor from the appellate court, and the creditor is not entitled to enforce its judgment. The “extraordinary relief” is the staying of proceedings until the judgment expires, wiping the debt that is owed. By staying these proceedings, the debtors are prevailing, not on the merits, but rather by abuse of appellate proceedings as their weapon.

Furthermore, in Raby Const., LLP v, Orr., the court made it clear that when there are specific orders stayed on appeal, they do not stay the execution of the underlying order of judgment:

> “In other words, because the only appeal pending at the time the trial court awarded additional attorneys' fees was the denial of the Rule 60(b) motion, that is the only order that would be automatically stayed; the general rule does not authorize a stay of the underlying order of judgment or order of foreclosure. Cf. In re Zapata Gulf Marine Corp., 941 F.2d 293, 295 (5th Cir.1991) (where the court, applying analogous federal rules, reversed the district court's stay of execution of the underlying judgment where the only appeal pending was the denial of the Rule 60(b) motion).”

Raby Const., LLP v. Orr, 358 S.C. 10, 594 S.E.2d 478 (S.C. 2004)

Here, the executing on the judgment by applying the debtors’ real property to it should not be stayed as the execution of the Judgment is not stayed. This leaves the court the jurisdiction to order the property be sold to be applied to the execution of the Judgment.

This defendant's filing of appeals has quite plainly and clearly been the intent of the debtors for over 23 month since the execution was filed. The Debtors refused to attend depositions after being served with notice. When the foreclosure action was initiated, the debtors answered with a demand for a jury trial, which was rejected. When the matter was referred to the Master, debtors moved for the court to reconsider the decisions and file an appeal once that is denied. Once the appeal was initiated, debtors filed for extensions until the appellate court refused to grant any more. In the supplemental proceedings, the debtors refused to provide documents ordered by the court, and avoided appealing the judgment directly, but instead filed other motions skirting around the issue until you, Judge Dukes, forced a hearing on the matter to get to the core of the issue. After their Rule 60 motion was denied, and the order to join parties was denied, they filed motions to reconsider and then an appeal, which they requested the appellate court consolidate with their other appeal such that they could have another practical extension after the appellate court refused to grant more. The point being, that all

this has been a clear and deliberate attempt to use the appellate process as a weapon to kill the judgment, when the debtors clearly owe the debt and are capable of paying.

Again, we state that the appeal does not stay these proceedings. Moreover, the staying of any proceedings relative to the enforcement of the judgment is the duty of the defendant to seek through petition to this court and to rest on the argument of an "automatic stay" is simply unlawful.

Through all this, if the court would prefer, the funds of the sale of the property can be deposited with the court, pursuant to SCRCP 67, to wait to be distributed until the appeals are resolved.

Thank you,

Luke R. Hoopes
Judgment Attorney
Angell Molony, LLC
18 E. North Street, Suite 302
Greenville, SC 29601
P: 864.248.4708
F: 864.752.1422
www.AngellMolony.com

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On Thu, Jan 19, 2023 at 2:06 PM McLeod, Heather <hmcleod@bcgov.net> wrote:

> Wonderful, thank you all. We will use the same call-in info that we were going for the 2:00 p.m. conference call but I have provided below for your convenience.

Call your dial-in number: **(202) 926-1130**

Enter the access code: **577627#**

Attention:

We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.

Please contact us immediately if you are:

1. **Waiting on a ruling and it has been more than 30 days.**
2. **Ready to schedule a Trial date.**
3. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

P. (843) 255-5710

F. (843) 255-9505

hmcleod@bcgov.net

Beaufort County Courthouse

Post Office Drawer 1228

Beaufort, SC 29901

Beaufort County Courthouse

102 Ribaut Road, 2nd Floor

(across the hall from the Clerk of Court)

Beaufort, SC 29902

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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, January 19, 2023 2:04 PM
To: Grey, Jacqueline <jgrey@bcgov.net>; Dukes, Marvin <mdukes@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

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That's fine with me. Luke Hoopes, Jim Koutrakos, and Robert Sneed were on the line with me, and they say it's fine with them, too.

Thanks.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
Facsimile: (803) 779-6700
www.harrisonfirm.com

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From: Grey, Jacqueline <jgrey@bcgov.net>
Sent: Thursday, January 19, 2023 2:02 PM
To: Drew Radeker <Drew@harrisonfirm.com>; Dukes, Marvin <mdukes@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

To all,

Just to let you all know the judge is running a little behind. Would you all be ok with doing this conference call at 3pm?

Attention:

We no longer have a Court Reporter so you are responsible for bringing your own. If there is live testimony at the hearing, you are REQUIRED to bring your own Court Reporter to this hearing. Failure to do so will result in the cancellation and rescheduling of the hearing.

Jacqueline Grey
Admin Tech III

Foreclosure Clerk
Hon. Marvin H. Dukes, III
Beaufort County Master In Equity
And Special Circuit Court Judge

P. (843) 255-5713
F. (843) 255-9505
jgrey@bcgov.net

Beaufort County Courthouse
102 Ribaut Rd., 2nd Floor, Room 212
Beaufort, SC 29902
Post Office Drawer 1228
Beaufort, SC 29901

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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, January 19, 2023 1:52 PM
To: Dukes, Marvin <mdukes@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

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Judge Dukes:

I write to note some case law about the effect of an appeal. The Court of Appeals, discussing the effect of an appeal (there, in a family court case), noted the following:

> When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. If a stay exists, either automatically under Rule 241(a) or by supersedeas under Rule 241(c), the appealed order may not be carried out or enforced during the pendency of the appeal. This is the purpose of a stay under Rule 241—to determine whether the appealed *order* may be carried out or enforced—not to determine whether the *action* may proceed in the lower court while the appeal is pending.

> The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. The rule provides: "Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal...." Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal. The rule states: "Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal." Rule 205, SCACR; see also Rule 241(a), SCACR ("The lower court ... retains jurisdiction over matters not affected by the appeal...."). Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court's power to proceed with the action and address matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a "matter[ ] affected by the appeal" under Rules 205 and 241(a).

Tillman v. Oakes, 398 S.C. 245, 254-55, 728 S.E.2d 45, 50-51 (Ct. App. 2012) (emphasis in original).

The Supreme Court has observed that "[t]he lower court may not act or issue orders that affect an issue on appeal." Arnal v. Fraser, 371 S.C. 512, 641 S.E.2d 419, 422 (2007).

Thank you. I look forward to speaking with you in a few minutes.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
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From: Drew Radeker
Sent: Wednesday, January 18, 2023 11:47 AM

To: McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Thank you, Heather. I have it on the calendar.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
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From: McLeod, Heather <hmcleod@bcgov.net>
Sent: Wednesday, January 18, 2023 11:24 AM
To: Jim Koutrakos <jimkoutrakos@callisontighe.com>; Drew Radeker <Drew@harrisonfirm.com>; Luke Hoopes <luke@angellmolony.com>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing
Importance: High

Good Morning:
I am scheduling the status conference call for January 19th, 2023 at 2:00 p.m. Please mark your calendars, as this is the only notice you will receive from the Court. We will use the below call-in info for the conference call.

Call your dial-in number: **(202) 926-1130**

Enter the access code: **577627#**

Attention:

We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.

Please contact us immediately if you are:

4. **Waiting on a ruling and it has been more than 30 days.**
5. **Ready to schedule a Trial date.**
6. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

P. (843) 255-5710

F. (843) 255-9505

hmcleod@bcgov.net

Beaufort County Courthouse

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Beaufort, SC 29901

Beaufort County Courthouse

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Beaufort, SC 29902

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From: Jim Koutrakos <jimkoutrakos@callisontighe.com>
Sent: Tuesday, January 17, 2023 2:44 PM
To: Drew Radeker <Drew@harrisonfirm.com>; Luke Hoopes <luke@angellmolony.com>; McLeod, Heather <hmcleod@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

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Heather,

I am available all those times.

Demetri "Jim" K. Koutrakos

CALLISON TIGHE & ROBINSON, LLC

1812 Lincoln Street, 2nd Floor

Post Office Box 1390 (29202-1390)

Columbia, South Carolina 29201

Office: (803) 404-6900

Direct Dial: (803) 404-6966

Mobile: (803) 603-9079

Facsimile: (803) 404-6902

JimKoutrakos@CallisonTighe.com

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Tuesday, January 17, 2023 2:21 PM
To: Luke Hoopes <luke@angellmolony.com>; McLeod, Heather <hmcleod@bcgov.net>
Cc: Jim Koutrakos <jimkoutrakos@callisontighe.com>; Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Heather, I can do any of those times except for the 19th at 3:00.

Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
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From: Luke Hoopes <luke@angellmolony.com>
Sent: Tuesday, January 17, 2023 12:52 PM
To: McLeod, Heather <hmcleod@bcgov.net>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: Re: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Heather:

All of those dates and times work for me.

Thank you,

Luke R. Hoopes

Judgment Attorney

Angell Molony, LLC

18 E. North Street, Suite 302

Greenville, SC 29601

P: 864.248.4708

F: 864.752.1422

www.AngellMolony.com

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On Tue, Jan 17, 2023 at 12:48 PM McLeod, Heather <hmcleod@bcgov.net> wrote:

Good Afternoon All:

As it turns out Jan. 18th no longer works for us. Are parties still available for any of the below dated/times?

Jan. 19th at 9:00 a.m., 2:00 p.m., 2:30 p.m. or 3:00 p.m.

Jan. 20th at 9:00 a.m., 11:00 a.m. or 2:30 p.m.

Attention:

We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.

Please contact us immediately if you are:

1. **Waiting on a ruling and it has been more than 30 days.**
2. **Ready to schedule a Trial date.**
3. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

P. (843) 255-5710

F. (843) 255-9505

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From: Luke Hoopes <luke@angellmolony.com>
Sent: Thursday, January 12, 2023 12:00 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Jim Koutrakos <jimkoutrakos@callisontighe.com>; McLeod, Heather <hmcleod@bcgov.net>; Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: Re: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

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Good morning Heather:

The 18th works best for me, but I might be able to move some things around to get the 19th or 20th to work.

Thanks,

Luke R. Hoopes

Judgment Attorney

Angell Molony, LLC

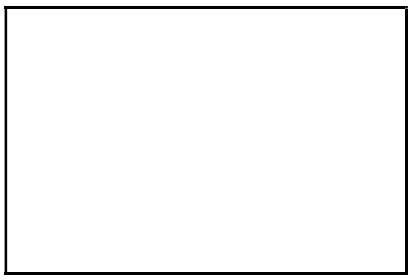
18 E. North Street, Suite 302

Greenville, SC 29601

P: 864.248.4708

F: 864.752.1422

www.AngellMolony.com



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On Thu, Jan 12, 2023 at 11:09 AM Drew Radeker <Drew@harrisonfirm.com> wrote:

Heather, all of those times work for me except for 2:30 and 3:00 on the 19th. (And I can reschedule something to make one of those work if I need to.)

Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
Facsimile: (803) 779-6700
www.harrisonfirm.com

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From: Jim Koutrakos <jimkoutrakos@callisontighe.com>
Sent: Thursday, January 12, 2023 11:08 AM
To: McLeod, Heather <hmcleod@bcgov.net>; Drew Radeker <Drew@harrisonfirm.com>; Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Luke Hoopes <luke@angellmolony.com>; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Heather- All those work for me.

Demetri "Jim" K. Koutrakos

CALLISON TIGHE & ROBINSON, LLC

1812 Lincoln Street, 2nd Floor

Post Office Box 1390 (29202-1390)

Columbia, South Carolina 29201

Office: (803) 404-6900

Direct Dial: (803) 404-6966

Mobile: (803) 603-9079

Facsimile: (803) 404-6902

JimKoutrakos@CallisonTighe.com

From: McLeod, Heather <hmcleod@bcgov.net>
Sent: Thursday, January 12, 2023 11:00 AM
To: Jim Koutrakos <jimkoutrakos@callisontighe.com>; Drew Radeker <Drew@harrisonfirm.com>; Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda

Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Luke Hoopes <luke@angellmolony.com>; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

No worries. I have listed additional dates/times below. Please let me know the availability of counsel; no clients at this time.

Jan. 18th at 9:00 a.m.

Jan. 19th at 9:00 a.m., 2:00 p.m., 2:30 p.m. or 3:00 p.m.

Jan. 20th at 9:00 a.m., 11:00 a.m. or 2:30 p.m.

Attention:

We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.

Please contact us immediately if you are:

1. **Waiting on a ruling and it has been more than 30 days.**
2. **Ready to schedule a Trial date.**
3. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

P. (843) 255-5710

F. (843) 255-9505

hmcleod@bcgov.net

Beaufort County Courthouse

Post Office Drawer 1228

Beaufort, SC 29901

Beaufort County Courthouse

102 Ribaut Road, 2nd Floor

(across the hall from the Clerk of Court)

Beaufort, SC 29902

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From: Jim Koutrakos <jimkoutrakos@callisontighe.com>
Sent: Thursday, January 12, 2023 10:39 AM
To: Drew Radeker <Drew@harrisonfirm.com>; McLeod, Heather <hmcleod@bcgov.net>; Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Luke Hoopes <luke@angellmolony.com>; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests for sensitive information to the Beaufort County IT Division at helpdesk@bcgov.net or to 843-255-7000.

I am sorry but I am in depositions out of town that day. I am flexible for the rest of next week.

Demetri "Jim" K. Koutrakos

CALLISON TIGHE & ROBINSON, LLC

1812 Lincoln Street, 2nd Floor

Post Office Box 1390 (29202-1390)

Columbia, South Carolina 29201

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Mobile: (803) 603-9079

Facsimile: (803) 404-6902

JimKoutrakos@CallisonTighe.com

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, January 12, 2023 9:49 AM
To: McLeod, Heather <hmcleod@bcgov.net>; Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

I can do any of those times. Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A. ATTORNEYS AT LAW

923 Calhoun Street,
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Post Office Box 50143,
Columbia, South Carolina 29250
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www.harrisonfirm.com

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From: McLeod, Heather <hmcleod@bcgov.net>
Sent: Thursday, January 12, 2023 9:28 AM
To: Drew Radeker <Drew@harrisonfirm.com>; Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Good Morning:
Judge Dukes would like to have a conference call with parties. How are parties on Tuesday, Jan. 17th ? We have the below times available.

9:00 a.m., 10:30 a.m., 11:00 a.m., 1:30 p.m., 2:30 p.m.

Attention:

We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.

Please contact us immediately if you are:

4. **Waiting on a ruling and it has been more than 30 days.**
5. **Ready to schedule a Trial date.**
6. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

P. (843) 255-5710

F. (843) 255-9505

hmcleod@bcgov.net

Beaufort County Courthouse

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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Wednesday, January 11, 2023 5:10 PM
To: Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; McLeod, Heather <hmcleod@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov;

kiera.dillon@dor.sc.gov; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests for sensitive information to the Beaufort County IT Division at helpdesk@bcgov.net or to 843-255-7000.

Jared:

As far as I am aware, whether a hearing goes forward is not a decision Mr. Hoopes' client gets to make. Below are Rule 241(a)&(b) of the South Carolina Appellate Court Rules. Subsection (a) sets forth the general rule – that an appeal stays the matters subject of the appealed order, here the joining of parties in relevant part to this discussion – and subsection (b) sets forth the exceptions to the general rule, none of which apply. Also set forth below is Rule 205 of the SCACR, and that rule provides that the Court of Appeals now has jurisdiction over whether the added parties necessary for the hearing are properly parties.

The hearing cannot lawfully go forward. Thank you.

RULE 241
STAY AND SUPERSEDEAS IN CIVIL ACTIONS

(a) General Rule. As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

(b) Exceptions. The exceptions to the general rule are found in statutes, court rules, and case law. Where specific conditions must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all, of the exceptions to the general rule is:

(1) Money judgments as provided in S.C. Code Ann. § 18-9-130.

(2) Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150.

(3) Judgments directing the execution of conveyances or other instruments as provided in S.C. Code Ann. § 18-9-160.

(4) Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170.

(5) Judgments directing the sale of perishable property as provided in S.C. Code Ann. § 18-9-220.

(6) Family court orders regarding a child or requiring payment of support for a spouse or child as provided in S.C. Code Ann. § 63-3-630.

(7) Worker's compensation awards as provided in S.C. Code Ann. § 42-17-60.

(8) An appeal from an order granting an injunction or temporary restraining order.

(9) Family court orders awarding temporary suit costs or attorney's fees as provided in S.C. Code Ann. § 63-3-530(A)(2).

(10) Ejectment orders as provided in S.C. Code Ann. § 27-37-130 and S.C. Code Ann. § 27-40-800.

(11) Appeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2) and § 1-23-600 (G)(5).

RULE 205
EFFECT OF APPEAL

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
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From: Luke Hoopes <luke@angellmolony.com>
Sent: Wednesday, January 11, 2023 4:53 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; McLeod, Heather <hmcleod@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Jim Koutrakos <jimkoutrakos@callisontighe.com>
Subject: Re: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Drew:

If you have any grounds for your claim, then you can make them known at the hearing. For now, it is being scheduled.

Thanks,

Luke R. Hoopes

Judgment Attorney

Angell Molony, LLC

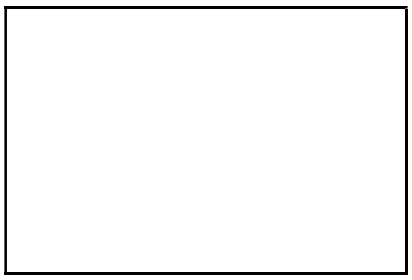
18 E. North Street, Suite 302

Greenville, SC 29601

P: 864.248.4708

F: 864.752.1422

www.AngellMolony.com



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IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

DEBT COLLECTOR: This firm collects debts for creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

On Wed, Jan 11, 2023 at 4:21 PM Drew Radeker <Drew@harrisonfirm.com> wrote:

Jared:

As the order joining the parties is being appealed, it is stayed right now. Accordingly, we believe that hearing could not lawfully go forward.

Thank you.

Drew Radeker

Sent from my iPhone - please excuse any typos

On Jan 11, 2023, at 4:17 PM, Luke Hoopes <luke@angellmolony.com> wrote:

Jared:

Since the last hearing in this matter, several parties have been joined and appeared. In these supplementals, we need to schedule a hearing on our Motion Applying Defendant's Real Property to Execution, filed October 21, 2022 (attached).

We anticipate this hearing taking no longer than 45 minutes, but as this will be the first opportunity for at least 3 new parties to speak, an hour might be a safer bet. What dates does Judge Dukes have available for this hearing?

Please let us know if this can be a virtual hearing, or if it must be in person.

Thank you,

Luke R. Hoopes

Judgment Attorney

Angell Molony, LLC

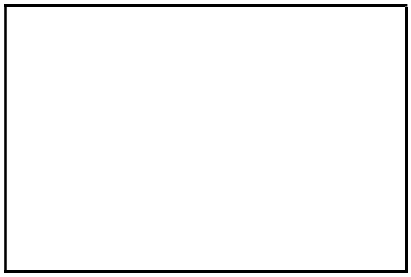
18 E. North Street, Suite 302

Greenville, SC 29601

P: 864.248.4708

F: 864.752.1422

www.AngellMolony.com



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RECEIVED
Jul 11 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Judge

Common Pleas Case No. 2021-CP-07-00944

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc. a South Carolina corporation, Defendants,

Of whom Kenneth J. Vilcheck and Renee M. Vilcheck are the..……Appellants.

NOTICE OF APPEAL

Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter "Appellants") appeal from the orders of the Honorable Jennifer B. McCoy filed May 9, 2022, May 10, 2022, and June 15, 2022. Copies of these orders are submitted to the Court of Appeals herewith. Appellants received written notice of the entry of these orders on the day each was filed.

July 11, 2022

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
Attorneys for Appellants

Other Counsel of Record:

Paul Simons, Jr.
S.C. Bar No. 76883
Hull Barrett, PC
111 Park Avenue, SW
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(803) 641-7809
psimons@hullbarrett.com
Attorney for Respondent

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S.C. Bar No. 80867
200 North Main St., Suite 301
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(864) 625-2523
aaron@angellmolony.com
Attorney for Respondent

Demetri K. Koutrakos
S.C. Bar No. 11318
Callison Tighe & Robinson, LLC
Post Office Box 1390
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jimkoutrakos@callisontighe.com
Attorney for Defendant Longbridge Financial, LLC

George J. Conits
S.C. Bar No. 1356
Assistant United States Attorney
55 Beattie Place, Suite 700
Greenville, South Carolina 29601
(864) 282-2100
george.conits@usdoj.gov
Attorney for Defendant United States of America

William Weston J. Newton
S.C. Bar No. 66502
Jones, Simpson & Newton, P.A.
Post Office Box 1938
Bluffton, SC 29910
(843) 706-6111
wnewton@jsplaw.net
Attorney for Defendant Belfair Property Owners' Association, Inc.

Sean G. Ryan
S.C. Bar No. 76585
Kiera C. Dillon
S.C. Bar No: 79891
Office of General Counsel
South Carolina Department of Revenue
Post Office Box 12265
Columbia, South Carolina 29211-9979
(803) 898-5130
kiera.dillon@dor.sc.gov
sean.ryan@dor.sc.gov
Attorneys for South Carolina Department of Revenue

RECEIVED
Jul 11 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Judge

Common Pleas Case No. 2021-CP-07-00944

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc. a South Carolina corporation, Defendants,

Of whom Kenneth J. Vilcheck and Renee M. Vilcheck are the..……Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing notice of appeal on the date given below by emailing it to counsel for the Respondent(s) and all other counsel of record in the underlying action at the address(es) noted below.

Paul Simons, Jr., Esq., at psimons@hullbarrett.com
Aaron J. Angel, Esq., at aaron@angellmolony.com
Demetri K. Koutrakos, Esq., at jimkoutrakos@callisontighe.com
George J. Conits, Esq., at george.conits@usdoj.gov
William Weston J. Newton, Esq., at wnewton@jsplaw.net
Sean G. Ryan, Esq., at sean.ryan@dor.sc.gov
Kiera C. Dillon, Esq., at kiera.dillon@dor.sc.gov

July 11, 2022

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
Attorneys for Appellants

RECEIVED
Nov 28 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master-in-Equity

Common Pleas Case No. 2012-CP-07-04253

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,..…….……Appellants.

NOTICE OF APPEAL

Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter "Appellants") appeal from the orders of the Honorable Marvin H. Dukes III filed October 21, November 7 (two orders), and November 22, 2022. Copies of these four orders are submitted to the Court of Appeals herewith. Appellants received written notice of the entry of these orders on the day each was filed.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
Attorneys for Appellants

November 28, 2022

Other Counsel of Record:

Luke R. Hoopes
S.C. Bar No. 103644
200 North Main St., Suite 301
Greenville, South Carolina 29601
(864) 625-2523
luke@angellmolony.com
Attorney for Respondent

RECEIVED
Nov 28 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master-in-Equity

Common Pleas Case No. 2012-CP-07-04253

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,..…….……Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing notice of appeal on the date given below by emailing it to counsel for the Respondent(s) and all other counsel of record in the underlying action at the address(es) noted below.

Luke R. Hoopes, Esq., at luke@angellmolony.com

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
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drew@harrisonfirm.com
sarah@harrisonfirm.com
Attorneys for Appellants

November 28, 2022

RECEIVED
Mar 16 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Judge

Appellate Case No. 2022-000958

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc. a South Carolina corporation, Defendants,

Of whom Kenneth J. Vilcheck and Renee M. Vilcheck are the..……Appellants.

STIPULATION OF DISMISSAL

Pursuant to Rule 206(b), SCACR, Appellants and Respondent hereby stipulate the dismissal of this appeal, with the parties each bearing their own attorneys' fees and costs.

Respectfully submitted,

/s/ Andrew S. Radeker
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/s/ Luke R. Hoopes
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Mar 16 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2022-001678

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,..…….……Appellants.

STIPULATION OF DISMISSAL

Pursuant to Rule 206(b), SCACR, Appellants and Respondent hereby stipulate the dismissal of this appeal, with the parties each bearing their own attorneys' fees and costs.

Respectfully submitted,

/s/ Andrew S. Radeker
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ELECTRONICALLY FILED - 2022 Mar 03 11:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS
SOUTHERN FIRST BANK, N.A. d/b/a GREENVILLE FIRST BANK, Plaintiff, v. KENNETH J. VILCHECK, RENEE M. VILCHECK, PORTFOLIO RECOVERY ASSOCIATES, LLC, UNITED STATES OF AMERICA, acting through its agency, DEPARTMENT OF TREASURY - INTERNAL REVENUE SERVICE, LONGBRIDGE FINANCIAL, LLC, FEDERAL HOUSING COMMISIONER, THE SOUTH CAROLINA DEPARTMENT OF REVENUE, BELFAIR PROPERTY OWNERS' ASSOCIATION, INC., and THE GREENERY, INC., a South Carolina corporation, Defendants.	C/A NO.: 2021-CP-07-00944 **MOTION FOR ORDER OF REFERENCE**

TO: ANDREW S. RADEKER, ATTOREY FOR DEFENDANTS KENNETH J. VILCHECK AND RENEE M. VILCHECK

Plaintiff moves pursuant to Rules 53 and 71, SCRCP, to refer the above foreclosure action to the Honorable Marvin H. Dukes, III, Master-in-Equity for Beaufort County, South Carolina. Plaintiff's cause of action is for foreclosure of real property located in Beaufort County, South Carolina. With the exception of Defendants Kenneth J. Vilcheck and Renee M. Vilcheck, all answering Defendants have consented to the referral of this action in their answer. This motion is based on the complaint in this action, all other pleadings of record, the answer of Defendants Kenneth J. Vilcheck and Renee M. Vilcheck, the South Carolina Rules of Civil Procedure, South Carolina case law, and such other and further memoranda as may be submitted by Plaintiff's

counsel.

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ELECTRONICALLY FILED - 2022 Mar 03 11:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

ELECTRONICALLY FILED - 2022 Mar 03 11:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS
SOUTHERN FIRST BANK, N.A. d/b/a GREENVILLE FIRST BANK, Plaintiff, v. KENNETH J. VILCHECK, RENEE M. VILCHECK, PORTFOLIO RECOVERY ASSOCIATES, LLC, UNITED STATES OF AMERICA, acting through its agency, DEPARTMENT OF TREASURY - INTERNAL REVENUE SERVICE, LONGBRIDGE FINANCIAL, LLC, FEDERAL HOUSING COMMISIONER, THE SOUTH CAROLINA DEPARTMENT OF REVENUE, BELFAIR PROPERTY OWNERS' ASSOCIATION, INC., and THE GREENERY, INC., a South Carolina corporation, Defendants.	C/A NO.: 2021-CP-07-00944 **MOTION TO STRIKE JURY DEMAND OF DEFENDANTS KENNETH J. VILCHECK AND RENEE M. VILCHECK**

TO: ANDREW S. RADEKER, ATTOREY FOR DEFENDANTS KENNETH J. VILCHECK AND RENEE M. VILCHECK

Plaintiff moves to strike the jury demand of Defendants Kenneth J. Vilcheck and Renee M. Vilcheck. Plaintiff's cause of action is one for foreclosure, which does not entitle Defendants Kenneth J. Vilcheck and Renee M. Vilcheck the right to a jury trial. This motion is based on the complaint in this action, all other pleadings of record, the answer of Defendants Kenneth J. Vilcheck and Renee M. Vilcheck, the South Carolina Rules of Civil Procedure, South Carolina case law, and such other and further memoranda as may be submitted by Plaintiff's counsel.

ELECTRONICALLY FILED - 2022 Mar 03 11:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944

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ELECTRONICALLY FILED - 2022 May 11 4:26 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **THE FOURTEENTH JUDICIAL CIRCUIT**
Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiff, vs. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendants.	County C/A No.: 2012-CP-07-04253 **NOTICE OF MOTION & MOTION FOR CHARGING ORDERS**

TO: DEFENDANTS KENNETH J. VILCHECK AND RENEE M. VILCHECK

PLEASE TAKE NOTICE THAT the Plaintiff, Southern First Bank, N.A. d/b/a Greenville First Bank, N.A (the "Plaintiff") will move before this Court on **July 25, 2022 at 1:30 p.m. at the Beaufort County Courthouse on the Second Floor, 102 Ribaut Road, Beaufort, South Carolina, 29901**, or at such other time and place the Court may set, for Charging Orders against the Defendants' distributional interests in the limited liability companies outlined herein, and that the Charging Orders be foreclosed upon pursuant to *S.C. Code Ann. §33-44-504*. The facts and law upon which this Motion are based are as follows:

FACTS & PROCEDURAL BACKGROUND

Plaintiff was granted a Judgment (bearing Case No: 2012-CP-07-04235) in Beaufort County on March 27, 2013 entered against the above captioned Defendants, Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter referred to as "Defendant"), in the principal amount of $391,284.46, plus post judgment interest at the legal rate. An Execution was signed by the Clerk of Court of Beaufort County and returned *Nulla Bona* by the Beaufort County Sheriff's Office,

ELECTRONICALLY FILED - 2022 May 11 4:26 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

filed with the Clerk of Court of Beaufort County on February 22, 2021. There is still due and owing on the Judgment the amount of Three Hundred Ninety-One Thousand, Two Hundred Eighty-four Dollars and Forty-Six Cents ($391,284.46), plus reasonable attorneys' fees, costs of collection, and interest at the legal rate until paid in full. Plaintiff is informed and believes the Defendant holds membership interest in the following business associations:

a) GCMK, LLC,
b) RMV, LLC,
c) RMV HAIG, LLC,
d) Vilcheck Group, LLC,
e) Centillion Partners, LLC, and
f) Bald Eagle 2, LLC

CHARGING ORDERS

The Plaintiff herby moves for charging liens on the Defendants' distributional interest in the following limited liability companies: ***GCMK, LLC; RMV, LLC; RMV HAIG, LLC; Vilcheck Group, LLC; Centillion Partners, LLC;*** and ***Bald Eagle 2, LLC***; and that the charging liens be foreclosed upon. *SC Code §33-44-504*, which is titled "Rights of Creditor", states in pertinent part the following:

> (a) **On application by a judgment creditor of a member of a limited liability company** … **a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment**. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order.
>
> (b) A charging order constitutes a lien on the judgment debtor's distributional interest. **The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time**. A purchaser at the foreclosure sale has the rights of a transferee.
>
> (c) At any time before foreclosure, a distributional interest in a limited liability company which is charged may be redeemed:

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> (1) by the judgment debtor;
>
> (2) with property other than the company's property, by one or more of the other members; or
>
> (3) with the company's property, but only if permitted by the operating agreement.
>
> (d) This chapter does not affect a member's right under exemption laws with respect to the member's distributional interest in a limited liability company.
>
> (e) **This section provides the exclusive remedy by which a judgment creditor of a member** … **may satisfy a judgment out of the judgment debtor's distributional interest** in a limited liability company.

SC Code §33-44-504 (emphasis added). The South Carolina Supreme Court has previously held that

> "generally, foreclosure is not a drastic remedy… It is [] a remedy routinely used in this state for the satisfaction of debts. Moreover, the statute provides no indication that foreclosure is "drastic" or only to be used in extreme circumstances. A judgment creditor has a right to collect on his judgment and characterizing the remedy of foreclosure as drastic wrongly implies that in order to foreclose on a charging order a debtor must make some showing beyond the simple necessity of foreclosure."

Kriti Ripley, LLC v. Emerald Invs., LLC, 404 S.C. 367, 381, 746 S.E.2d 26, 33-34 (S.C. 2013). The Court went on to find in the *Kriti Ripley* case that

> "[f]oreclosure is not a penalty, but rather is simply the ultimate remedy for collection of a debt owed. Foreclosure on an LLC member's interest does not divest the member of the interest without compensation or cause him to lose his interest. The member simply has a debt that must be paid. Furthermore, the member can avoid the foreclosure by paying the judgment.

Id., 404 S.C. at 382, 746 S.E.2d at 34. The decision to grant foreclosure under *§33-44-504* is an equitable matter, and therefore requires a consideration of the totality of the circumstances. *Id*. "However, the primary, and usually determinative, factor for a circuit court to consider is whether the judgment will be paid within a reasonable amount of time through distributions… In short, if

a judgment will not be paid through distributions in the reasonably foreseeable future, then foreclosure usually should be ordered." *Id.*, 404 S.C. at 382-383, 746 S.E.2d at 34.

Considering the facts and law outlined above, the Plaintiff respectfully requests the Court to grant charging orders on the Defendants' membership interests in ***GCMK, LLC; RMV, LLC; RMV HAIG, LLC; Vilcheck Group, LLC; Centillion Partners, LLC;*** and ***Bald Eagle 2, LLC .***

WHEREFORE, Plaintiff prays this Court for the following relief:

A. The Court grant the Plaintiff a charging lien against the Defendants' distributional interests in ***GCMK, LLC; RMV, LLC; RMV HAIG, LLC; Vilcheck Group, LLC; Centillion Partners, LLC; and Bald Eagle 2, LLC***;

B. The Court issue its Order finding that the charging liens should be foreclosed upon;

C. The Court award Plaintiff's attorney fees, costs for these proceedings; and

D. For such other and further relief as the Court may deem just and proper.

[SIGNATURE PAGE TO FOLLOW]

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Respectfully Submitted by:

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Attorneys for the Plaintiff

May 11, 2022
Aiken & Greenville Counties, South Carolina

ELECTRONICALLY FILED - 2022 Jul 06 2:11 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiff, vs. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendants.	**IN THE COURT OF COMMON PLEAS** **FOR THE FOURTEENTH JUDICIAL CIRCUIT** County C/A No.: 2012-CP-07-04253 **NOTICE OF MOTIONS, and MOTION FOR CONTEMPT & SANCTIONS**

TO: DEFENDANTS KENNETH J. VILCHECK AND RENEE M. VILCHECK

PLEASE TAKE NOTICE THAT, the Plaintiff, Southern First Bank, N.A. d/b/a Greenville First Bank, N.A, (hereinafter Plaintiff), by and through its undersigned counsel, will move before this Court at some date and time as that the Court may set, for (1) an Order finding the Defendants in Contempt for failing to comply with this Court's Subpoenas to Depose Defendants, and (2) an Order for Costs and Sanctions associated with the Contempt. The facts and law upon which these Motions are based are as follows:

I. FACTS & PROCEDURAL BACKGROUND

Plaintiff was granted a Judgment (bearing Case No: 2012-CP-07-04253) in Beaufort County on March 27, 2013, entered against the above captioned Defendants, Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter referred to as "Defendants"), in the principal amount of $391,284.46, plus post judgment interest at the legal rate. Plaintiff is informed and believes that Defendants own nonexempt assets, either titled in their names individually or collectively or in the name of a business association in which Defendants hold an interest, which the Defendants unjustly refuse to apply toward satisfaction of the Judgment.

On March 2, 2021, this matter was referred to the Honorable Marvin H. Dukes, III, Master in Equity of Beaufort County, through the Order of Reference signed and entered by the Honorable Jerri Ann Roseneau, Clerk of Court for Beaufort County. An Execution was signed by the Clerk

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of Court of Beaufort County on February 9, 2021 and returned marked *Nulla Bona* by the Beaufort County Sheriff's Office, a copy of which was filed with the Clerk of Court for Beaufort County on February 22, 2021. Plaintiff filed a Petition for supplemental proceedings against the Defendants with this Court on March 5, 2021. Plaintiff filed a Rule to Show Cause Order being issued by this Court on May 10, 2022, which designated the date for the Rule to Show Cause hearing as July 25, 2022 and required several documents and records be delivered to Plaintiff's attorney within fifteen (15) dates of the service thereof. The Defendants were personally served on May 20, 2022 at 9:50 a.m. with Subpoenas and Notices to Depose each defendant on Tuesday, June 21, 2022; Rule to Show Cause Order; Notice of Motion & Motion for Charging Orders; and other pleadings and documents, with affidavits of service as to each of the Defendants filed on May 24, 2022.

After being served with the above mentioned documents, Defendant Kenneth J. Vilcheck emailed Luke R. Hoopes, attorney for the Plaintiff, a tax Form 433-A. When attorney for the Plaintiff requested clarification on the form, Mr. Vilcheck declined to respond and told Mr. Hoopes to only communicate with Mr. Vilcheck's attorney going forward. Mr. Hoopes has contacted the attorney Mr. Vilcheck named on two occasions to inquire about his representing Mr. Vilcheck in this matter – as of July 6, 2022, that attorney had not represented Mr. Vilcheck in these supplemental proceedings.

Defendants failed to appear for their Depositions after being duly and properly served with Subpoenas to Depose and notices of the Depositions well in advance of the date of the Depositions. Certificates of Non-Appearance as to both Mr. Kenneth J. Vilcheck and Renee M. Vilcheck for their depositions have been submitted for efiling on the same date as this motion: July 6, 2022. Also, as of the date of this Motion, Defendants have failed to provide any of the information or documents they were ordered to provide the Plaintiff pursuant to this Court's Rule to Show Cause

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Order, beyond a Single tax Form 433-A.

II. LEGAL ANALYSIS

CONTEMPT & SANCTIONS

The power to punish for contempt is inherent in all courts and is essential to preservation of order in judicial proceedings. State v. Havelka, 285 S.C. 388, 330 S.E.2d 288 (1985) In re Brown, 333 S.C. 414, 511 S.E.2d 351 (S.C. 1998). Willful disobedience of an order of the Court may result in contempt. Spartanburg County Dep't of Social Services v. Padgett, 296 S.C. 79, 370 S.E.2d 872 (1988); Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (1982). A willful act is defined as one "done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law." Spartanburg County Dep't of Social Services v. Padgett, supra. In re Brown, 333 S.C. 414, 511 S.E.2d 351 (S.C. 1998).

In a civil contempt proceeding, a contemnor may be required to reimburse a complainant for the costs he incurred in enforcing the court's prior order, including reasonable attorney's fees. Curlee v. Howle, 277 S.C. 377, 386, 287 S.E.2d 915, 919 (1982) **Compensatory contempt is a money award for the plaintiff when the defendant has injured the plaintiff by violating a previous court order**. The goal is to indemnify the plaintiff directly for harm the contemnor caused by breaching the injunction. *id*. at 387, 287 S.E.2d at 920 (stating the money award for compensatory contempt "should be limited to the complainant's actual loss," which includes "the costs in defending and enforcing the court's order, including litigation costs and attorney's fees"). *id*. at 920. In Lorick & Lowrance v. Motley, 69 S.C. 567, 48 S.E. 614 (1904), the court held that a contemnor may be required to pay damages suffered by reason of his contemptuous action or suffer imprisonment. The defendant was ordered to pay to the plaintiff the value of the trees he had destroyed in disregard of the court's order. Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915

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(S.C. 1982).

Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. Where compensation is extended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss .... United States v. United Mine Workers of America, 330 U.S. 258, 304-305, 67 S.Ct. 677, 701-702, 91 L.Ed. 884 (1947). Therefore, the compensatory award should be limited to the complainant's actual loss. Included in the actual loss are the costs in defending and enforcing the court's order, including litigation costs and attorney's fees. Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (S.C. 1982).

The Plaintiff submits to the Court that the civil contempt statute and the award of compensatory contempt damages are available for the circumstances is currently before the Court. The Defendants has flagrantly disobeyed the Court's Rule to Show Cause Order and validly issued and properly served Subpoenas to Depose, particularly the Courts Orders to provide the Plaintiff's counsel with the documents outlined in the Rule to Show Cause Orders. The Defendants, through their willful contempt of Court Order and Subpoena, and evasive actions and conduct, have unjustly delayed and hindered Plaintiff's ability to enforce its lawfully entered Judgment against the Defendants. Plaintiff has sought the Defendants compliance with the Orders on multiple occasions to no avail.

WHEREFORE, based on the aforementioned facts and legal analysis provided herein, the Plaintiff respectfully prays this Honorable Court to:

1) Issue an Order holding the Defendant in Civil Contempt of Court for failing to comply with this Court's May 10, 2022 Rule to Show Cause Order, as well as

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failing to appear for validly issued and duly and properly served Subpoenas to Depose;

2) Issue an Order for Costs and Sanctions against the Defendant for failure to comply with the May 10, June 23, and November 4, 2020 Rule to Show Cause Orders of this Court;

3) Issue an Order reimbursing Plaintiff for the costs incurred in scheduling and traveling for the previous Depositions, including reasonable attorney fees;

4) Issue an Order compelling the Defendants Kenneth J. Vilcheck and Renee M. Vilcheck to comply with the Rule to Show Cause Order and to appear for a Deposition; and

5) Such other and further relief which the Court deems just and proper.

Respectfully Submitted,

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July 6th, 2022

ELECTRONICALLY FILED - 2022 Jul 13 5:42 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **Case No. 2012-CP-07-04253**
Southern First Bank, N.A. d/b/a Greenville First Bank, **Plaintiff,** **vs.** **Kenneth J. Vilcheck and Renee M. Vilcheck,** **Defendants.**	**MOTION TO STAY PROCEEDINGS**

YOU WILL PLEASE TAKE NOTICE that the Defendants move before this court pursuant to Rule 62(h), SCRCP, as well as pursuant to all other applicable law, for an order staying the proceedings seeking to collect the judgment of record against them in the above-captioned action.

Defendants so move on the following grounds:

1. There is another pending action in which the Plaintiff seeks judgment collection in this matter.
2. The judgment in this action is void, and the Defendants seek a ruling to that effect in that other action, as shown by their answer in that action, a copy of which is filed with this motion and is incorporated herein by reference as if here set forth verbatim.
3. It would be inequitable and premature for judgment collection proceedings to occur in this action until the question of the judgment's validity is determined in the proceeding in which that question was first raised and is presently pending.

4. The court should enter an appropriate stay in this action.

5. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that there would have been no useful purpose in consultation with opposing counsel in an attempt to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
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July 13, 2022

ELECTRONICALLY FILED - 2022 Jul 13 5:42 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

ELECTRONICALLY FILED - 2021 May 17 5:39 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700944
ELECTRONICALLY FILED - 2022 Jul 13 5:42 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT SOUTHERN FIRST BANK, N.A. d/b/a GREENVILLE FIRST BANK, Plaintiff, v. KENNETH J. VILCHECK, RENEE M. VILCHECK, PORTFOLIO RECOVERY ASSOCIATES, LLC, UNITED STATES OF AMERICA, acting through its agency, DEPARTMENT OF TREASURY - INTERNAL REVENUE SERVICE, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as nominee for LONGBRIDGE FINANCIAL, LLC, FEDERAL HOUSING COMMISIONER, THE SOUTH CAROLINA DEPARTMENT OF REVENUE, BELFAIR PROPERTY OWNERS' ASSOCIATION, INC., and THE GREENERY, INC., a South Carolina corporation, Defendants.	IN THE COURT OF COMMON PLEAS SUMMONS (NON-JURY MORTGAGE FORECLOSURE) C/A NO.: 2021-CP-07-_____ DEFICIENCY REQUESTED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint upon the subscribers, at their office, 111 Park Avenue, SW, Aiken, South Carolina 29801, within thirty (30) days, after service hereof, exclusive of the day of such service, except the United States of America which shall have sixty (60) days from the date of service; and if you fail to answer the Complaint in the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT SOUTHERN FIRST BANK, N.A. d/b/a GREENVILLE FIRST BANK, Plaintiff, v. KENNETH J. VILCHECK, RENEE M. VILCHECK, PORTFOLIO RECOVERY ASSOCIATES, LLC, UNITED STATES OF AMERICA, acting through its agency, DEPARTMENT OF TREASURY - INTERNAL REVENUE SERVICE, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as nominee for LONGBRIDGE FINANCIAL, LLC, FEDERAL HOUSING COMMISIONER, THE SOUTH CAROLINA DEPARTMENT OF REVENUE, BELFAIR PROPERTY OWNERS' ASSOCIATION, INC., and THE GREENERY, INC., a South Carolina corporation, Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. 2021-CP-07-_____ COMPLAINT DEFICIENCY REQUESTED (Non-Jury)

SOUTHERN FIRST BANK, N.A. d/b/a GREENVILLE FIRST BANK ("**Southern First**"), alleges as follows:

1. Southern First is a national banking association and submits itself to the jurisdiction of the Court.

2. Upon information and belief, Defendant Kenneth J. Vilcheck is a resident of Beaufort

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County, South Carolina.

3. Upon information and belief, defendant Renee M. Vilcheck is a resident of Beaufort County, South Carolina.

4. Upon information and belief, defendant Department of Treasury – Internal Revenue Service is an agency of the United States of America.

5. Portfolio Recovery Associates, LLC is a limited liability company doing business in Beaufort County, South Carolina.

6. Upon information and belief, Mortgage Electronic Registration Systems, Inc., as nominee for Longbridge Financial, LLC, a Delaware limited liability company, conducts business in Beaufort County, South Carolina.

7. The Federal Housing Commissioner is an agent of the Federal Housing Administration, an agency of the United States of America.

8. The South Carolina Department of Revenue is an agency of the State of South Carolina.

9. Upon information and belief, The Greenery, Inc. is a corporation organized and existing under the laws of the State of South Carolina and is doing business in Beaufort County, South Carolina.

10. Belfair Property Owners' Association, Inc. is a non-profit corporation formed and existing under the laws of the State of South Carolina and, upon information and belief, conducts business in Beaufort County, South Carolina.

11. Southern First is the owner and holder of that certain Judgment (defined below) covering real property that is the subject of this foreclosure action, located in Beaufort County, South Carolina.

12. Any Defendant(s) described herein as Judgment Creditor(s) have by filing

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Judgment(s) designated the attorney(s) entering the Judgment(s) as their agent for service of process pursuant to the provisions of § 15-35-840 of the *South Carolina Code of Laws* (1976), as amended.

13. Jurisdiction and venue are proper in this Court.

FOR A FIRST CAUSE OF ACTION
Judicial Lien Foreclosure

14. The foregoing paragraphs are reiterated and realleged as fully as if set forth herein verbatim.

15. The real property that is the subject of this action is located in Beaufort County, South Carolina and is described as follows ("**Property**"):

> ALL that certain lot, piece or parcel of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat Phase of VI-A Belfair (Lots 313-319, 319A-368)(416 -417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1996, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.
>
> This being the same property conveyed to Kenneth J. Vilcheck and Renee M. Vilcheck by deed of Renee M. Vilcheck a/k/a Renee Marsh Vilcheck and Kenneth Joseph Vilcheck, dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019 in Book 3760, at Page 1585.
>
> TMS# R600 023 00F 0112 0000
>
> Street Address: 318 Bamberg Drive
> Bluffton, SC 29910

16. On or about April 6, 2006, for value received, Kenneth J. Vilcheck and Renee M. Vilcheck (collectively, "**Vilcheck**"), executed and delivered to Southern First a certain Home Equity Line of Credit Note ("**Note**") wherein and whereby Vilcheck promised to pay to the order of Southern First the sum of $385,000.00, together with interest thereon at the rate of Prime + .25%. A

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true and correct copy of the Note is attached hereto as Exhibit "A".

17. The Note provides, among other things, that Southern First is entitled to recover all costs and expenses in enforcing the Note, including court costs and reasonable attorneys' fees.

18. On or around December 19, 2012, Southern First instituted an action to collect under the Note in Beaufort County, South Carolina bearing C/A No.: 2012-CP-07-4253 ("**Action**").

19. On or around December 21, 2012, Vilcheck, jointly or severally, caused Bald Eagle 2, LLC, a Wyoming limited liability company ("**Bald Eagle**"), to be organized.

20. On or about March 27, 2013, an Order for Judgment by Default against Vilcheck ("**Judgment**") was filed in the Action. A true and correct copy of the Judgment is attached hereto as Exhibit "B".

21. The Judgment was entered and duly indexed in the Beaufort County Clerk of Court's Office against Vilcheck in favor of Southern First, in the amount of $391,284.46, together with reasonable attorneys' fees, costs of collection, and interest at the legal rate until paid in full.

22. The lien of the Judgment constitutes a first priority lien against the Property.

23. Upon its entry, the Judgment became a lien against all real and personal property then or subsequently owned by Vilcheck located in Beaufort County, South Carolina.

24. On April 15, 2013, Bald Eagle became the title holder to the Property by virtue of that deed of Linda A. Delcher dated April 11, 2013, and recorded in the Register of Deeds Office for Beaufort County, South Carolina on April 15, 2013, in Deed Book 3231, at Page 1843.

25. On or around June 26, 2015, for nominal consideration, Bald Eagle transferred title to the Property to its sole member, Renee M. Vilcheck, as Trustee of the Bermuda Trust Agreement UAD November 9, 2012 ("**Bermuda Trust**"), by virtue of that deed dated June 26, 2015, and recorded in the aforesaid records on July 8, 2015, in Deed Book 3412, at Page 2628.

26. On or around June 26, 2015, for nominal consideration, Bermuda Trust transferred

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title to the Property to Renee M. Vilcheck by virtue of that deed dated June 26, 2015, and recorded in the aforesaid records on July 8, 2015, in Deed Book 3412, at Page 2631.

27. Thereafter, for nominal consideration, Renee M. Vilcheck transferred title to the Property to Kenneth J. Vilcheck and Renee M. Vilcheck, as joint tenants with rights of survivorship, either (i) by virtue of that deed dated February 5, 2019, and recorded in the aforesaid records on February 5, 2019, in Deed Book 3735, at Page 2438, or (ii) by virtue of that deed dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019, in Deed Book 3760, at Page 1585.

28. On or around May 9, 2019, Vilcheck closed on a reverse mortgage loan with Longbridge Financial, LLC, successor in interest by assignment to TowneBank Mortgage, which reverse mortgage loan is secured by the Property.

29. On or around October 28, 2019, the IRS Lien (as defined below) was filed with the Register of Deeds Office for Beaufort County, South Carolina.

30. The Defendant Mortgage Electronic Registration Systems, Inc., as nominee for Longbridge Financial, LLC, has an interest in the Property by virtue of that Adjustable Rate Home equity Conversion Mortgage dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019, in Book 3760, at Page 1588; however, the lien of such defendant is junior and subordinate to the Judgment lien.

31. The Defendant Federal Housing Commissioner has an interest in the property by virtue of that Adjustable Rate Home Equity Conversion Second Mortgage dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019, in Book 3760, at Page 1607; however, the lien of such defendant is junior and subordinate to the Judgment lien.

32. The Defendant United States of America, acting through its agency, the Department of Treasury – Internal Revenue Service has an interest in the Property by virtue of that Notice of Federal Tax Lien filed with the Beaufort County Register of Deeds Office on October 8, 2019, in the

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amount of $285,799.00 ("**IRS Lien**"), however, the lien of such defendant is junior and subordinate to the Judgment lien.

33. Defendant Portfolio Recovery Associates, LLC has an interest in the Property by virtue of that judgment filed with the Beaufort County Clerk of Court's Office on January 16, 2014, in the amount of $26,496.27, however, the lien of such defendant is junior and subordinate to the Judgment lien.

34. Defendant The South Carolina Department of Revenue has an interest in the Property by virtue of the following tax liens:

Lien ID:	**Lien Amount**	**Date Filed**
794136	$4,927.39	12/11/2020
802729	$14,390.28	04/10/2021
863513	$3,682.54	06/12/2020

However, the lien of such defendant is junior and subordinate to the Judgment lien.

35. Defendant Belfair Property Owners' Association, Inc. has or may claim to have an interest in the Property by virtue of liens and assessments created under the Declaration of Covenants and Restrictions for Belfair and Provisions for the Belfair Property Owners' Association, Inc. recorded in the Beaufort County Records Book 787 at Page 390; as amended by those Supplemental Declarations recorded in Book 790 at Page 777; as amended by those Supplemental Declarations recorded in Book 813, at Page 2476; as amended by that First Supplement recorded in Book 1311, at Page 2182; as amended by that Second Supplement recorded in Book 869, at Page 2019; as amended by that Third Supplement recorded in Book 869, at Page 260; as amended by that Fourth Supplement recorded in Book 918 at Page 1390; as amended by that Fifth Supplement recorded in Book 918 at Page 1411; as amended by that Sixth Supplement recorded in Book 1058 at Page 1474; as amended by that Seventh Supplement recorded in Book 1220 at Page 2487; as amended by those

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Amendments recorded in Book 1311 at Pages 2162, 2166, 2170, 2174, 2178 and 2182; as amended by that First Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association, Inc., recorded in Book 1412 at Page 1803; as amended by that First Amendment recorded in Book 1667 at Page 523; as amended by that Second Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association Inc., recoded in Book 2014 at Page 1007; as amended by that First Amendment recorded in Book 2113 at page 706; as amended by that Second Amendment recorded in Book 2406 at Page 1120; and all further amendments thereto; and to the Supplemental Land Use Covenants, Conditions, Easements and Restrictions for the Belfair Golf Cottages, a Portion of Belfair, recorded in the Beaufort County Records in Book 832 at Page 1743, as amended in Book 1058 at Page 1474 and all further amendments or supplements thereto. However, the lien of such defendant is junior and subordinate to the Judgment lien.

36. Defendant The Greenery, Inc. has an interest in the Property by virtue of that judgment filed with the Beaufort County Clerk of Court's Office on April 14, 2015, in the amount of $3,403.70, however, the lien of such defendant is junior and subordinate to the Judgment lien.

37. Southern First, as the owner and holder of the Judgment lien, has elected to foreclose upon its security, by selling the Property pursuant to law.

38. As of April 29, 2021, there is due and owing under the Judgment the sum of $643,389.57 together with interest at the South Carolina judgment rate to the date of full payment, plus the costs of this action, including court costs and attorneys' fees.

FOR A FIRST CAUSE OF ACTION
Judicial Lien Foreclosure

39. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

40. On or about February 9, 2021, an Execution was ordered by the Clerk of Court for Beaufort County, which execution was returned *Nulla Bona* by the Beaufort County Sheriff's Office

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on February 18, 2021.

41. Vilcheck refuses to apply his property (including the Property) in satisfaction of the Judgment.

42. Plaintiff seeks the appointment of a receiver to market and dispose of the Property according to the Judgment and the laws of South Carolina.

WHEREFORE, having fully set forth its complaint, Southern First prays that this Court inquire into the matters set forth herein and enter an Order finding:

i. That the amount due upon the Judgment held by Southern First be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

ii. That the Judgment be declared a first priority judgment lien against the Property, and that Southern First have judgment of foreclosure for the amount so found to be due and owing thereon, together with a reasonable sum as attorney's fees and for the costs of this action.

iii. That the Property be sold under the direction of this Court, the equity of redemption be barred, and the proceeds of sale be applied as follows:

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

Second, to the payment and discharge of the amount due on the Judgment, together with attorney's fees and costs as aforesaid, and

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

iv. For an order directing and empowering the Sheriff of Beaufort County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the Property should the same become necessary.

v. For an order for the ejectment of others in possession herein.

vi. That the interests, if any, of the Defendants in and to the Property, be extinguished and that this Court enter supplemental orders with respect to the same.

vii. In the alternative, for the appointment of a to market and dispose of the Property according to the Judgment and the laws of South Carolina.

viii. For such other and further relief as may be just and proper.

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Aiken, South Carolina
May 17, 2021

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STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **Case No. 2021-CP-07-00944**
Southern First Bank, N.A. d/b/a Greenville First Bank, **Plaintiff,** **vs.** **Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Mortgage Electronic Registration Systems, Inc. as nominee for Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc. a South Carolina corporation,** **Defendants.**	**ANSWER OF VILCHECK DEFENDANTS (JURY TRIAL DEMANDED)**

Defendants Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter "Defendants" or "the Defendants"), in answer to the Plaintiff's Complaint, answer and assert as follows:

FOR A FIRST DEFENSE

1. Any allegation of the Complaint not herein admitted, qualified, or explained is denied. Any allegations of the Complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the Complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

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2. Answering the allegations of paragraph 1 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief as to the same.

3. Answering the allegations of paragraphs 2 and 3 of the Complaint, Defendants admit the same.

4. Answering the allegations of paragraph 4 of the Complaint, Defendants admit the same upon information and belief.

5. Answering the allegations of paragraph 5 of the Complaint, Defendants admit the same upon information and belief.

6. Answering the allegations of paragraph 6 of the Complaint, Defendants admit the same upon information and belief.

7. Answering the allegations of paragraph 7 of the Complaint, Defendants admit the same upon information and belief.

8. Answering the allegations of paragraph 8 of the Complaint, Defendants admit the same upon information and belief.

9. Answering the allegations of paragraph 9 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief as to the same.

10. Answering the allegations of paragraph 10 of the Complaint, Defendants admit the same upon information and belief.

11. Answering the allegations of paragraph 11 of the Complaint, Defendants deny the same. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

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12. Answering the allegations of paragraph 12 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief as to the same.

13. Answering the allegations of paragraph 13 of the Complaint, Defendants answer that they were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

14. No separate answer is required to the allegations of paragraph 14 of the Complaint.

15. Answering the allegations of paragraph 15 of the Complaint, Defendants admit the same to the extent they accurately describe the property at issue.

16. Answering the allegations of paragraph 16 of the Complaint, Defendants admit the same upon information and belief.

17. Answering the allegations of paragraph 17 of the Complaint, Defendants admit that the note states what it states and deny any allegation inconsistent with what it states.

18. Answering the allegations of paragraph 18 of the Complaint, Defendants deny the same. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

19. Answering the allegations of paragraph 19 of the Complaint, Defendants admit the same.

20. Answering the allegations of paragraph 20 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

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21. Answering the allegations of paragraph 21 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

22. Answering the allegations of paragraph 22 of the Complaint, Defendants deny the same. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

23. Answering the allegations of paragraph 23 of the Complaint, Defendants deny the same. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

24. Answering the allegations of paragraph 24 of the Complaint, Defendants admit the transfer occurred.

25. Answering the allegations of paragraph 25 of the Complaint, Defendants admit the transfer occurred.

26. Answering the allegations of paragraph 26 of the Complaint, Defendants admit the transfer occurred.

27. Answering the allegations of paragraph 27 of the Complaint, Defendants admit the transfer occurred.

28. Answering the allegations of paragraph 28 of the Complaint, Defendants admit to the extent consistent with land records.

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29. Answering the allegations of paragraph 29 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief as to the same.

30. Answering the allegations of paragraph 30 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

31. Answering the allegations of paragraph 31 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

32. Answering the allegations of paragraph 32 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

33. Answering the allegations of paragraph 33 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

34. Answering the allegations of paragraph 34 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

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35. Answering the allegations of paragraph 35 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

36. Answering the allegations of paragraph 36 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

37. Answering the allegations of paragraph 37 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

38. Answering the allegations of paragraph 38 of the Complaint, Defendants deny the same.

39. No separate answer is required to the allegations of paragraph 39 of the Complaint.

40. Answering the allegations of paragraph 40 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants.

41. Answering the allegations of paragraph 41 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported

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judgment is void for lack of personal jurisdiction over the Defendants. Defendants do refuse to have their property applied toward a nonexistent, void judgment.

42. Answering the allegations of paragraph 42 of the Complaint, Defendants deny the same as stated. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case. That purported judgment is void for lack of personal jurisdiction over the Defendants. Plaintiff is not entitled to the appointment of a receiver.

FOR A SECOND DEFENSE
(Judgment is Void)

43. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

44. The Defendants were never served with the summons and complaint in the underlying action that produced the purported judgment subject of this case.

45. That purported judgment is void for lack of personal jurisdiction over the Defendants.

46. Plaintiff cannot maintain this suit.

FOR A THIRD DEFENSE
(Rule 12(b)(6), SCRCP)

47. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

48. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action.

49. No statute, rule, or other law provides for the suit here brought by the Plaintiff or the remedy here sought by the Plaintiff.

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FOR A FOURTH DEFENSE
(Statute of Limitations)

50. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

51. Plaintiff's claim on the note at issue is barred by the statute of limitations.

WHEREFORE, the Defendants pray for the court to:

(a) Issue an order dismissing the Complaint with prejudice;

(b) Deny Plaintiff the relief it seeks in this action;

(c) Enter judgment for Defendants for the costs and expenses of this action; and

(d) Grant Defendants such other and further relief as the court deems just and proper.

Respectfully submitted,

/s/ Andrew S. Radeker
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ATTORNEYS FOR DEFENDANTS
KENNETH J. VILCHECK AND RENEE M. VILCHECK

Columbia, South Carolina
November 18, 2021

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STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **Case No. 2012-CP-07-04253**
Southern First Bank, N.A. d/b/a Greenville First Bank, **Plaintiff,** **vs.** **Kenneth J. Vilcheck and Renee M. Vilcheck,** **Defendants.**	**MOTION FOR RELIEF FROM RULE TO SHOW CAUSE AND TO QUASH SUBPOENA**

YOU WILL PLEASE TAKE NOTICE that the Defendants move before this court pursuant to Rules 45 and 60(b), SCRCP, as well as pursuant to all other applicable law, for an order granting them relief from the rule to show cause filed May 10, 2022, and for relief from and to quash the deposition subpoenas to them in the above-captioned action.

Defendants so move on the following grounds:

1. Rule 60(b), SCRCP, provides that:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud, misrepresentation, or other misconduct of an adverse party;
> (4) **the judgment is void**;
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

(emphasis added).

2. The rule to show cause is void. It purports to require the production of documents, though it is a rule to show cause in supplemental judgment collection proceedings.

3. As shown by Rule 69, SCRCP, and S.C. Code Ann. §§ 15-39-310 and -330, a judgment creditor is permitted to *examine* the judgment debtor. There is no authority that entitles a judgment creditor to discovery of documents in a proceeding such as this one, nor is there any authority that permits a court to order document production as in the rule to show cause.

4. Accordingly, the subpoena is similarly improper.

5. Further, even if some document production would be proper (which it is not), the subpoena is unduly burdensome and seeks the production of irrelevant documents.

6. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that he has consulted with opposing counsel in an attempt to resolve the matter subject of this motion.

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Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

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July 13, 2022

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ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiffs, v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendant(s).	IN THE COURT OF COMMON PLEAS THE FOURTEENTH JUDICIAL CIRCUIT County C/A No.: 2012-CP-07-04253 **NOTICE OF MOTIONS AND MOTIONS APPLYING DEFENDANT'S REAL PROPERTY TO EXECUTION AND TO JOIN RELEVANT PARTIES**

TO: DEFENDANTS KENNETH J. VILCHECK AND RENEE M. VILCHECK

PLEASE TAKE NOTICE THAT, the Plaintiff, Southern First Bank, N.A. (hereinafter referred to as "Plaintiff"), by and through its undersigned counsel, will move before this Court at a date and time to be determined, at the **Beaufort County Courthouse on the Second Floor, 102 Ribaut Road, Beaufort, South Carolina 29901**, or at such other place and time as to be determined, before the **Honorable Marvin H. Dukes, III**, **Master-in-Equity for Beaufort County** for (1) an Order applying the non-exempt real property of Defendants Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter referred to as "Defendant") which bears Beaufort County Parcel # R600 023 00F 0112 0000, to the Execution towards satisfaction of the Judgment by selling such property at a judicial sale according to South Carolina Law; (2) an Order any other costs, fees, and/or expenses that the Plaintiff may necessarily incur by virtue of the properties being sold at auction via judicial sale or otherwise; and (3) an Order joining all relevant parties with interests in the real property such that a judicial sale may be carried out. The facts and law upon which this Motion is based are detailed further below in this Motion.

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

FACTS & PROCEDURAL BACKGROUND

On December 19, 2012, Plaintiff filed a Summons and Complaint initiating this matter as Case Number 2012-CP-07-04253.

On or about December 21, 2012, the Defendants, individually or collectively, caused Bald Eagle 2, LLC, a Wyoming limited liability company, to be organized.

On January 16, 2013, Defendants Kenneth J. Vilcheck and Renee M. Vilcheck were properly served with the Summons and Complaint in this matter.

On March 27, 2013, a judgment was entered in this matter in favor of the Plaintiff Southern First Bank, N.A. and against the Defendants Kenneth J. Vilcheck and Renee M. Vilcheck in the amount of Three Hundred Ninety-One Thousand, Two Hundred Eighty-Four Dollars and Forty-Six Cents ($391,284.46) as it appears at Judgment Roll no. 2012-CP-07-04253. From that point in time forward, the Judgment attaches as a lien on all real property owned by the Defendants in Beaufort County.

On April 15, 2013, Beaufort County Register of Deeds recorded in Book 3231 at Page 1843 a deed dated April 11, 2013 which conveyed from Linda A. Delcher to Bald Eagle 2, LLC the real property with Beaufort County TMS# R600 023 00F 0112 0000, located at 318 Bamberg Drive, Bluffton, SC 29910 (the "Property"). Deed attached as Exhibit A.

The Property is currently described as follows:

> ALL that certain lot, piece or parcel of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat Phase of VI-A Belfair (Lots 313-319, 319A-368)(416 -417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1996, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

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> This being the same property conveyed to Kenneth J. Vilcheck and Renee M. Vilcheck by deed of Renee M. Vilcheck a/k/a Renee Marsh Vilcheck and Kenneth Joseph Vilcheck, dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019 in Book 3760, at Page 1585.

On January 16, 2014, a judgment was entered in favor of Portfolio Recovery Associates, LLC and against Kenneth J. Vilcheck in the amount of Twenty-Six Thousand, Four Hundred Ninety-Six Dollars, and Twenty-Seven Cents ($26,496.27) at Judgment Roll 2013-CP-07-02756. Judgment attached as Exhibit B.

On July 8, 2015, the Beaufort County Register of Deeds recorded in Book 3412 at Page 2628 a deed dated June 26, 2015 conveying the Property from Bald Eagle 2, LLC (with Renee M. Vilcheck signing as Sole Member) to Renee M. Vilcheck as Trustee of the Bermuda Trust Agreement UAD November 9, 2012. Deed attached as Exhibit C.

On July 8, 2015, the Beaufort County Register of Deeds recorded in Book 3412 at Page 2631 a deed dated June 26, 2015 conveying the Property from Renee M. Vilcheck as Trustee of the Bermuda Trust Agreement UAD November 9, 2012 to Renee M. Vilcheck. Deed attached as Exhibit D.

On February 5, 2019, the Beaufort County Register of Deeds recorded in Book 3735 at Page 2438 a Quitclaim Deed dated February 5, 2019 conveying the Property from Renee Marsh Vilcheck to Kenneth Joseph Vilcheck and Renee Marsh Vilcheck. Deed attached as Exhibit E.

On May 16, 2019, the Beaufort County Register of Deeds recorded in Book 3760 at Page 1585 a deed dated May 9, 2019 conveying the Property from Renee M. Vilcheck a/k/a Renee Marsh Vilcheck and Kenneth Joseph Vilcheck to Kenneth J. Vilcheck and Renee M. Vilcheck. Deed attached as Exhibit F.

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On May 16, 2019, the Beaufort County Register of Deeds recorded in Book 3760 at Page 1588 MERS for TowneBank Mortgage's Adjustable Rate Home Equity Conversion Mortgage secured by the Property dated May 9, 2019. Mortgage attached as Exhibit G.

On May 16, 2019, the Beaufort County Register of Deeds recorded in book 3760 at Page 1607 the Federal Housing Commissioner's Adjustable Rate Home Equity Conversion Second Mortgage secured by the Property, dated May 9, 2019. Mortgage attached as Exhibit H.

On October 8, 2019, the Beaufort County Register of Deeds recorded in Book 141 at Page 951 the Department of the Treasury – Internal Revenue Service's Notice of Federal Tax Lien on the Property in the amount of Two Hundred Eighty-Five Thousand, Seven Hundred Ninety-Nine Dollars and Zero Cents ($285,799.00). Notice attached as Exhibit I.

On June 12, 2020; April 10, 2020; and June 10, 2022 the South Carolina Department of Revenue filed state tax liens against both Defendants as follows:

LIEN ID:	**LIEN AMOUNT:**	**DATE FILED:**
863513	$1,373.93	06/12/2020
802729	$18,723.30	04/10/2021
949023	$2,084.34	06/10/2022

SCDOR Liens attached as Exhibit J.

On February 9, 2021, Plaintiff filed an Execution on the Judgment in this matter. This Execution was returned *Nulla Bona* by the Beaufort County Sheriff's Office, and filed February 22, 2021.

On March 2, 2021, an Order of Reference to the Honorable Marvin H. Dukes, III, pursuant to SCRCP 53, was entered, granting him full authority to rule on any and all motions as necessary to resolve this matter, with any appeal directly to the South Carolina Supreme Court, or Court of Appeals of South Carolina, as appropriate.

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On March 5, 2021, a Petition for Supplemental Proceedings was filed in this matter, along with an Affidavit in support.

On May 17, 2021, Plaintiff filed a Summons and Complaint to foreclose on this Judgment lien as it attached to the Property in case number 2021-CP-07-00944 (the "Foreclosure Action").

On July 7, 2021, the Beaufort County Register of Deeds recorded in Book 4034 at Page 1582 an assignment of TowneBank Mortgage's mortgage to Longbridge Financial, LLC. Assignment attached as Exhibit K.

On May 10, 2022, a Rule to Show Cause Order was entered in this matter, demanding the Defendants supply the Plaintiffs with several documents and appear for a Rule to Show Cause hearing on July 25, 2022. The Defendants were properly served with this Rule to Show Cause Order and other documents on May 20, 2022.

On July 6, 2022, Plaintiff filed a motion for contempt and sanctions against the Defendants.

On July 11, 2022, in the Foreclosure Action, Defendants filed notices of appeal of the orders entered on May 9, 2022 (Order granting Plaintiff's motion to strike Defendants' demand for a jury trial), May 10, 2022 (Order of Reference of Foreclosure Action to the Beaufort Master in Equity), and June 15, 2022 (Order denying Defendants' motion to reconsider the two prior orders).

On July 13, 2022, Defendants filed a motion for Relief from the Rule to Show Cause Order, and a Motion to Stay proceedings.

On July 20, 2022, a hearing was held on the pending motions, and it was determined that the Rule to Show Cause hearing scheduled for July 25, 2022 should be stayed until the Defendants' Rule 60 arguments to have the Judgment declared void could be heard with live testimony on September 29, 2022.

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On September 29, 2022 it was confirmed that the motion hearing to be held on that date was to be continued to October 17, 2022, due to Beaufort County shutting down for Hurricane Ian.

On October 17, 2022 the hearing on Defendants' Rule 60 motion was held, with testimony given by the Defendants and by Pamela J. Jezewski.

On October 21, 2022, the Court entered an Order denying Defendants' Rule 60 motion, declaring that the Summons and Complaint was properly served on the Defendants on January 16, 2013, that the Court had personal jurisdiction over the Defendants, and that the Judgment is not void.

ORDER APPLYING REAL PROPERTY OF DEFENDANT TO EXECUTION

The Plaintiff moves for this Court to issue an Order applying the non-exempt real property of the Defendants to the Execution towards satisfaction of the Judgment by selling such property at auction according to South Carolina Law. *S.C. Code §15-39-410*; which is titled "Property which may be ordered to be applied to execution", states in pertinent part the following:

> The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied.

Furthermore, *S.C. Code §15-39-610*; which is titled "Property taken under execution shall be sold", states in relevant part that:

> When any sheriff or other officer shall take the lands … of any person whatsoever by virtue of any execution and the owner of such lands … shall not, within five days after such taking, satisfy the debt, damages and costs of the party issuing such execution, such sheriff or officer shall and may sell, by auction, the lands, tenements, goods and chattels so taken or so much thereof as shall be sufficient to satisfy the judgment for the best price that can be got for them.

Plaintiff is informed and believes that Defendant owns the Property, a non-exempt parcel of real property in Beaufort County, South Carolina. Plaintiff is informed and believes that its Judgment lien is the priority lien on the property, with subsequent and junior liens possibly held

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by Portfolio Recovery Associates, LLC; Longbridge Financial, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue. Plaintiff elects to have the Property applied towards its Judgment lien and ordered to be sold at public auction pursuant to the preceding statutes.

WHEREFORE, Plaintiff prays this Court for the following relief:

(1) An Order applying the non-exempt real property of Defendants Kenneth J. Vilcheck and Renee M. Vilcheck; which bears Beaufort County TMS #'s R600 023 00F 0112 0000, to the Execution towards satisfaction of the Judgment by selling such property at auction according to South Carolina Law;

(2) An Order for any other costs, fees, and/or expenses that the Plaintiff may necessarily incur by virtue of the properties being sold at auction via judicial sale or otherwise;

(3) An Order joining Portfolio Recovery Associates, LLC; Longbridge Financial, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue as defendants in this matter given their possible interests in the real property held by Defendants; and

(4) For such other and further relief as the Court may deem just and proper.

Respectfully Submitted by:

s/Luke R. Hoopes
SC Bar No. 103644
Angell Molony, LLC
18 E. North St., Ste. 302
Greenville, SC 29601
P: 864.248.4708
F: 864.752.1422
LUKE@ANGELLMOLONY.COM

October 21, 2022
Greenville, South Carolina

EXHIBIT A

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

3 PB 10 Perl 22307 22315

RECORDED
2013 Apr -24 08:42 AM
Sharon D. Burris
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 03231 PGS 1843-1845
FILE NUM 2013020863
04/15/2013 12:50:17 PM
REC'D BY P BAXLEY RCPT# 70815
RECORDING FEES 10.00
County Tax 814.00
State Tax 1,924.00

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This deed was prepared in the law offices of
MCNAIR LAW FIRM, P.A.
23-B Shelter Cove Ln # 400, Post Office Drawer 3
Hilton Head Island, SC 29928
(843) 785-2171

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

TITLE TO REAL ESTATE
(General Warranty)

KNOW ALL MEN BY THESE PRESENTS, that **Linda A. Delcher**, hereinafter referred to as "Grantor," in the State aforesaid, for and in consideration of the sum of Seven Hundred Forty Thousand and 00/100 Dollars ($740,000.00) to Grantor in hand paid by

Bald Eagle 2, LLC, a Wyoming Limited Liability Company
318 Bamberg Drive
Bluffton, SC 29910

hereinafter referred to as "Grantee," the receipt of which is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release, subject to the easements, restrictions, reservations and conditions set forth in the legal description below, unto the said Grantee, the following described property:

ALL that certain piece, parcel or lot of land situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, Phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Phase VI-A, Belfair (Lots 313-319, 319A-368)(416-417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1996, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

Said property is conveyed subject to all easements as shown on the plats of record and to the Declaration of Covenants and Restrictions for Belfair and Provisions for the Belfair Property Owners' Association, Inc., recorded in the Beaufort County Records in Book 787 at Page 390; Supplemental Declarations recorded in Book 790 at Page 777; Supplemental Declarations recorded in Book 813 at Page 2476 as amended in Book 1311 at Page 2182; Second Supplement recorded in Book 869 at Page 2019; Third Supplement recorded in Book 869 at Page 260; Fourth Supplement recorded in Book 918 at Page 1390; Fifth Supplement recorded in Book 918 at Page 1411; Sixth Supplement recorded in Book 1058 at

PIN #R600:023:00F:0112:0000

ADD DMP Record 4/16/2013 04:34:02 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	023	00F	0112	0000	00

R 0308

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Page 1474; Seventh Supplement recorded in Book 1220 at Page 2487; Amendments recorded in Book 1311 at Pages 2162, 2166, 2170, 2174, 2178 and 2182; First Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association, Inc., recorded in Book 1412 at Page 1803; First Amendment recorded in Book 1667 at Page 523; Second Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association, Inc., recorded in Book 2014 at Page 1007; First Amendment recorded in Book 2113 at Page 706, Second Amendment recorded in Book 2406 at Page 1120; and all further amendments thereto; and to the Supplemental Land Use Covenants, Conditions, Easements and Restrictions for the Belfair Golf Cottages, a Portion of Belfair, recorded in the Beaufort County Records in Book 832 at Page 1743, as amended in Book 1058 at Page 1474 and all further amendments or supplements thereto.

The property intended to be conveyed herein is the same property conveyed to the within Grantor by Deed from Gregory Charles Voetsch and Susan Rieckers Voetsch, dated March 14, 2012, and recorded in Book 3140 at Page 2642, Beaufort County Records, on May 7, 2012.

This Deed was prepared in the Law Offices of McNair Law Firm, P.A., Post Office Drawer 3, Hilton Head Island, South Carolina 29938, by Cary S. Griffin.

THIS CONVEYANCE IS MADE SUBJECT TO all other easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned, unto the Grantee, their successors and assigns forever; subject, however, to the rights, conditions and restrictions that constitute covenants running with the land, all as set forth herein.

AND Grantor does hereby bind herself and her heirs, executors, administrators and assigns to warrant and forever defend all and singular the said premises unto Grantee, their successors and assigns, against Grantor and her heirs and assigns, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof.

[Signatures on Following Page]

WITNESS my Hand and Seal this 11th day of April, 2013.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(2) _____
Signature of 1st Witness

(3) _____
Signature of 2nd Witness/Notary Public

(1) _____ (SEAL)
Linda A. Delcher

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that **Linda A. Delcher**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 11th day of April, 2013.

Sarah F. Robertson
Notary Public
South Carolina
My Commission Expires 04-07-2019

(4) _____
Notary Public for South Carolina
My Commission Expires: _____

Instructions for Execution of Deed
(Please Follow Carefully - and Use Blue Ink Only)

A. Grantor signs on line numbered (1) **exactly as name is typed under the line**.

B. Two (2) disinterested Witnesses sign on lines numbered (2) and (3). Notary may be one of the witnesses.

C. Notary Public signs on line numbered (4) and affixes seal and expiration date.

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EXHIBIT B

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 13-CP-07-2756

PORTFOLIO RECOVERY ASSOCIATES, LLC

PLAINTIFF(S)

KENNETH J VILCHECK

DEFENDANT(S)

Submitted by: S. Nelson Weston, Jr. Adam S. Tesh	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

FILED
BEAUFORT COUNTY, S.C.
2014 JAN 16 PM 2:46

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 :

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)
PORTFOLIO RECOVERY ASSOCIATES, LLC	KENNETH J VILCHECK	$26,496.27
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:
n/a

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.**

Circuit Court Judge

2142
Judge Code

1-15-14
Date

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

For Clerk of Court Office Use Only

This judgment was entered on the 16 day of Jan 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 23 day of Jan 2014 to attorneys of record or to parties (when appearing pro se) as follows:

A Test

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

C/A NO: 13-CP-07-2756

PORTFOLIO RECOVERY ASSOCIATES, LLC
Plaintiff
vs

ORDER AGAINST DEFENDANT

KENNETH J VILCHECK,
Defendant.

2014 JAN 16 PM 2:46
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Based upon the facts certified to in the accompanying Certificate and Affidavit of Default and it appearing that the damages sought in this action are liquidated, and it further appearing that the Defendant is in default, it is ORDERED that the Plaintiff have Judgment against the Defendant as follows:

a) Twenty-Six Thousand Three Hundred Six and 27/100 ($26306.27) Dollars;
b) $0.00 Dollars as attorneys' fees;
c) The costs and disbursements of this action.

AND IT IS SO ORDERED

BEAUFORT, South Carolina

1-15, 2014

Circuit Judge
FOURTEENTH Judicial Circuit

JUDGMENT

An Order of Judgment has been signed by the Honorable Judge of this Court, said Judgment shall be reflected upon the Records of the Clerk of this Court, as follows:

Amount	$26306.27
Interest	0.00
Costs and Disbursements	0.00
Clerk's Costs	175.00
Cost of Service	15.00
Other	0.00
TOTAL	$ 26496.27

Columbia, South Carolina

Adam S. Tesh
RICHARDSON PLOWDEN & ROBINSON, P.A.
Attorneys for Plaintiff

12/31, 2014

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

C/A NO: 13-CP-07-2756

PORTFOLIO RECOVERY ASSOCIATES, LLC
Plaintiff,

CERTIFICATE FOR JUDGMENT

vs.

KENNETH J VILCHECK,
Defendant.

2014 JAN 16 PM 2:46
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The undersigned attorney for Plaintiff hereby certifies that this application for default judgment, pursuant to South Carolina Rules of Civil Procedure, against KENNETH J VILCHECK is based upon a Complaint alleging either:

( ) a cause of action for liquidation damages only; or

(X) a cause of action based upon an open end account to which a verified statement of account was attached and served with the summons and complaint;

and further certifies that the following documents have been filed with the clerk of court in support of the foregoing, to wit:

1. Summons and Complaint;

2. Proper proof of legal service upon Defendant;

3. Proper documentation supporting liquidation demand in the amount of $26306.27 as set forth in the complaint as provided by statute; together with proper documentation for award of attorneys' fees and interest, if applicable, pursuant to the terms of a written agreement.

I certify that unearned interest has been rebated or credited pursuant to statutory law.

Columbia, South Carolina
12/31 ,2014

Adam S. Tesh
Richardson Plowden & Robinson, P.A.
Attorneys for Plaintiff

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EXHIBIT C

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

3 PB 10 Delaney Edwards

RECORDED
2015 Jul -21 04:28 PM
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3412 Pgs 2628-2630
FILE NUM 2015035131
07/08/2015 08:46:51 AM
REC'D BY marg1 RCPT# 780828
RECORDING FEES $10.00

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT **BALD EAGLE 2, LLC, (Grantor)** in the State aforesaid for Ten dollars ($10.00) and no other valuable consideration to it in hand paid at and before the sealing of these presents by **RENEE M. VILCHECK, AS TRUSTEE OF THE BERMUDA TRUST AGREEMENT UAD NOVEMBER 9, 2012, (Grantee),** in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release, subject to the easements, restrictions, reservation and conditions set forth in the legal description below, unto the said **RENEE M. VILCHECK, AS TRUSTEE OF THE BERMUDA TRUST AGREEMENT UAD NOVEMBER 9, 2012**, her successors and assigns, forever, their entire interest in the following described property, to-wit:

All that certain piece, parcel or lot of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, Phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat Phase of VI-A, Belfair (Lots 313-319, 319A-368)(416-417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1966, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

Said property is conveyed subject to all easements as shown on the plats of record and to the Declaration of Covenants and Restrictions for Belfair and Provisions for the Belfair Property Owners' Association, Inc. recorded in the Beaufort County Records Book 787 at Page 390; Supplemental Declarations recorded in Book 790 at 777; Supplemental Declarations recorded in Book 813 at page 2476 as amended in Book 1311 at Page 2182; Second Supplement recorded in Book 869 at Page 2019; Third Supplement recorded in Book 869 at Page 260; Fourth Supplement recorded in Book 918 at Page 1390; Fifth Supplement recorded in Book 918 at Page 1411; Sixth Supplement recorded in Book 1058 at Page 1474; Seventh Supplement recorded in Book 1220 at Page 2487; Amendments recorded in Book 1311 at Pages 2162, 2166, 2170, 2174, 2178 and 2182; First Amended and

ADD DMP Record 7/16/2015 03:29:29 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	023	00F	0112	0000	00

R 0317

Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association, Inc., recorded in Book 1412 at Page 1803; First Amendment recorded in Book 1667 at Page 523; Second Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association Inc., recoded in Book 2014 at Page 1007; First Amendment recorded in Book 2113 at page 706, Second Amendment recorded in Book 2406 at Page 1120; and all further amendments thereto; and to the Supplemental Land Use Covenants, Conditions, Easements and Restrictions for the Belfair Golf Cottages, a Portion of Belfair, recorded in the Beaufort County Records in Book 832 at Page 1743, as amended in Book 1058 at Page 1474 and all further amendments or supplements thereto.

Beaufort County Tax Map Reference: R600 023 00F 0112 0000
Grantee's Address: 318 Bamberg Drive, Bluffton, SC 29910

This being the same property conveyed to Bald Eagle 2, LLC by deed of Linda A. Delcher dated April 11, 2013 and recorded on April 15, 2013 in the Register of Deeds Office for Beaufort County, South Carolina in Deed Book 3231 at Page 1843.

This Deed was prepared without benefit of title search by the Delaney Law Firm, PA., Post Office Box 3199, Bluffton, South Carolina 29910 by Douglas S. Delaney, Esquire.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **RENEE M. VILCHECK, AS TRUSTEE OF THE BERMUDA TRUST AGREEMENT UAD NOVEMBER 9, 2012**, her successors and assigns, forever.

AND said Grantor does hereby bind itself and its heirs, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said **RENEE M. VILCHECK, AS TRUSTEE OF THE BERMUDA TRUST AGREEMENT UAD NOVEMBER 9, 2012**, her successors and assigns, forever, against Grantors and Grantors' heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

Book3412/Page2629 CFN#2015035131

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

IN WITNESS WHEREOF, IT has caused these presents to be executed as of the 26th day of June, 2015.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

BALD EAGLE 2, LLC

Renee M. Vilcheck

By: Renee M. Vilcheck, Sole Member and as Trustee of the Bermuda Trust Agreement UAD November 9, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, Douglas S. Delaney, a notary public for the State of South Carolina, do hereby certify that **Bald Eagle 2, LLC, by Renee M. Vilcheck, Sole Member and as Trustee of the Bermuda Trust Agreement UAD November 9, 2012** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 26 day of June, 2015.

SWORN to before me
the 26 day of June, 2015.

Notary Public for South Carolina
My Commission Expires: June 21, 2017

Book3412/Page2630 CFN#2015035131

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

EXHIBIT D

3
10 Pb
Delaney
Escrow

ADD DMP Record 7/16/2015 03:32:08 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	023	00F	0112	0000	00

BEAUFORT COUNTY SC - ROD
BK 3412 Pgs 2631-2633
FILE NUM 2015035132
07/08/2015 08:46:51 AM
REC'D BY marg RCPT# 780829
RECORDING FEES $10.00

RECORDED
2015 Jul -21 04:29 PM
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA)
) **TITLE TO REAL ESTATE**
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, THAT **RENEE M. VILCHECK, AS TRUSTEE OF THE BERMUDA TRUST AGREEMENT UAD NOVEMBER 9, 2012, (Grantor)** in the State aforesaid for Ten dollars ($10.00) and no other valuable consideration to it in hand paid at and before the sealing of these presents by **RENEE M. VILCHECK, (Grantee),** in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release, subject to the easements, restrictions, reservation and conditions set forth in the legal description below, unto the said **RENEE M. VILCHECK**, her successors and assigns, forever, their entire interest in the following described property, to-wit:

All that certain piece, parcel or lot of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, Phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat Phase of VI-A, Belfair (Lots 313-319, 319A-368)(416-417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1966, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

Said property is conveyed subject to all easements as shown on the plats of record and to the Declaration of Covenants and Restrictions for Belfair and Provisions for the Belfair Property Owners' Association, Inc. recorded in the Beaufort County Records Book 787 at Page 390; Supplemental Declarations recorded in Book 790 at 777; Supplemental Declarations recorded in Book 813 at page 2476 as amended in Book 1311 at Page 2182; Second Supplement recorded in Book 869 at Page 2019; Third Supplement recorded in Book 869 at Page 260; Fourth Supplement recorded in Book 918 at Page 1390; Fifth Supplement recorded in Book 918 at Page 1411; Sixth Supplement recorded in Book 1058 at Page 1474; Seventh Supplement recorded in Book 1220 at Page 2487; Amendments recorded in Book 1311 at Pages 2162, 2166, 2170, 2174, 2178 and 2182; First Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association, Inc., recorded in Book 1412 at Page 1803; First

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Amendment recorded in Book 1667 at Page 523; Second Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association Inc., recoded in Book 2014 at Page 1007; First Amendment recorded in Book 2113 at page 706, Second Amendment recorded in Book 2406 at Page 1120; and all further amendments thereto; and to the Supplemental Land Use Covenants, Conditions, Easements and Restrictions for the Belfair Golf Cottages, a Portion of Belfair, recorded in the Beaufort County Records in Book 832 at Page 1743, as amended in Book 1058 at Page 1474 and all further amendments or supplements thereto.

This being the same property conveyed to RENEE M. VILCHECK, as Trustee of the BERMUDA TRUST AGREEMENT UAD NOVEMBER 9, 2012 by deed of Bald Eagle 2, LLC dated 26 day of June, 2015 and recorded on 8th day of July, 2015 in the Register of Deeds Office for Beaufort County, South Carolina in Deed Book 3412 at Page 2628.

Beaufort County Tax Map Reference: R600 023 00F 0112 0000
Grantee's Address: 318 Bamberg Drive, Bluffton, SC 29910

This Deed was prepared without benefit of title search by the Delaney Law Firm, PA., Post Office Box 3199, Bluffton, South Carolina 29910 by Douglas S. Delaney, Esquire.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **RENEE M. VILCHECK**, her successors and assigns, forever.

AND said Grantor does hereby bind herself and her heirs, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said **RENEE M. VILCHECK**, her successors and assigns, forever, against Grantors and Grantors' heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

IN WITNESS WHEREOF, IT has caused these presents to be executed as of the 16 day of June, 2015.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

BERMUDA TRUST AGREEMENT UAD NOVEMBER 9, 2012

Renee M. Vilcheck

By: Renee M. Vilcheck, Trustee

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, Douglas S. Delaney, a notary public for the State of South Carolina, do hereby certify that **RENEE M. VILCHECK, AS TRUSTEE OF THE BERMUDA TRUST AGREEMENT UAD NOVEMBER 9, 2012, by Renee M. Vilcheck, Trustee** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 16 day of June, 2015.

SWORN to before me
the 16 day of June, 2015.

Notary Public for South Carolina
My Commission Expires: June 21, 2017

Book3412/Page2633 CFN#2015035132

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

EXHIBIT E

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

RECORDED
2019 Mar -15 04:07 PM
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3735 Pgs 2438-2443
FILE NUM 2019006373
02/05/2019 03:48:11 PM
REC'D BY rbins RCPT# 920342
RECORDING FEES $12.00

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

ADD DMP Record 3/8/2019 10:04:34 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	023	00F	0112	0000	00

Quitclaim Deed

THIS QUIT CLAIM DEED, executed this 5th day of February, 2019, by the first party, Renee Marsh Vilcheck, married, of 318 Bamberg Drive Bluffton SC 29910, (the "Grantor"), to the second party, Kenneth Joseph Vilcheck, of 318 Bamberg Dr Bluffton SC 29910 and Renee Marsh Vilcheck, of 318 Bamberg Drive Bluffton SC, a married couple, (collectively the "Grantee") JT ROS (Joint Tenants with the rights of survivorship)

WITNESSETH, that the Grantor, for good and valuable consideration in the sum of $10.00 paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby remise and release, as well as quitclaim, unto the Grantee forever, all the right, title, interest and claim which the Grantor has in and to the following described parcel of land, and improvements and appurtenances attached to said property, in the County of Beaufort, State of South Carolina:

Lot 357 Bamberg Drive Bluffton SC.

This being that same property conveyed to the Grantor by deed of _____, on April 15, 2013 and recorded in the office of the Beaufort County on April 15, 2013 in Book _____ and Page _____

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said Premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said

Grantee forever in fee simple.

IN WITNESS WHEREOF the Grantor has signed and sealed these presents the day and year first above written.

Signed in the presence of:

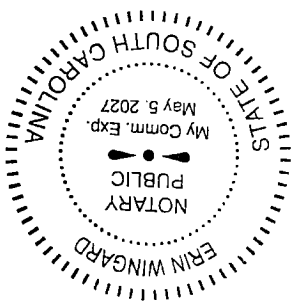
Signature

Witness Name

Signature

Witness Name

Renee Marsh Vilcheck



ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Spousal Acknowledgement

I, Kenneth Joseph Vilcheck of 318 Bamberg Dr Bluffton SC 29910, spouse of Renee Marsh Vilcheck, in accordance with the above Quitclaim Deed, and in consideration of the above sum and other good and valuable consideration received, do hereby waive and release to the Grantee all rights of dower, curtesy, homestead, community property, and all other right, title and interest, if any, in and to the above property.

Spouse's Signature: _____

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

Before me, Erin Wingard a Notary Public in and for the said state and county, duly commissioned and qualified, personally appeared Kenneth Joseph Vilcheck, known to me (or proven to me on the basis of satisfactory evidence) to be the person described in and who executed this Spousal Acknowledgement, and acknowledged that they executed this Spousal Acknowledgement with lawful authority as a free and voluntary act on behalf of the Grantor's spouse.

Witness my official seal this 5th day of February, 2019.

_____
Notary Public for the State of South Carolina

ERIN WINGARD
NOTARY PUBLIC
My Comm Exp. May 5 2027
STATE OF SOUTH CAROLINA

County of Beaufort SC

My commission expires: 5/5/2027

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Grantor Acknowledgement

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

Before me, Erin Wingard a Notary Public in and for the said state and county, duly commissioned and qualified, personally appeared Renee Marsh Vilcheck, known to me (or proven to me on the basis of satisfactory evidence) to be the person described in and who executed this Quitclaim Deed, and acknowledged that they executed this Quitclaim Deed with lawful authority as a free and voluntary act on behalf of the Grantor.

Witness my official seal this 5th day of February, 2019.

Notary Public for the State of South Carolina

County of Beaufort South Carolina

My commission expires: 5/5/2027

ERIN WINGARD
NOTARY PUBLIC
My Comm. Exp.
May 5. 2027
STATE OF SOUTH CAROLINA

This deed was prepared by Kenneth J Vilcheck of 318 Bamberg Drive Bluffton SC 29910.

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

3
10 Pd
Delaney
Escrow

ADD DMP Record 7/16/2015 03:32:08 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	023	00F	0112	0000	00

Exhibit A

BEAUFORT COUNTY SC - ROD
BK 3412 Pgs 2631-2633
FILE NUM 2015035132
07/08/2015 08:46:51 AM
REC'D BY marg1 RCPT# 780829
RECORDING FEES $10.00

RECORDED
2015 Jul -21 04:29 PM
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA)
) **TITLE TO REAL ESTATE**
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, THAT **RENEE M. VILCHECK, AS TRUSTEE OF THE BERMUDA TRUST AGREEMENT UAD NOVEMBER 9, 2012, (Grantor)** in the State aforesaid for Ten dollars ($10.00) and no other valuable consideration to it in hand paid at and before the sealing of these presents by **RENEE M. VILCHECK, (Grantee),** in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release, subject to the easements, restrictions, reservation and conditions set forth in the legal description below, unto the said **RENEE M. VILCHECK,** her successors and assigns, forever, their entire interest in the following described property, to-wit:

All that certain piece, parcel or lot of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, Phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat Phase of VI-A, Belfair (Lots 313-319, 319A-368)(416-417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1966, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

Said property is conveyed subject to all easements as shown on the plats of record and to the Declaration of Covenants and Restrictions for Belfair and Provisions for the Belfair Property Owners' Association, Inc. recorded in the Beaufort County Records Book 787 at Page 390; Supplemental Declarations recorded in Book 790 at 777; Supplemental Declarations recorded in Book 813 at page 2476 as amended in Book 1311 at Page 2182; Second Supplement recorded in Book 869 at Page 2019; Third Supplement recorded in Book 869 at Page 260; Fourth Supplement recorded in Book 918 at Page 1390; Fifth Supplement recorded in Book 918 at Page 1411; Sixth Supplement recorded in Book 1058 at Page 1474; Seventh Supplement recorded in Book 1220 at Page 2487; Amendments recorded in Book 1311 at Pages 2162, 2166, 2170, 2174, 2178 and 2182; First Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association, Inc., recorded in Book 1412 at Page 1803; First

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EXHIBIT F

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ADD DMP Record 6/11/2019 04:36:27 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R600	023	00F	0112	0000	00

RECORDED
2019 Jun -18 01:43 PM

BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3760 Pgs 1585-1587
FILE NUM 2019025690
05/16/2019 12:23:53 PM
REC'D BY shirleys RCPT# 937864
RECORDING FEES $10.00

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DEED CONVEYANCE
(without the benefit of title examination)

KNOW ALL MEN BY THESE PRESENTS that we, **RENEE M. VILCHECK a/k/a RENEE MARSH VILCHECK and KENNETH JOSEPH VILCHECK**, of Bluffton, South Carolina (hereinafter referred to as Grantor(s)) in the State aforesaid, for/and in consideration of the sum of Ten ($10.00) dollars to the Grantor(s) paid by **KENNETH J. VILCHECK and RENEE M. VILCHECK, as joint tenants with rights of survivorship and not as tenants in common,** of Bluffton, South Carolina, (hereinafter referred to as Grantee(s)) in the State and County aforesaid, the receipt of which is hereby acknowledged, have released, relinquished and forever quitclaimed, and by these presents do release, relinquish and forever quitclaim, any and all of my right, title and interest unto the said **KENNETH J. VILCHECK and RENEE M. VILCHECK, as joint tenants with rights of survivorship and not as tenants in common,** their Heirs, Successors and Assigns forever, in fee simple, in and to the following described property to-wit:

All that certain piece, parcel or lot of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as **Lot 357, Phase VI-A**; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat Phase of VI-A, Belfair (Lots 313-319, 319A-368)(416-417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1966, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

Said property is conveyed subject to all easements as shown on the plats of record and to the Declaration of Covenants and Restrictions for Belfair and Provisions for the Belfair Property Owners' Association, Inc. recorded in the Beaufort County Records Book 787 at Page 390; Supplemental Declarations recorded in Book 790 at 777; Supplemental Declarations recorded in Book 813 at page 2476 as amended in Book 1311 at Page 2182; Second Supplement recorded in Book 869 at Page 2019; Third Supplement recorded in Book 869 at Page 260; Fourth Supplement recorded in Book 918 at Page 1390; Fifth Supplement recorded in Book 918 at Page 1411; Sixth Supplement recorded in Book 1058 at Page 1474; Seventh Supplement recorded in Book 1220 at Page 2487; Amendments recorded in Book 1311 at

RETURN TO:
Michael C. Sgobbo, Esq., (Deed prepared without the benefit of title examination)
852 Orleans Road, Charleston, SC 29407 843.402.0300

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

Pages 2162, 2166, 2170, 2174, 2178 and 2182; First Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association, Inc., recorded in Book 1412 at Page 1803; First Amendment recorded in Book 1667 at Page 523; Second Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association Inc., recoded in Book 2014 at Page 1007; First Amendment recorded in Book 2113 at page 706, Second Amendment recorded in Book 2406 at Page 1120; and all further amendments thereto; and to the Supplemental Land Use Covenants, Conditions, Easements and Restrictions for the Belfair Golf Cottages, a Portion of Belfair, recorded in the Beaufort County Records in Book 832 at Page 1743, as amended in Book 1058 at Page 1474 and all further amendments or supplements thereto.

This being the identical property conveyed to RENEE MARSH VILCHECK AND **KENNETH JOSEPH VILCHECK**, by Deed of **RENEE M. VILCHECK**, dated February 5, 2019, and recorded February 5, 2019, with the Register of Deeds for Beaufort County in Deed Book 3735, at Pages 2438-2443; and being the identical property conveyed to **RENEE M. VILCHECK**, by deed of **RENEE M. VILCHECK, TRUSTEE OF BERMUDA TRUST AGREEMENT UAD** November 9, 2012, dated June 26, 2015 and recorded July 8, 2015 with the Register of Deeds for Beaufort County in Deed Book 3412, page 2631-2633.

TMS # R600 023 00F 0112 0000
Grantee's Address: 318 Bamberg Drive, Bluffton, SC 29910

Together with all and singular, the rights, members, hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said **KENNETH J. VILCHECK and RENEE M. VILCHECK, as joint tenants with rights of survivorship and not as tenants in common,** Heirs and assigns, forever--so that neither we, nor our heirs, nor any other person or persons, claiming under me or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part of parcel thereof, forever.

IN WITNESS WHEREOF I, **RENEE M. VILCHECK a/k/a RENEE MARSH VILCHECK and KENNETH JOSEPH VILCHECK**, have hereunto set my hand and seal this 9 day of May, 2019.

Signed, sealed and delivered
in the presence of :

GRANTORS

Renee M. Vilcheck a/k/a
Renee Marsh Vilcheck
RENEE M. VILCHECK a/k/a
RENEE MARSH VILCHECK

KENNETH JOSEPH VILCHECK

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

I, a Notary Public for the State of South Carolina, do hereby certify that **RENEE M. VILCHECK and KENNETH JOSEPH VILCHECK**, personally appeared before me this date and acknowledged the due execution of the foregoing instrument.

SWORN to before me this 9 day of May, 2019.

_____
Notary Public for South Carolina
Michael C. Sgobbo, Esq.
My commission exp: June 23, 2019

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred is being transferred by: **RENEE M. VILCHECK** a/k/a RENEE MARSH VILCHECK and KENNETH JOSEPH VILCHECK
   to RENEE M. VILCHECK and KENNETH J. VILCHECK
   ON: May 9 2019
3. Check on of the following: **THE DEED IS**
   (a) ____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b) ____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   (c) _X_ EXEMPT from the deed recording fee because **(#1) Consideration/Value less than $100.00**
   (If exempt, please skip items 4-6, and go to item 7 of affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a)___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.
   (b)___ The fee is computed on the fair market value of the realty which is $_____.
   (c)___ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.
5. Check YES__ or NO__ to the following: A lien or encumbrance is being assumed as part of the conveyance.
   If "YES" the amount of the outstanding balance of the encumbrance is $_____.
6. The DEED Recording Fee is computed as follows:
   (a)_____the amount listed in item 4 above
   (b)_____the amount listed in item 5 above (Zero if no amount is listed)
   (c)_____Subtract Line 6(b) from Line 6(a) and place the result.
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee is $_____.
8. As required by Code Section 12-24-70, I state that I am a responsible party's connected with this conveyance as: _____.

I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined no more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this 9 day of May, 2019

_____
Notary Public for South Carolina
my commission expires: June 23, 2019
Michael C. Sgobbo, Esq.

_____
Grantor/Grantee/Responsible Person connected with transaction

EXHIBIT G

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

19-27 Sgobbo 2370

BEAUFORT COUNTY SC - ROD
BK 3760 Pgs 1588-1606
FILE NUM 2019025691
05/16/2019 12:23:53 PM
REC'D BY shirleys RCPT# 931864
RECORDING FEES $25.00

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

record and return to: Michael C. Sgobbo, Esq.
852 Orleans Road #203
Charleston, SC 29407

_____ [Space Above This Line For Recording Data] _____

State of SOUTH CAROLINA

FHA Case No. **461-7280203-962**
Loan No. **3647331**
MIN: **1000845-0000250451-8**

ADJUSTABLE RATE HOME EQUITY CONVERSION MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on **May 9, 2019**. The mortgagor is **Kenneth J. Vilcheck and Renee M. Vilcheck, as joint tenants with rights of survivorship and not as tenants in common, their Heirs, Successors and Assigns forever**, whose address is **318 Bamberg Drive, Bluffton, South Carolina 29910** ("Borrower"), and the non-borrowing mortgagor is **Renee M. Vilcheck**, whose address is **318 Bamberg Dr, BLUFFTON, SC 29910** ("Mortgagor"). Borrower is a mortgagor who is an original borrower under the Loan Agreement and Note. The term "Borrower" does not include the Borrower's successors and assigns. Mortgagor is an original mortgagor under this Security Instrument. The term "Mortgagor" includes Mortgagor's heirs, executors, administrators, and assigns. This Security Instrument is given to **Mortgage Electronic Registration Systems, Inc. ("MERS")**, which is organized and existing under the laws of **Delaware**, and whose address is **P.O. Box 2026, Flint, MI 48501-2026, telephone (888) 679-MERS. TowneBank Mortgage is organized and existing under the laws of Virginia, and has an address of 600 22nd Street, Suite 300, Virginia Beach, VA 23451**("Lender"). Borrower has agreed to repay to Lender amounts which Lender is obligated to advance, including future advances, under the terms of a Home Equity Conversion Mortgage Adjustable Rate Loan Agreement dated the same date as this Security Instrument ("Loan Agreement"). The agreement to repay is evidenced by Borrower's Adjustable-Rate Note dated the same date as this Security Instrument ("Note"). **The mortgagee of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS.** This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest at a rate subject to adjustment (interest), and all renewals, extensions and modifications of the Note; (b) and all future advances made under the Loan Agreement, Note and this Security Instrument, in accordance with S.C. Code Ann. § 29-3-50 (1976), as amended, including the payment of all other sums, with interest, advanced under Paragraph 5 to protect the security of this Security Instrument or otherwise due under the terms of this Security Instrument up to a maximum principal amount of **One Million, Eighty Nine Thousand, Seven Hundred Eighty Seven Dollars and Fifty Cents** (U.S. **$1,089,787.50**) plus interest thereon, attorneys' fees and court costs, which interest may be deferred, accrued, or capitalized, subject to such greater amounts as may be permitted by S.C.

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Code Ann. § 29-4-40 (1976); and (c) the performance of Borrower's covenants and agreements under this Security Instrument, the Loan Agreement and the Note. The full debt, including amounts described in (a), (b), and (c) above, if not due earlier, is due and payable on **March 13, 2107**. For this purpose, Borrower and Mortgagor do hereby mortgage, grant, convey, bargain, sell, alien, remise, release, assign, transfer, hypothecate, pledge, deliver, set over, warrant, confirm and grant a security interest to MERS and to the successors and assigns of MERS, in and to the following described property located in **BEAUFORT** County, SOUTH CAROLINA:

See legal description as Exhibit A attached hereto and made a part hereof for all intents and purposes

which has the address of
318 Bamberg Drive, Bluffton, South Carolina 29910, ("Property Address")

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, fixtures, replacements and additions now or hereafter a part of the property unto Lender and Lender's successors and assigns, forever. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

PROVIDED, HOWEVER, that if Borrower promptly pays or causes to be paid to Lender the principal and interest payable herein under the Loan Agreement and Note, at the times and in the manner stipulated therein, herein, and in all other instruments securing the Loan Agreement and Note, all without any deduction or credit for taxes or other similar charges paid by Borrower, and if Borrower and Mortgagor keep, perform, and/or observe all the covenants and promises herein, in the Loan Agreement and Note, and any renewal, extension or modification thereof, and in this and in all other instruments securing the Loan Agreement and Note, to be kept, performed and/or observed by Borrower and Mortgagor, and Lender cancels the Loan Agreement and Note and the account of the Borrower thereunder, then this Security Instrument, and all the properties, interest and rights hereby granted, surveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

BORROWER AND MORTGAGOR COVENANTS that each is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered. Borrower and Mortgagor warrant and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower, Mortgagor and Lender covenant and agree as follows:
1. Payment of Principal and Interest. Borrower shall pay when due the principal of $1,089,787.50, and interest on, the debt evidenced by the Note.

2. Payment of Property Charges. Borrower shall pay all property charges consisting of property taxes, public assessments, repairs, hazard insurance premiums, flood insurance premiums, ground rents,

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condominium fees, planned unit development fees, homeowner's association fees, and any other special assessments that may be required by local or state law in a timely manner, and shall provide evidence of payment to Lender, unless Lender pays property charges as provided for and in accordance with the Loan Agreement.

3. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including, but not limited to, fire and flood, for which Lender requires insurance. Such insurance shall be maintained in the amounts, and for the periods that Lender requires; Lender has the discretion to increase or decrease the amount of any insurance required at any time provided the amount is equal to or greater than any minimum required by the Federal Housing Commissioner ("Commissioner") but in all events, subject to any limitations in S.C. Code Ann. § 29-3-70 (1976), as amended. Whether or not Lender imposes a flood insurance requirement, Borrower shall at a minimum insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Commissioner. If the Lender imposes insurance requirements, all insurance shall be carried with companies approved by Lender, and the insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss to Lender instead of to Borrower and Lender jointly. Insurance proceeds shall be applied to restoration or repair of the damaged Property, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied first to the reduction of any indebtedness under a Second Note and Second Security Instrument (as described in Paragraph 15) held by the Commissioner on the Property and then to the reduction of the indebtedness under the Note and this Security Instrument. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

4. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's Principal Residence after the execution of this Security Instrument and Borrower (or at least one Borrower, if initially more than one person are Borrowers) shall continue to occupy the Property as Borrower's Principal Residence for the term of the Security Instrument.

Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a Principal Residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

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5. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument in the manner provided in Paragraph 14(c).

If Borrower fails to make these payments or pay the property charges required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of property taxes, hazard insurance and other items mentioned in Paragraph 2.

To protect Lender's security in the Property, Lender shall advance and charge to Borrower all amounts due to the Commissioner for the Mortgage Insurance Premium as defined in the Loan Agreement as well as all sums due to the loan servicer for servicing activities as defined in the Loan Agreement. Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower as provided for in the Loan Agreement and shall be secured by this Security Instrument.

6. Inspection. Lender or its agent may enter on, inspect or make appraisals of the Property in a reasonable manner and at reasonable times provided that Lender shall give the Borrower notice prior to any inspection or appraisal specifying a purpose for the inspection or appraisal which must be related to Lender's interest in the Property. If the Property is vacant or abandoned or the loan is in default, Lender may take reasonable action to protect and preserve such vacant or abandoned Property without notice to the Borrower.

7. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation, or other taking of any part of the Property, or for conveyance in place of condemnation shall be paid to Lender. The proceeds shall be applied first to the reduction of any indebtedness under a Second Note and Second Security Instrument (as described in Paragraph 15) held by the Commissioner on the Property, and then to the reduction of the indebtedness under the Note and this Security Instrument. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

8. Fees. Lender may collect fees and charges authorized by the Commissioner.

9. Non-Borrowing Spouse. Borrower, **Kenneth J. Vilcheck** is married under the laws of **South Carolina** to **Renee M. Vilcheck** ("Non-Borrowing Spouse"), who is not a Borrower under the terms of the "Note," "Loan Agreement" or this Security Instrument.

(a) Eligible Non-Borrowing Spouse - A Non-Borrowing Spouse identified by the Borrower who meets, and continues to meet, the Qualifying Attributes requirements established by the Commissioner that the Non-Borrowing Spouse must satisfy in order to be eligible for the Deferral Period.

(b) Ineligible Non-Borrowing Spouse - A Non-Borrowing Spouse who does not meet the Qualifying Attributes requirements established by the Commissioner that the Non-Borrowing Spouse must satisfy in order to be eligible for the Deferral Period.

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10. Grounds for Acceleration of Debt.

(a) Due and Payable - Death.

(i) Except as provided in Paragraph 10(a)(ii), Lender may require immediate payment in full of all sums secured by this Security Instrument if a Borrower dies and the Property is not the Principal Residence of at least one surviving Borrower.

(ii) Lender shall defer the due and payable requirement under Paragraph 10(a)(i) above for any period of time ("Deferral Period") in which a Non-Borrowing Spouse identified in Paragraph 9 qualifies as an Eligible Non-Borrowing Spouse and certifies all of the following conditions are, and continue to be, met:

a. Such Eligible Non-Borrowing Spouse remained the spouse of the identified Borrower for the duration of such Borrower's lifetime;
b. Such Eligible Non-Borrowing Spouse has occupied, and continues to occupy, the Property as [His/Her] Principal Residence;
c. Such Eligible Non-Borrowing Spouse has established legal ownership or other ongoing legal right to remain in the Property;
d. All other obligations of the Borrower under the Note, the Loan Agreement and this Security Instrument continue to be satisfied; and
e. The Note is not eligible to be called due and payable for any other reason; and
f. If requested by Lender, such Eligible Non-Borrowing Spouse and the Mortgagor, if different, sign an enforceable agreement suspending the statute of limitations applicable to the enforcement of a real property lien and any other document(s) Lender deems necessary to preserve (I) the priority of Lender's lien on the Property, (II) Lender's right to foreclose the security interest in the Property, and (III) Lender's right to exercise its default remedies available under this Security Instrument and the Note.

This Subparagraph (ii) is inapplicable or null and void if an Eligible Non-Borrowing Spouse is or becomes an Ineligible Non-Borrowing Spouse at any time. Further, during a deferral of the due and payable status, should any of the conditions for deferral cease to be met, such a deferral shall immediately cease and the Note will become immediately due and payable in accordance with the provisions of Paragraph 7 (A)(i) of the Note.

(b) Due and Payable - Sale. Lender may require immediate payment in full of all sums secured by this Security Instrument if all of a Borrower's title in the Property (or his or her beneficial interest in a trust owning all or part of the Property) is sold or otherwise transferred and no other Borrower retains title to the Property in fee simple or retains a leasehold under a lease for not less than 99 years which is renewable or a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest Borrower or retains a life estate (or retaining a beneficial interest in a trust with such an interest in the Property). A deferral of due and payable status is not permitted when a Lender requires immediate payment in full under this Paragraph.

(c) Due and Payable with Commissioner Approval. - Lender may require immediate payment in full of all sums secured by this Security Instrument, upon approval of the Commissioner, if:

(i) The Property ceases to be the Principal Residence of a Borrower for reasons other than death and the Property is not the Principal Residence of at least one other Borrower; or

(ii) For a period of longer than twelve (12) consecutive months, a Borrower fails to occupy the Property because of physical or mental illness and the Property is not the Principal Residence

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of at least one other Borrower; or

(iii) An obligation of the Borrower under this Security Instrument is not performed which jeopardizes Lenders security..

A deferral of due and payable status is not permitted when a Lender requires immediate payment in full under this Paragraph 10(c).

(d) Notice and Certification to Lender. Borrower shall complete and provide to the Lender on an annual basis a certification, in a form prescribed by the Lender, stating whether the Property remains the Borrower's Principal Residence and, if applicable, the Principal Residence of his or her Non-Borrowing Spouse. Where a Borrower has identified a Non-Borrowing Spouse in Paragraph 9 and the identified Non-Borrowing Spouse qualifies as an Eligible Non-Borrowing Spouse, the Borrower shall also complete and provide to the Lender on an annual basis an Eligible Non-Borrowing Spouse certification, in a form prescribed by the Lender, certifying that all requirements for the application of a Deferral Period continue to apply and continue to be met. During a Deferral Period, the annual Principal Residence certification must continue to be completed and provided to the Lender by the Eligible Non-Borrowing Spouse. The Borrower shall also notify Lender whenever any of the events listed in Paragraph 10 (b) and (c) occur.

(e) Notice to Commissioner and Borrower. Lender shall notify the Commissioner and Borrower whenever the loan becomes due and payable under Paragraph 10 (b) and (c). Lender shall not have the right to commence foreclosure until Borrower has had thirty (30) days after notice to either:

(i) Correct the matter which resulted in the Security Instrument coming due and payable; or

(ii) Pay the balance in full; or

(iii) Sell the Property for the lesser of the balance or ninety-five percent (95%) of the appraised value and apply the net proceeds of the sale toward the balance; or

(iv) Provide the Lender with a deed-in-lieu of foreclosure.

(f) Notice to Commissioner and Eligible Non-Borrowing Spouse. Lender shall notify the Commissioner and any Eligible Non-Borrowing Spouse whenever any event listed in Paragraph 10 (b) and (c) occurs during a Deferral Period.

(g) Trusts. Conveyance of a Borrower's interest in the Property to a trust which meets the requirements of the Commissioner, or conveyance of a trust's interests in the Property to a Borrower, shall not be considered a conveyance for purposes of this Paragraph 10. A trust shall not be considered an occupant or be considered as having a Principal Residence for purposes of this Paragraph 10.

(h) Mortgage Not Insured. Borrower agrees that should this Security Instrument and the Note not be eligible for insurance under the National Housing Act within eight (8) months from the date hereof, if permitted by applicable law Lender may, at its option, require immediate payment-in-full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Commissioner dated subsequent to eight (8) months from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender failure to remit a mortgage insurance premium to the Commissioner.

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11. No Deficiency Judgments. Borrower shall have no personal liability for payment of the debt secured by this Security Instrument. Lender may enforce the debt only through sale of the Property. Lender shall not be permitted to obtain a deficiency judgment against Borrower if the Security Instrument is foreclosed. If this Security Instrument is assigned to the Commissioner upon demand by the Commissioner, Borrower shall not be liable for any difference between the mortgage insurance benefits paid to Lender and the outstanding indebtedness, including accrued interest, owed by Borrower at the time of the assignment.

12. Reinstatement . Borrower has a right to be reinstated if Lender has required immediate payment in full. This right applies even after foreclosure proceedings are instituted. To reinstate this Security Instrument, Borrower shall correct the condition which resulted in the requirement for immediate payment in full. Foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding shall be added to the Principal Balance, to the extent permitted by applicable law. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, except as otherwise provided by applicable law, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two (2) years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the Security Instrument.

13. Deferral Period Reinstatement. If a Deferral Period ceases or becomes unavailable because a Non-Borrowing Spouse no longer satisfies the Qualifying Attributes for a Deferral Period and has become an Ineligible Non-Borrowing Spouse, neither the Deferral Period nor the Security Instrument may be reinstated. In the event a Deferral Period ceases because an obligation of the Note, the Loan Agreement, or this Security Instrument has not been met or the Note has become eligible to be called due and payable and is in default for a reason other than death, an Eligible Non-Borrowing Spouse may have a Deferral Period and this Security Instrument reinstated provided that the condition which resulted in the Deferral Period ceasing is corrected within thirty (30) days, or such longer period as may be required by applicable law. A Lender may require the Eligible Non-Borrowing Spouse to pay for foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding, such costs may not be added to the Principal Balance. Upon reinstatement by an Eligible Non-Borrowing Spouse, the Deferral Period and this Security Instrument and the obligations that it secures shall remain in effect as if the Deferral Period had not ceased and the Lender had not required immediate payment in full. However, except as otherwise required by applicable law, Lender is not required to permit reinstatement if: (i)the Lender has accepted a reinstatement of either the Deferral Period or this Security Instrument within the past two (2) years immediately preceding the current notification to the Eligible Non-Borrowing Spouse that the mortgage is due and payable; (ii) reinstatement of either the Deferral Period or this Security Instrument will preclude foreclosure in the future, or (iii) reinstatement of either the Deferral Period or Security Instrument will adversely affect the priority of this Security Instrument.

14. Lien Status.

(a) Modification.

Borrower and Mortgagor agree to extend this Security Instrument in accordance with this Paragraph 14(a). If Lender determines that the original lien status of the Security Instrument is jeopardized under state law (including but not limited to situations where the amount secured by the Security Instrument equals or exceeds the maximum principal amount stated or the maximum period under which loan advances retain the same lien priority initially granted to loan advances has expired) and state law permits the original lien status to be maintained for future loan advances through the execution and recordation of one or more

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documents, then Lender shall obtain title evidence at Borrower's expense. If the title evidence indicates that the Property is not encumbered by any liens (except this Security Instrument, the Second Security Instrument described in Paragraph 15(a) and any subordinate liens that the Lender determines will also be subordinate to any future loan advances), Lender shall request the Borrower and Mortgagor to execute any documents necessary to protect the lien status of future loan advances. Borrower and Mortgagor agree to execute such documents. If state law does not permit the original lien status to be extended to future loan advances, Borrower will be deemed to have failed to have performed an obligation under this Security Instrument.

(b) Tax Deferral Programs.

Borrower shall not participate in a real estate tax deferral program, if any liens created by the tax deferral are not subordinate to this Security Instrument.

(c) Prior Liens.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operates to prevent the enforcement of the lien or forfeiture of any part of the Property; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to all amounts secured by this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.

15. Relationship to Second Security Instrument.

(a) Second Security Instrument. In order to secure payments which the Commissioner may make to or on behalf of Borrower pursuant to Section 255(i)(1)(A) of the National Housing Act and the Loan Agreement, the Commissioner has required Borrower to execute a Second Note and a Second Security Instrument on the Property.

(b) Relationship of First and Second Security Instruments. Payments made by the Commissioner shall not be included in the debt under the Note unless:

(i) This Security Instrument is assigned to the Commissioner; or

(ii) The Commissioner accepts reimbursement by the Lender for all payments made by the Commissioner.

If the circumstances described in (i) or (ii) occur, then all payments by the Commissioner, including interest on the payments, but excluding late charges paid by the Commissioner, shall be included in the debt under the Note.

(c) Effect on Borrower. Where there is no assignment or reimbursement as described in (b)(i) or (ii) and the Commissioner makes payments to Borrower, then Borrower shall not:

(i) Be required to pay amounts owed under the Note, or pay any rents and revenues of the

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Property under Paragraph 23 to Lender or a receiver of the Property, until the Commissioner has required payment-in-full of all outstanding principal and accrued interest under the Second Note; or

(ii) Be obligated to pay interest or shared appreciation under the Note at any time, whether accrued before or after the payments by the Commissioner, and whether or not accrued interest has been included in the principal balance under the Note.

(d) No Duty of the Commissioner. The Commissioner has no duty to Lender to enforce covenants of the Second Security Instrument or to take actions to preserve the value of the Property, even though Lender may be unable to collect amounts owed under the Note because of restrictions in this Paragraph 15.

16. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

17. Successors and Assigns Bound; Joint and Several Liability. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender. Borrower may not assign any rights or obligations under this Security Instrument or under the Note, except to a trust that meets the requirements of the Commissioner. Borrower's covenants and agreements shall be joint and several.

Notwithstanding anything to the contrary herein, upon the death of the last surviving Borrower, the Borrower's successors and assigns will be bound to perform Borrower's obligations under this Security Instrument.

18. Notices. Any notice to Borrower or Mortgagor provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address all Borrowers jointly designate. Notices to Mortgagor shall be given at the address provided by Mortgagor to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice to a Non-Borrowing Spouse provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower, Lender, Mortgagor or Non-Borrowing Spouse when given as provided in this Paragraph 18.

19. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

20. Borrower's and Mortgagor's Copy. Borrower shall be given one conformed copy of the Note and this Security Instrument, and Mortgagor shall be given one conformed copy of this Security Instrument.

21. Third-Party Beneficiary. Except as set forth in Paragraph 10(a)(ii) and only for an Eligible Non-Borrowing Spouse, this Security Instrument does not and is not intended to confer any rights or remedies upon any person other than the parties. Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between HUD and Lender.

22. Capitalized Terms. Capitalized terms not defined in this Security Instrument shall have the

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meanings ascribed to them in the Loan Agreement.

NON-UNIFORM COVENANTS. Borrower, Mortgagor and Lender covenant and agree as follows:

23. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only, as permitted by applicable law.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by this Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this Paragraph 23.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by this Security Instrument is paid in full.

24. Foreclosure Procedure. If Lender requires immediate payment-in-full under Paragraph 10, Lender may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 24, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

25. Lien Priority. The full amount secured by this Security Instrument shall have the same priority over any other liens on the Property as if the full amount had been disbursed on the date the initial disbursement was made, regardless of the actual date of any disbursement. The amount secured by this Security Instrument shall include all direct payments by Lender to Borrower and all other loan advances permitted by this Security Instrument for any purpose. This lien priority shall apply notwithstanding any State constitution, law or regulation, except that this lien priority shall not affect the priority of any liens for unpaid State or local governmental unit special assessments or taxes.

26. Adjustable-Rate Feature. Under the Note, the initial stated interest rate of **5.121%** which accrues on the unpaid principal balance ("Initial Interest Rate") is subject to change, as described below. When the interest rate changes, the new adjusted interest rate will be applied to the total outstanding principal balance. Each adjustment to the interest rate will be based upon the average of interbank offered rates for one-year U.S. dollar denominated deposits in the London Market ("LIBOR"), as published in The Wall Street Journal ("Index"), rounded to three digits to the right of the decimal point, plus a margin. If the Index is no longer available, Lender will be required to use any index prescribed by the Department of Housing and Urban Development. Lender will give Borrower notice of new index.

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Lender will perform the calculations described below to determine the new adjusted interest rate. The interest rate may change on **June 1, 2020** and **on that day of each succeeding year.** ("Change Date"). Change Date means each date on which the interest rate could change.

The value of the Index will be determined, using the most recent Index figure available thirty (**30**) days before the Change Date ("Current Index"). Before each Change Date, the new interest rate will be calculated by adding a margin to the Current Index. The sum of the margin plus the Current Index will be called the "Calculated Interest Rate" for each Change Date. The Calculated Interest Rate will be compared to the interest rate in effect immediately prior to the current Change Date (the "Existing Interest Rate").

The Calculated Interest Rate cannot be more than 2.0 percentage points higher or lower than the Existing Interest Rate, nor can it be more than 5.0 percentage points higher or lower than the Initial Interest Rate.

The Calculated Interest Rate will be adjusted if necessary to comply with the rate limitation(s) described above and will be in effect until the next Change Date. At any change date, if the Calculated Interest Rate equals the Existing Interest Rate, the interest rate will not change.

27. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

28. Homestead Waiver. Borrower and Mortgagor waive all rights of homestead exemption in the Property to the extent allowed by applicable law.

29. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made pursuant to the Note, the Loan Agreement, or this Security Instrument, as provided by S.C. Code Ann. § 29-3-50 (1976), as amended. The maximum principal amount of all indebtedness outstanding at any one time secured hereby shall not exceed the maximum principal amount set forth on page one of this Security Instrument, plus interest thereon, attorneys' fees and court costs, which interest may be deferred, accrued or capitalized, subject to such greater amounts as may be permitted by S.C. Code Ann. § 29-4-40 (1976), as amended.

30. Deferred Interest. UNDER THE TERMS OF THE NOTE AND LOAN AGREEMENT, INTEREST WILL ACCRUE DAILY AND WILL BE ADDED TO THE PRINCIPAL BALANCE AS A LOAN ADVANCE AT THE END OF EACH MONTH. SUCH INTEREST, WHEN ADDED TO THE PRINCIPAL BALANCE, IS "CAPITALIZED INTEREST." INTEREST WILL BE CHARGED ON UNPAID PRINCIPAL (INCLUDING CAPITALIZED INTEREST) UNTIL THE FULL AMOUNT OF PRINCIPAL, INCLUDING CAPITALIZED INTEREST, HAS BEEN PAID OR OTHERWISE SATISFIED.

31. Riders to this Security Instrument. If one or more riders are executed by Borrower and Mortgagor, and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es).]

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☐ Condominium Rider ☒ Planned Unit Development Rider

☐ Other [Specify]

32. Nominee Capacity of MERS. MERS Serves as mortgagee of record and secured party solely as nominee for Lender and its successors and assigns and holds legal title to the interests granted, assigned, and transferred herein. All payments or deposits with respect to the Secured Obligations shall be made to Lender, all advances under the Loan Documents shall be made by Lender, and all consents, approvals, or other determinations required or permitted of Mortgagee herein shall be made by Lender. MERS shall at all times comply with the instructions of Lender and its successors and assigns. If necessary to comply with law or custom, MERS (for the benefit of Lender and its successors and assigns) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of this Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument executes the same under seal, together with any rider(s) executed by Borrower and recorded with it.

Kenneth J. Vilcheck (SEAL) 5/9/19

Kenneth J. Vilcheck Date

BY SIGNING BELOW, a Non-Borrowing Spouse and/or non-borrowing owner consent(s) to Borrower obtaining the HECM loan, and accept(s) and agree(s) to the terms and covenants contained in this Security Instrument, and in any rider(s) recorded with it, as they affect his or her rights in and to the Property securing the HECM loan under this Security Instrument.

Renee M. Vilcheck (SEAL) 5/9/19

Renee M. Vilcheck, non-borrowing spouse, as Non-Borrowing Spouse and Mortgagor Date

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MORTGAGOR CERTIFICATION

BY SIGNING BELOW, as a Non-Borrowing Spouse and/or non-borrowing owner, I hereby certify that I: (i) consent to Borrower owner obtaining the HECM loan; (ii) acknowledge the terms and conditions of this Security Instrument; and (iii) acknowledge that the real property listed and described in this Security Instrument and/or Exhibit hereto will serve as collateral for the HECM loan as evidenced by the mortgage lien(s) of this Security Instrument. I accept and agree to the terms and covenants contained in this Security Instrument as it affects my rights in and to the real property securing the HECM loan under this Security Instrument and any rider(s) executed by Borrower and me in connection with the HECM loan.

Renee M Vilcheck
Renee M. Vilcheck, non-borrowing spouse, as Non-Borrowing Spouse and Mortgagor

5/9/19
Date

Signed, sealed, and delivered in the presence of:

Witness

Michael Sgobba
Print Witness's Name

Witness

Teresa Fuller
Print Witness's Name

[Space Below This Line For Acknowledgment]

STATE OF South Carolina)
) ACKNOWLEDGMENT
COUNTY OF Beaufort)

I, the undersigned Notary Public of the County and State aforesaid do hereby certify that Kenneth J. Vilcheck and Renee M. Vilcheck personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal this 9 day of May, 2019.

Notary Public for State of: South Carolina

Book3760/Page1600 CFN#2019025691

Print Name: Michael Sgobbo
My Commission Expires: June 23 2019

(NOTARIAL SEAL)

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Loan Originator Organization

Mortgage Loan Originator Organization: **TowneBank Mortgage**

Nationwide Mortgage Licensing system and Registry Identification Number: **512138**

Individual Loan Originator

Mortgage Loan Originator: **Nicole Friez**

Nationwide Mortgage Licensing system and Registry Identification Number: **634510**

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EXHIBIT A

Exhibit A to the Security Instrument made on **May 9, 2019**, by **Kenneth J. Vilcheck and Renee M. Vilcheck, as joint tenants with rights of survivorship and not as tenants in common, their Heirs, Successors and Assigns forever** ("Borrower") and **Renee M. Vilcheck** ("Mortgagor") to **Mortgage Electronic Registration Systems, Inc. ("MERS")** ("Mortgagee"). The Property is located in the county

Description of Property

Legal description of Property:

See Exhibit "A" Attached

Derivation: This being the same property conveyed to Borrower and Mortgagor by deed of Renee M. Vilcheck dated 2-5-19 and recorded in the Office of the ROD for Beaufort County in Book 3735 at Page 2438-2443 and by quit claim deed recorded simultaneously herewith.

Tax Map Number:

R600 023 00F 0112 0000

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Exhibit A

All that certain piece, parcel or lot of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, Phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat Phase of VI-A, Belfair (Lots 313-319, 319A-368)(416-417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1966, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record. Said property is conveyed subject to all easements as shown on the plats of record and to the Declaration of Covenants and Restrictions for Belfair and Provisions for the Belfair Property Owners' Association, Inc. recorded in the Beaufort County Records Book 787 at Page 390; Supplemental Declarations recorded in Book 790 at 777; Supplemental Declarations recorded in Book 813 at page 2476 as amended in Book 1311 at Page 2182; Second Supplement recorded in Book 869 at Page 2019; Third Supplement recorded in Book 869 at Page 260; Fourth Supplement recorded in Book 918 at Page 1390; Fifth Supplement recorded in Book 918 at Page 1411; Sixth Supplement recorded in Book 1058 at Page 1474; Seventh Supplement recorded in Book 1220 at Page 2487; Amendments recorded in Book 1311 at Pages 2162, 2166, 2170, 2174, 2178 and 2182; First Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association, Inc., recorded in Book 1412 at Page 1803; First Amendment recorded in Book 1667 at Page 523; Second Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association Inc., recoded in Book 2014 at Page 1007; First Amendment recorded in Book 2113 at page 706, Second Amendment recorded in Book 2406 at Page 1120; and all further amendments thereto; and to the Supplemental Land Use Covenants, Conditions, Easements and Restrictions for the Belfair Golf Cottages, a Portion of Belfair, recorded in the Beaufort County Records in Book 832 at Page 1743, as amended in Book 1058 at Page 1474 and all further amendments or supplements thereto.

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Planned Unit Development Rider
(Home Equity Conversion Mortgage)

FHA Case Number: **461-7280203-962**

THIS PLANNED UNIT DEVELOPMENT RIDER is made on **5/9/2019** and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to **TowneBank Mortgage**("Lender") of the same date and covering the Property described in the Security Instrument and located at:

318 Bamberg Drive, Bluffton, South Carolina 29910

The Property is a part of a planned unit development ("PUD") known as

Belfair Plantation

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender or the Secretary require, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the payment of the premium for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 3 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.

C. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

Kenneth J. Vilcheck — Date 5/9/19

Renee M. Vilcheck, non-borrowing spouse — Date 5/9/19

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EXHIBIT H

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BEAUFORT COUNTY SC - ROD
BK 3760 Pgs 1607-1623
FILE NUM 2019025692
05/16/2019 12:23:53 PM
REC'D BY shirleys RCPT# 93
RECORDING FEES $23.00

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Record and Return to:

Michael C. Sgobbo, Esq.
852 Orleans Road #203
Charleston, SC 29407

_____ [Space Above This Line For Recording Data] _____

State of SOUTH CAROLINA

FHA Case No. **461-7280203-952**
Loan No. **3647331**
MIN: **1000845-0090250451-8**

ADJUSTABLE RATE
HOME EQUITY CONVERSION SECOND MORTGAGE

THIS MORTGAGE ("Security Instrument" or "Second Security Instrument") is given on **May 9, 2019**. The mortgagor is **Kenneth J. Vilcheck and Renee M. Vilcheck, as joint tenants with rights of survivorship and not as tenants in common, their Heirs, Successors and Assigns forever**, whose address is **318 Bamberg Drive, Bluffton, South Carolina 29910** ("Borrower"), and the non-borrowing mortgagor is **Renee M. Vilcheck**, whose address is **318 Bamberg Dr, BLUFFTON, SC 29910** ("Mortgagor"). Borrower is a mortgagor who is an original borrower under the Loan Agreement and Note. The term "Borrower" does not include the Borrower's successors and assigns. Mortgagor is an original mortgagor under this Security Instrument. The term "Mortgagor" includes Mortgagor's heirs, executors, administrators, and assigns. This Security Instrument is given to the Federal Housing Commissioner, whose address is 451 Seventh Street, SW, Washington, DC 20410 ("Lender" or "Commissioner"). Borrower has agreed to repay to Lender amounts which Lender is obligated to advance, including future advances, under the terms of a Home Equity Conversion Mortgage Adjustable Rate Loan Agreement dated the same date as this Security Instrument ("Loan Agreement"). The agreement to repay is evidenced by Borrower's Adjustable-Rate Note dated the same date as this Security Instrument ("Second Note"). This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Second Note, with interest at a rate subject to adjustment (interest), and all renewals, extensions and modifications of the Second Note; (b) and all future advances made under the Loan Agreement, the Second Note, and this Security Instrument, in accordance with S.C. Code Ann. § 29-3-50 (1976), as amended, including the payment of all other sums, with interest, advanced under Paragraph 5 to protect the security of this Security Instrument or otherwise due under the terms of this Security Instrument up to a maximum principal amount of **One Million, Eighty Nine Thousand, Seven Hundred Eighty Seven Dollars and Fifty Cents** (U.S. **$1,089,787.50**) plus interest thereon, attorneys' fees and court costs, which interest may be deferred, accrued, or capitalized, subject to such greater amounts as may be permitted by S.C. Code Ann. § 29-4-40 (1976) as amended; and (c) the performance of Borrower's covenants and agreements under this Security Instrument, the Loan Agreement and the Second Note. The full debt, including amounts described in (a), (b), and (c) above, if not due earlier, is due and payable on **March 13, 2107**. For this purpose, Borrower and Mortgagor do hereby mortgage, grant, convey, bargain, sell, alien, remise, release, assign, transfer, hypothecate,

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pledge, deliver, set over, warrant, confirm and grant a security interest to Lender and Lender's successors and assigns, in and to the following described property located in **BEAUFORT** County, SOUTH CAROLINA:

See legal description as Exhibit A attached hereto and made a part hereof for all intents and purposes

which has the address of
318 Bamberg Drive, Bluffton, South Carolina 29910, ("Property Address")

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, fixtures, replacements and additions now or hereafter a part of the property unto Lender and Lender's successors and assigns, forever. All of the foregoing is referred to in this Security Instrument as the "Property."

PROVIDED, HOWEVER, that if Borrower promptly pays or causes to be paid to Lender the principal and interest payable herein under the Loan Agreement and Note, at the times and in the manner stipulated therein, herein, and in all other instruments securing the Loan Agreement and Note, all without any deduction or credit for taxes or other similar charges paid by Borrower, and if Borrower and Mortgagor keep, perform, and/or observe all the covenants and promises herein, in the Loan Agreement and Note, and any renewal, extension or modification thereof, and in this and in all other instruments securing the Loan Agreement and Note, to be kept, performed and/or observed by Borrower and Mortgagor, and Lender cancels the Loan Agreement and Note and the account of the Borrower thereunder, then this Security Instrument, and all the properties, interest and rights hereby granted, surveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

BORROWER AND MORTGAGOR COVENANT(S) that each is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is only encumbered by a First Security Instrument given by Borrower and Mortgagor and dated the same date as this Security Instrument ("First Security Instrument"). Borrower and Mortgagor warrant and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower, Mortgagor and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall pay when due the principal of **$1,089,787.50**, and interest on, the debt evidenced by the Second Note.

2. Payment of Property Charges. Borrower shall pay all property charges consisting of property taxes, public assessments, repairs, hazard insurance premiums, flood insurance premiums, ground rents, condominium fees, planned unit development fees, homeowner's association fees, and any other special assessments that may be required by local or state law in a timely manner, and shall provide evidence of payment to Lender, unless Lender pays property charges as provided for and in accordance with the Loan Agreement.

3. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including, but not limited to, fire and flood, for which Lender requires insurance. Such insurance shall

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be maintained in the amounts, and for the periods that Lender requires; Lender has the discretion to increase or decrease the amount of any insurance required at any time provided the amount is equal to or greater than any minimum required by the Federal Housing Commissioner ("Commissioner") but in all events, subject to any limitations in S.C. Code Ann. § 29-3-70 (1976), as amended. Whether or not Lender imposes a flood insurance requirement, Borrower shall at a minimum insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Commissioner. If the Lender imposes insurance requirements, all insurance shall be carried with companies approved by Lender, and the insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss to Lender, instead of to Borrower and Lender jointly. Insurance proceeds shall be applied to restoration or repair of the damaged Property, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied first to the reduction of any indebtedness under the Second Note and this Security Instrument and then to the reduction of the indebtedness under the First Note and the First Security Instrument. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Second Note and this Security Instrument and the First Note and the First Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

4. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's Principal Residence after the execution of this Security Instrument and Borrower (or at least one Borrower, if initially more than one person are Borrowers) shall continue to occupy the Property as Borrower's Principal Residence for the term of the Security Instrument.

Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a Principal Residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

5. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument in the manner provided in Paragraph 14(c).

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If Borrower fails to make these payments or pay the property charges required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of property taxes, hazard insurance and other items mentioned in Paragraph 2.

To protect Lender's security in the Property, Lender shall advance and charge to Borrower all amounts due to the Commissioner for the Mortgage Insurance Premium as defined in the Loan Agreement as well as all sums due to the loan servicer for servicing activities as defined in the Loan Agreement. Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower as provided for in the Loan Agreement and shall be secured by this Security Instrument.

6. Inspection. Lender or its agent may enter on, inspect or make appraisals of the Property in a reasonable manner and at reasonable times provided that Lender shall give the Borrower notice prior to any inspection or appraisal specifying a purpose for the inspection or appraisal which must be related to Lender's interest in the Property. If the Property is vacant or abandoned or the loan is in default, Lender may take reasonable action to protect and preserve such vacant or abandoned Property without notice to the Borrower.

7. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, shall be paid to Lender. The proceeds shall be applied first to the reduction of any indebtedness under the Second Note and this Security Instrument, and then to the reduction of the indebtedness under the First Note and First Security Instrument. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Second Note and this Security Instrument and the First Note and First Security Instrument shall be paid to the entity legally entitled thereto.

8. Fees. Lender may collect fees and charges authorized by the Commissioner.

9. Non-Borrowing Spouse. Borrower, **Kenneth J. Vilcheck** is married under the laws of **South Carolina** to **Renee M. Vilcheck** ("Non-Borrowing Spouse"), who is not a Borrower under the terms of the "Second Note," "Loan Agreement" or this Security Instrument.

(a) Eligible Non-Borrowing Spouse - A Non-Borrowing Spouse identified by the Borrower who meets, and continues to meet, the Qualifying Attributes requirements established by the Commissioner that the Non-Borrowing Spouse must satisfy in order to be eligible for the Deferral Period.

(b) Ineligible Non-Borrowing Spouse - A Non-Borrowing Spouse who does not meet the Qualifying Attributes requirements established by the Commissioner that the Non-Borrowing Spouse must satisfy in order to be eligible for the Deferral Period.

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10. Grounds for Acceleration of Debt.

(a) Due and Payable - Death.

(i) Except as provided in Paragraph 10(a)(ii), Lender may require immediate payment in full of all sums secured by this Security Instrument if a Borrower dies and the Property is not the Principal Residence of at least one surviving Borrower.

(ii) Lender shall defer the due and payable requirement under Paragraph 10(a)(i) above for any period of time ("Deferral Period") in which a Non-Borrowing Spouse identified in Paragraph 9 qualifies as an Eligible Non-Borrowing Spouse resides in the Property as [His/Her] Principal Residence and certifies all of the following conditions are, and continue to be, met:

a. Such Eligible Non-Borrowing Spouse remained the spouse of the identified Borrower for the duration of such Borrower's lifetime;
b. Such Eligible Non-Borrowing Spouse has occupied, and continues to occupy, the Property as [His/Her] Principal Residence;
c. Such Eligible Non-Borrowing Spouse has established legal ownership or other ongoing legal right to remain in the Property;
d. All other obligations of the Borrower under the Second Note, the Loan Agreement and this Security Instrument continue to be satisfied; and
e. The Second Note is not eligible to be called due and payable for any other reason; and
f. If requested by Lender, such Eligible Non-Borrowing Spouse and the Mortgagor, if different, sign an enforceable agreement suspending the statute of limitations applicable to the enforcement of a real property lien and any other document(s) Lender deems necessary to preserve (I) the priority of Lender's lien on the Property, (II) Lender's right to foreclose the security interest in the Property, and (III) Lender's right to exercise its default remedies available under this Security Instrument and the Note.

This Subparagraph (ii) is inapplicable or null and void if an Eligible Non-Borrowing Spouse is or becomes an Ineligible Non-Borrowing Spouse at any time. Further, during a deferral of the due and payable status, should any of the conditions for deferral cease to be met, such a deferral shall immediately cease and the Note will become immediately due and payable in accordance with the provisions of Paragraph 7(A)(i) of the Note.

(b) Due and Payable - Sale. Lender may require immediate payment in full of all sums secured by this Security Instrument if all of a Borrower's title in the Property (or his or her beneficial interest in a trust owning all or part of the Property) is sold or otherwise transferred and no other Borrower retains title to the Property in fee simple or retains a leasehold under a lease for not less than 99 years which is renewable or a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest Borrower or retains a life estate (or retaining a beneficial interest in a trust with such an interest in the Property). A deferral of due and payable status is not permitted when a Lender requires immediate payment in full under this Paragraph.

(c) Due and Payable with Commissioner Approval. - Lender may require immediate payment in full of all sums secured by this Security Instrument, upon approval of the Commissioner, if:

(i) The Property ceases to be the Principal Residence of a Borrower for reasons other than death and the Property is not the Principal Residence of at least one other Borrower; or

(ii) For a period of longer than twelve (12) consecutive months, a Borrower fails to occupy the

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Property because of physical or mental illness and the Property is not the Principal Residence of at least one other Borrower; or

(iii) An obligation of the Borrower under this Security Instrument is not performed which jeopardizes Lenders security..

A deferral of due and payable status is not permitted when a Lender requires immediate payment in full under this Paragraph 10(c).

(d) Notice and Certification to Lender. Borrower shall complete and provide to the Lender on an annual basis a certification, in a form prescribed by the Lender, stating whether the Property remains the Borrower's Principal Residence and, if applicable, the Principal Residence of his or her Non-Borrowing Spouse. Where a Borrower has identified a Non-Borrowing Spouse in Paragraph 9 and the identified Non-Borrowing Spouse qualifies as an Eligible Non-Borrowing Spouse, the Borrower shall also complete and provide to the Lender on an annual basis a Non-Borrowing Spouse certification, in a form prescribed by the Lender, certifying that all requirements for the application of a Deferral Period continue to apply and continue to be met. During a Deferral Period, the Borrower's annual certifications, required by this Paragraph, must continue to be completed and provided to the Lender by the Eligible Non-Borrowing Spouse. The Borrower shall also notify the Lender whenever any of the events listed in Paragraph 10 (b) and (c) occur.

(e) Notice to Borrower. Lender shall notify Borrower whenever the loan becomes due and payable under Paragraph 10 (b) and (c). Lender shall not have the right to commence foreclosure until Borrower has had thirty (30) days after notice to either:

(i) Correct the matter which resulted in the Security Instrument coming due and payable; or

(ii) Pay the balance in full; or

(iii) Sell the Property for the lesser of the balance or ninety-five percent (95%) of the appraised value and apply the net proceeds of the sale toward the balance; or

(iv) Provide the Lender with a deed-in-lieu of foreclosure.

(f) Notice to Commissioner and Eligible Non-Borrowing Spouse. Lender shall notify the Commissioner and any Non-Borrowing Spouse identified in Paragraph 9 who qualifies as an Eligible Non-Borrowing Spouse whenever any event listed in Paragraph 10 (b) and (c) occurs during a Deferral Period.

(g) Trusts. Conveyance of a Borrower's interest in the Property to a trust which meets the requirements of the Commissioner, or conveyance of a trust's interests in the Property to a Borrower, shall not be considered a conveyance for purposes of this Paragraph 10. A trust shall not be considered an occupant or be considered as having a Principal Residence for purposes of this Paragraph 10.

11. No Deficiency Judgments. Borrower shall have no personal liability for payment of the debt secured by this Security Instrument. Lender may enforce the debt only through sale of the Property. Lender shall not be permitted to obtain a deficiency judgment against Borrower if the Security Instrument is foreclosed.

12. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full. This right applies even after foreclosure proceedings are instituted. To reinstate this Security

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Instrument, Borrower shall correct the condition which resulted in the requirement for immediate payment in full. Foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding shall be added to the Principal Balance, to the extent permitted by applicable law. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, except as otherwise provided by applicable law, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two (2) years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the Security Instrument.

13. Deferral Period Reinstatement. If a Deferral Period ceases or becomes unavailable because a Non-Borrowing Spouse no longer satisfies the Qualifying Attributes for a Deferral Period and has become an Ineligible Non-Borrowing Spouse, neither the Deferral Period nor the Security Instrument may be reinstated. In the event a Deferral Period ceases because an obligation of the Note, the Loan Agreement, or this Security Instrument has not been met or the Note has become eligible to be called due and payable and is in default for a reason other than death, an Eligible Non-Borrowing Spouse may have a Deferral Period and this Security Instrument reinstated provided that the condition which resulted in the Deferral Period ceasing is corrected within thirty (30) days, or such longer period as may be required by applicable law. A Lender may require the Eligible Non-Borrowing Spouse to pay for foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding, such costs may not be added to the Principal Balance. Upon reinstatement by an Eligible Non-Borrowing Spouse, the Deferral Period and this Security Instrument and the obligations that it secures shall remain in effect as if the Deferral Period had not ceased and the Lender had not required immediate payment in full. However, except as otherwise required by applicable law, Lender is not required to permit reinstatement if: (i)the Lender has accepted a reinstatement of either the Deferral Period or this Security Instrument within the past two (2) years immediately preceding the current notification to the Eligible Non-Borrowing Spouse that the mortgage is due and payable; (ii) reinstatement of either the Deferral Period or this Security Instrument will preclude foreclosure in the future, or (iii) reinstatement of either the Deferral Period or Security Instrument will adversely affect the priority of this Security Instrument.

14. Lien Status.

(a) Modification.

Borrower and Mortgagor agree to extend this Security Instrument in accordance with this Paragraph 14(a). If Lender determines that the original lien status of the Security Instrument is jeopardized under state law (including but not limited to situations where the amount secured by the Security Instrument equals or exceeds the maximum principal amount stated or the maximum period under which loan advances retain the same lien priority initially granted to loan advances has expired) and state law permits the original lien status to be maintained for future loan advances through the execution and recordation of one or more documents, then Lender shall obtain title evidence at Borrower's expense. If the title evidence indicates that the Property is not encumbered by any liens (except the First Security Instrument described in Paragraph 15(a), this Second Security Instrument and any subordinate liens that the Lender determines will also be subordinate to any future loan advances), Lender shall request the Borrower and Mortgagor to execute any documents necessary to protect the lien status of future loan advances. Borrower and Mortgagor agree to execute such documents. If state law does not permit the original lien status to be extended to future loan advances, Borrower will be deemed to have failed to have performed an obligation under this Security Instrument.

(b) Tax Deferral Programs.

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Borrower shall not participate in a real estate tax deferral program, if any liens created by the tax deferral are not subordinate to this Security Instrument.

(c) Prior Liens.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the Property; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to all amounts secured by this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.

15. Relationship to First Security Instrument.

(a) Second Security Instrument. In order to secure payments which the Commissioner may make to or on behalf of Borrower pursuant to Section 255(i)(1)(A) of the National Housing Act and the Loan Agreement, the Commissioner has required Borrower to execute a Second Note and this Second Security Instrument. Borrower also has executed a First Note and First Security Instrument.

(b) Relationship of First and Second Security Instruments. Payments made by the Commissioner shall not be included in the debt under the First Note unless:

(i) The First Security Instrument is assigned to the Commissioner; or

(ii) The Commissioner accepts reimbursement by the holder of the First Note for all payments made by the Commissioner.

If the circumstances described in (i) or (ii) occur, then all payments by the Commissioner, including interest on the payments but excluding late charges paid by the Commissioner, shall be included in the debt under the First Note.

(c) Effect on Borrower. Where there is no assignment or reimbursement as described in (b)(i) or (ii) and the Commissioner makes payments to Borrower, then Borrower shall not:

(i) Be required to pay amounts owed under the First Note, or pay any rents and revenues of the Property under Paragraph 24 to the holder of the First Note or a receiver of the Property, until the Commissioner has required payment-in-full of all outstanding principal and accrued interest under the Second Note; or

(ii) Be obligated to pay interest or shared appreciation under the First Note at any time, whether accrued before or after the payments by the Commissioner, and whether or not accrued interest has been included in the Principal Balance under the First Note.

(d) No Duty of the Commissioner. The Commissioner has no duty to the holder of the First Note to enforce covenants of the Second Security Instrument or to take actions to preserve the value of the Property, even though the holder of the First Note may be unable to collect amounts owed under the First Note because of restrictions in this Paragraph 15.

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16. Restrictions on Enforcement. Notwithstanding anything else in this Security Instrument, the Borrower shall not be obligated to comply with the covenants hereof, and Paragraph 24 shall have no force and effect, whenever there is no outstanding balance under the Second Note.

17. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

18. Successors and Assigns Bound; Joint and Several Liability. Borrower may not assign any rights or obligations under this Security Instrument or the Second Note, except to a trust that meets the requirements of the Commissioner. Borrower's covenants and agreements shall be joint and several.

Notwithstanding anything to the contrary herein, upon the death of the last surviving Borrower, the Borrower's successors and assigns will be bound to perform Borrower's obligations under this Security Instrument.

19. Notices. *Any notice to Borrower or Mortgagor provided for in this Security Instrument shall be* given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address all Borrowers jointly designate. Notices to Mortgagor shall be given at the address provided by Mortgagor to Lender. Any notice to the Commissioner shall be given by first class mail to the HUD Field Office with jurisdiction over the Property or any other address designated by the Commissioner. Any notice to a Non-Borrowing Spouse provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower, Lender, Mortgagor or Non-Borrowing Spouse when given as provided in this Paragraph 19.

20. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Second Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Second Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Second Note are declared to be severable.

21. Borrower's and Mortgagor's Copy. Borrower shall be given one conformed copy of the Note and this Security Instrument, and Mortgagor shall be given one conformed copy of this Security Instrument.

22. Third-Party Beneficiary. Except as set forth in Paragraph 10(a)(ii) and only for an Eligible Non-Borrowing Spouse, this Security Instrument does not and is not intended to confer any rights or remedies upon any person other than the parties Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between HUD and the holder of the First Note.

23. Capitalized Terms. Capitalized terms not defined in this Security Instrument shall have the meanings ascribed to them in the Loan Agreement.

NON-UNIFORM COVENANTS. Borrower, Mortgagor and Lender further covenant and agree as follows:

24. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents.

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However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by this Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this Paragraph 24, except as provided in the First Security Instrument.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by this Security Instrument is paid in full.

25. Foreclosure Procedure. If Lender requires immediate payment-in-full under Paragraph 10, Lender may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 25, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

26. Lien Priority. The full amount secured by this Security Instrument shall have a lien priority subordinate only to the full amount secured by the First Security Instrument.

27. Adjustable-Rate Feature. Under the Second Note, the initial stated interest rate of **5.121%** which accrues on the unpaid principal balance ("Initial Interest Rate") is subject to change, as described below. When the interest rate changes, the new adjusted interest rate will be applied to the total outstanding principal balance. Each adjustment to the interest rate will be based upon the average of interbank offered rates for one-year U.S. dollar denominated deposits in the London Market ("LIBOR"), as published in The Wall Street Journal ("Index") plus a margin. If the Index is no longer available, Lender will be required to use any index prescribed by the Department of Housing and Urban Development. Lender will give Borrower notice of new index.

Lender will perform the calculations described below to determine the new adjusted interest rate. The interest rate may change on **June 1, 2020** and **on that day of each succeeding year.** ("Change Date"). Change Date means each date on which the interest rate could change.

The value of the Index will be determined, using the most recent Index figure available thirty (**30**) days before the Change Date ("Current Index"). Before each Change Date, the new interest rate will be calculated by adding a margin to the Current Index. The sum of the margin plus the Current Index will be called the "Calculated Interest Rate" for each Change Date. The Calculated Interest Rate will be compared to the interest rate in effect immediately prior to the current Change Date (the "Existing Interest Rate").

The Calculated Interest Rate cannot be more than 2.0 percentage points higher or lower than the Existing Interest Rate, nor can it be more than 5.0 percentage points higher or lower than the Initial Interest Rate.

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The Calculated Interest Rate will be adjusted if necessary to comply with the rate limitation(s) described above and will be in effect until the next Change Date. At any change date, if the Calculated Interest Rate equals the Existing Interest Rate, the interest rate will not change.

28. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

29. Homestead Waiver. Borrower and Mortgagor waive all rights of homestead exemption in the Property to the extent allowed by applicable law.

30. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Second Note and any future advances made pursuant to the Second Note, the Loan Agreement, or this Security Instrument, as provided by S.C. Code Ann. § 29-3-50 (1976), as amended. The maximum principal amount of all indebtedness outstanding at any one time secured hereby shall not exceed the maximum principal amount set forth on page one of this Security Instrument, plus interest thereon, attorneys' fees and court costs, which interest may be deferred, accrued or capitalized, subject to such greater amounts as may be permitted by S.C. Code Ann. § 29-4-40 (1976), as amended.

31. Deferred Interest. UNDER THE TERMS OF THE NOTE AND LOAN AGREEMENT, INTEREST WILL ACCRUE DAILY AND WILL BE ADDED TO THE PRINCIPAL BALANCE AS A LOAN ADVANCE AT THE END OF EACH MONTH. SUCH INTEREST, WHEN ADDED TO THE PRINCIPAL BALANCE, IS "CAPITALIZED INTEREST." INTEREST WILL BE CHARGED ON UNPAID PRINCIPAL (INCLUDING CAPITALIZED INTEREST) UNTIL THE FULL AMOUNT OF PRINCIPAL, INCLUDING CAPITALIZED INTEREST, HAS BEEN PAID OR OTHERWISE SATISFIED.

32. Riders to this Security Instrument. If one or more riders are executed by Borrower and Mortgagor, and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es).]

☐ Condominium Rider ☒ Planned Unit Development Rider

☐ Other [Specify]

BY SIGNING BELOW, Non-Borrowing Spouse and/or non-borrowing owner consent(s) to Borrower obtaining the HECM loan, and accept(s) and agree(s) to the terms and covenants contained in this Security Instrument, and in any rider(s) recorded with it, as they affect his or her rights in and to the Property securing the HECM loan under this Security Instrument.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument executes the same under seal, together with any rider(s) executed by Borrower and recorded with it.

Kenneth J. Vilcheck (SEAL)

5/9/19
Date

BY SIGNING BELOW, Non-Borrowing Spouse consent(s) to Borrower obtaining the HECM loan, and accept(s) and agree(s) to the terms and covenants contained in this Security Instrument, and in any rider(s) recorded with it, as they affect his or her rights in and to the Property securing the HECM loan under this Security Instrument.

Renee M. Vilcheck

5/9/19
Date

Renee M. Vilcheck, non-borrowing spouse, Non-Borrowing Spouse and Mortgagor

MORTGAGOR CERTIFICATION

BY SIGNING BELOW, as a Non-Borrowing Spouse , I hereby certify that I: (i) consent to Borrower owner obtaining the HECM loan; (ii) acknowledge the terms and conditions of this Security Instrument; and (iii) acknowledge that the real property listed and described in this Security Instrument and/or Exhibit hereto will serve as collateral for the HECM loan as evidenced by the mortgage lien(s) of this Security Instrument. I accept and agree to the terms and covenants contained in this Security Instrument as it affects my rights in and to the real property securing the HECM loan under this Security Instrument and any rider(s) executed by Borrower and me in connection with the HECM loan.

Renee M. Vilcheck

5/9/19
Date

Renee M. Vilcheck, non-borrowing spouse, Non-Borrowing Spouse and Mortgagor

Signed, sealed, and delivered in the presence of:

Witness

Witness

Michael Sgobbo
Print Witness's Name

Teresa Feller
Print Witness's Name

[Space Below This Line For Acknowledgment]

STATE OF South Carolina)
) ACKNOWLEDGMENT
COUNTY OF Beaufort)

I, the undersigned Notary Public of the County and State aforesaid do hereby certify that Kenneth J. Vilchesk and Renee M. Vilchesk personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal this 9 day of May, 2019.

Notary Public for State of: South Carolina
Print Name: Michael Sgobba
My Commission Expires: June 23 2019

(NOTARIAL SEAL)

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Loan Originator Organization

Mortgage Loan Originator Organization: **TowneBank Mortgage**

Nationwide Mortgage Licensing system and Registry Identification Number: **512138**

Individual Loan Originator

Mortgage Loan Originator: **Nicole Friez**

Nationwide Mortgage Licensing system and Registry Identification Number: **634510**

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EXHIBIT A

Exhibit A to the Security Instrument made on **May 9, 2019**, by **Kenneth J. Vilcheck and Renee M. Vilcheck, as joint tenants with rights of survivorship and not as tenants in common, their Heirs, Successors and Assigns forever** ("Borrower") and **Renee M. Vilcheck** ("Mortgagor") to **TowneBank Mortgage** ("Lender"). The Property is located in the county of **BEAUFORT**, state of **South Carolina**,

Description of Property

Legal description of Property:

See Exhibit "A" Attached

Derivation: This being the same property conveyed to Borrower and Mortgagor by deed of Renee M. Vilcheck dated 2-5-19 and recorded in the Office of the ROD for Beaufort County in Book 3735 at Page 2478-2443. and by quit claim deed recorded simultaneously herewith

Tax Map Number: R600 023. 00F 0112 0000

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Exhibit A

All that certain piece, parcel or lot of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, Phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat Phase of VI-A, Belfair (Lots 313-319, 319A-368)(416-417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1966, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record. Said property is conveyed subject to all easements as shown on the plats of record and to the Declaration of Covenants and Restrictions for Belfair and Provisions for the Belfair Property Owners' Association, Inc. recorded in the Beaufort County Records Book 787 at Page 390; Supplemental Declarations recorded in Book 790 at 777; Supplemental Declarations recorded in Book 813 at page 2476 as amended in Book 1311 at Page 2182; Second Supplement recorded in Book 869 at Page 2019; Third Supplement recorded in Book 869 at Page 260; Fourth Supplement recorded in Book 918 at Page 1390; Fifth Supplement recorded in Book 918 at Page 1411; Sixth Supplement recorded in Book 1058 at Page 1474; Seventh Supplement recorded in Book 1220 at Page 2487; Amendments recorded in Book 1311 at Pages 2162, 2166, 2170, 2174, 2178 and 2182; First Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association, Inc., recorded in Book 1412 at Page 1803; First Amendment recorded in Book 1667 at Page 523; Second Amended and Restated Declaration of Covenants and Provisions for Membership in Belfair Property Owners' Association Inc., recoded in Book 2014 at Page 1007; First Amendment recorded in Book 2113 at page 706, Second Amendment recorded in Book 2406 at Page 1120; and all further amendments thereto; and to the Supplemental Land Use Covenants, Conditions, Easements and Restrictions for the Belfair Golf Cottages, a Portion of Belfair, recorded in the Beaufort County Records in Book 832 at Page 1743, as amended in Book 1058 at Page 1474 and all further amendments or supplements thereto.

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Planned Unit Development Rider
(Home Equity Conversion Mortgage)

FHA Case Number: **461-7280203-962**

THIS PLANNED UNIT DEVELOPMENT RIDER is made on **5/9/2019** and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to the Secretary of Housing and Urban Development ("Lender" or "Secretary") of the same date and covering the Property described in the Security Instrument and located at:

318 Bamberg Drive, Bluffton, South Carolina 29910

The Property is a part of a planned unit development ("PUD") known as

Belfair Plantation

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender or the Secretary require, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the payment of the premium for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 3 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.

C. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

Kenneth J. Vilcheck — Date 5/9/19

Renee M. Vilcheck, non-borrowing spouse — Date 5/9/19

EXHIBIT I

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KOSMP
IRS

18332

Form 668 (Y)(c)
(Rev. February 2004)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:
SMALL BUSINESS/SELF EMPLOYED AREA #3
Lien Unit Phone: (800) 829-3903

Serial Number
383186419

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer KENNETH J & RENEE M VILCHECK

Residence
318 BAMBERG DR
BLUFFTON, SC 29910-4898

BEAUFORT COUNTY SC - ROD
BK 141 Pg 951
FILE NUM 2019054361
10/08/2019 02:05:48 PM
REC'D BYkpaston RCPT# 949164
RECORDING FEES $10.00

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2011	XXX-XX-7433	04/22/2013	05/22/2023	113959.36
1040	12/31/2013	XXX-XX-7433	11/24/2014	12/24/2024	32014.24
1040	12/31/2015	XXX-XX-7433	02/19/2018	03/20/2028	136230.25
1040	12/31/2016	XXX-XX-7433	02/19/2018	03/20/2028	3595.15

Place of Filing
REGISTER - PO DRAWER 1197
Beaufort COUNTY
BEAUFORT, SC 29901-1197

Total $ 285799.00

This notice was prepared and signed at BALTIMORE, MD, on this,

the 24th day of September, 2019.

Signature
for S. MCGUIGAN

Title
ACS SBSE
(800) 829-3903

23-00-0008

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Kept By Recording Office
R 0375

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO 60025X

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

EXHIBIT J

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

1350

dor.sc.gov

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Notice of State Tax Lien

W-131-F
(Rev. 04/29/22)
2048

A state tax lien has been filed for the taxpayer below:

Tax Lien Number:	863513	**Last Updated:**	10/21/22
Legal Name:	VILCHECK, KENNETH	**Tax:**	$0.00
Taxpayer ID:	***-**-7433	**Penalty:**	$774.73
Status:	Active	**Interest:**	$423.84
Issued:	Statewide	**Costs:**	$175.36
Period(s) Covered:	12/31/18	**Balance Due:**	$1,373.93
Tax Type:	Individual Income Tax		
Transmit Address:	318 BAMBERG DR BLUFFTON SC 29910-4898 USA		
Date Filed:	06/12/20		
DBA/Second Name:	VILCHECK, RENEE		
Spouse ID:	***-**-5496		

The South Carolina Department of Revenue issued this tax lien on the State Tax Lien Registry in compliance with S.C. Code Ann. §§ 12-54-120 and 12-54-122.

The total amount shown, plus all additional interest, penalties, and fees that accrue, is a lien in favor of the Department on all real and personal property currently owned or hereafter acquired by the taxpayer named in this notice. This lien will remain until the debt is paid.

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

1350

dor.sc.gov

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

Notice of State Tax Lien

W-131-F
(Rev. 04/29/22)
2048

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

A state tax lien has been filed for the taxpayer below:

Last Updated:	10/21/22		
Tax Lien Number:	802729	**Tax:**	$12,397.00
Legal Name:	VILCHECK, KENNETH	**Penalty:**	$4,593.85
Taxpayer ID:	***-**-7433	**Interest:**	$1,051.64
Status:	Active	**Costs:**	$680.81
Issued:	Statewide	**Balance Due:**	$18,723.30
Period(s) Covered:	12/31/19		
Tax Type:	Individual Income Tax		
Transmit Address:	318 BAMBERG DR BLUFFTON SC 29910-4898 USA		
Date Filed:	04/10/21 06:28:48		
DBA/Second Name:	VILCHECK, RENEE		
Spouse ID:	***-**-5496		

The South Carolina Department of Revenue issued this tax lien on the State Tax Lien Registry in compliance with S.C. Code Ann. §§ 12-54-120 and 12-54-122.

The total amount shown, plus all additional interest, penalties, and fees that accrue, is a lien in favor of the Department on all real and personal property currently owned or hereafter acquired by the taxpayer named in this notice. This lien will remain until the debt is paid.

1350

dor.sc.gov

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Notice of State Tax Lien

W-131-F
(Rev. 04/29/22)
2048

A state tax lien has been filed for the taxpayer below:

Last Updated:	10/21/22		
Tax Lien Number:	949023	**Tax:**	$1,577.00
Legal Name:	VILCHECK, KENNETH	**Penalty:**	$319.86
Taxpayer ID:	***-**-7433	**Interest:**	$91.82
Status:	Active	**Costs:**	$95.66
Issued:	Statewide	**Balance Due:**	$2,084.34
Period(s) Covered:	12/31/20		
Tax Type:	Individual Income Tax		
Transmit Address:	318 BAMBERG DR BLUFFTON SC 29910-4898 USA		
Date Filed:	06/10/22 08:16:38		
DBA/Second Name:	VILCHECK, RENEE		
Spouse ID:	***-**-5496		

The South Carolina Department of Revenue issued this tax lien on the State Tax Lien Registry in compliance with S.C. Code Ann. §§ 12-54-120 and 12-54-122.

The total amount shown, plus all additional interest, penalties, and fees that accrue, is a lien in favor of the Department on all real and personal property currently owned or hereafter acquired by the taxpayer named in this notice. This lien will remain until the debt is paid.

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EXHIBIT K

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

BEAUFORT COUNTY SC - ROD
BK 4034 Pgs 1582-1583
FILE NUM 2021049333
07/07/2021 04:03:00 PM
RCPT# 1043815
RECORDING FEES 10.00

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

ASSIGNMENT OF MORTGAGE

Prepared By:
CELINK/LAUREN ALLWARD
3900 Capital City Blvd
Lansing, MI 48906
After Recording Return To: Celink
Attn: Lien Release Dept.
PO Box 40724
Lansing MI 48901
Charles A. Brown & Associates, P.L.L.C. d/b/a DocSolution, Inc. did not prepare a title search of the property encumbered by the security instrument described below. The preparer of this document makes no representation as to the status of the title, loan history, property use or zoning regulations concerning described property herein assigned, transferred or conveyed nor any matter except the validity of the form of this instrument. Information herein was provided to preparer by Grantor/Grantee and/or their agent. No boundary survey was made at the time of this assignment, transfer or conveyance.

Client Id: CelinkMI/AOL
Loan #: 1408190-ER

* 9 6 9 0 3 8 *

Min: 100084500002504518 MERS Phone: 1-888-679-6377

FHA Case Number: **4617280203**

***FOR VALUE RECEIVED*, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS MORTGAGEE,** whose address is P.O. Box 2026, Flint, MI 48501-2026, **AS NOMINEE FOR TOWNEBANK MORTGAGE, ITS SUCCESSORS AND ASSIGNS,** does hereby assign and transfer to **LONGBRIDGE FINANCIAL LLC, ITS SUCCESSORS AND ASSIGNS,** forever and without recourse, whose address is 1 INTERNATIONAL BLVD, SUITE 410, MAHWAH, NJ 07495, all its right, title and interest in and to a certain Mortgage from **KENNETH J VILCHECK AND RENEE M. VILCHECK, AS JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON, THEIR HEIRS, SUCCESSORS AND ASSIGNS FOREVER** to **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS MORTGAGEE AS NOMINEE FOR TOWNEBANK MORTGAGE, ITS SUCCESSORS AND ASSIGNS** for **$1,089,787.50**, dated **5/9/2019** of record on **5/16/2019** in Book **3760** Page **1588-1606** as Document **2019025691**, in the **BEAUFORT County** Clerk's Office, State of **SOUTH CAROLINA**.
Property Address: 318 Bamberg Drive, Bluffton, SOUTH CAROLINA 29910

Executed this JUL 07 2021.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS MORTGAGEE AS NOMINEE FOR TOWNEBANK MORTGAGE, ITS SUCCESSORS AND ASSIGNS

Witness: Patty Ling
Printed Name: Patty Ling

By: AMANDA BEACH
Title: ASSISTANT SECRETARY

Witness: Brianna St John
Printed Name: Brianna St John

STATE OF MICHIGAN

COUNTY OF CLINTON

Before me, the undersigned officer, on this day, personally appeared AMANDA BEACH the ASSISTANT SECRETARY of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS MORTGAGEE AS NOMINEE FOR TOWNEBANK MORTGAGE, ITS SUCCESSORS AND ASSIGNS known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal this JUL 07 2021

LAUREN ALLWARD
Notary Public
County of Ingham
My Commission Expires
July 9, 2025
Acting in the County of
Clinton
STATE OF MICHIGAN

Notary Public in and for the State of MICHIGAN
Notary's Printed Name: LAUREN ALLWARD
My Commission Expires: _____
Mortgage for $1,089,787.50 dated 5/9/2019

969038

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

RECEIVED
Oct 21 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Judge

Appellate Case No. 2022-000958

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc. a South Carolina corporation, Defendants,

Of whom Kenneth J. Vilcheck and Renee M. Vilcheck are the..……Appellants.

MOTION TO EXTEND DEADLINE TO SERVE AND FILE INITITAL BRIEF
AND DESIGNATION OF MATTER
TO BE INCLUDED IN RECORD ON APPEAL

Appellant hereby moves pursuant to Rule 263(b), SCACR, for a 30-day extension of the time in which to serve and file the Appellant's initial brief and designation of matter to be included in the record on appeal. The grounds for this motion are that there is good cause to grant the requested extension, as the following shows:

1. The subject deadline is today, and Appellant's counsel has not yet completed the initial brief. Appellant's counsel has a number of court

events and deadlines to meet lately, and this has affected the time he has had to complete the brief.

2. Accordingly, an extension is needed.

3. This is the first extension sought of this deadline.

4. There is good cause for the requested extension.

5. The undersigned has served this document on opposing counsel by email to registered AIS email address on the date given below.

WHEREFORE Appellant prays for an order extending the time in which to serve and file the Appellant's initial brief and designation of matter to be included in the record on appeal by 30 days.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
Attorneys for Appellants

October 21, 2022

RECEIVED
Oct 21 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Judge

Appellate Case No. 2022-000958

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc. a South Carolina corporation, Defendants,

Of whom Kenneth J. Vilcheck and Renee M. Vilcheck are the..……Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing motion for extension on the date given below by emailing it to counsel for the Respondent(s) and all other counsel of record in the underlying action at the address(es) noted below.

Paul Simons, Jr., Esq., at psimons@hullbarrett.com
Aaron J. Angel, Esq., at aaron@angellmolony.com

October 21, 2022

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
Attorneys for Appellants

ELECTRONICALLY FILED - 2022 Oct 31 2:27 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF BEAUFORT	**Case No. 2012-CP-07-04253**
Southern First Bank, N.A. d/b/a Greenville First Bank, **Plaintiff,** **vs.** **Kenneth J. Vilcheck and Renee M. Vilcheck,** **Defendants.**	**MOTION TO RECONSIDER**

YOU WILL PLEASE TAKE NOTICE that the Defendants move before this court pursuant to Rules 52 and 59, SCRCP, for an order reconsidering, altering, amending, and/or clarifying the order filed in the above-captioned action on October 21, 2022.

The Defendants so move on the following grounds:

1. The Defendants specifically incorporate into this motion by reference their previous filings in this case and all arguments they made at the hearing that produced the aforesaid order.

2. The Defendants argued at the hearing and argue now that, as illustrated by Richardson Constr. Co. v. Meek Eng'g and Constr., 274 S.C. 307, 311, 262 S.E.2d 913, 916 (1980), they rebutted the presumption of service created by the affidavits of service and are entitled to relief from the judgment, as they made a detailed showing, whereas the ostensible process server testified that she had no memory of the supposed process service. Under Richardson Construction, the Defendants'

detailed showing rebutted the presumption of service and entitled them to relief. See id.

3. The court should reconsider its ruling and issue an order declaring the judgment to be void. See id.

4. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that there would have been no useful purpose in consultation with opposing counsel in an attempt to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
ATTORNEYS FOR DEFENDANTS
KENNETH J. VILCHECK AND RENEE M. VILCHECK

Columbia, South Carolina
October 31, 2022

ELECTRONICALLY FILED - 2022 Oct 31 2:27 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

ELECTRONICALLY FILED - 2022 Nov 17 9:34 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **Case No. 2012-CP-07-04253**
Southern First Bank, N.A. d/b/a Greenville First Bank, **Plaintiff,** **vs.** **Kenneth J. Vilcheck and Renee M. Vilcheck,** **Defendants.**	**MOTION TO RECONSIDER**

YOU WILL PLEASE TAKE NOTICE that the Defendants move before this court pursuant to Rules 52 and 59, SCRCP, for an order reconsidering, altering, amending, and/or clarifying the order joining parties filed in the above-captioned action on November 7, 2022.

The Defendants so move on the following grounds:

1. The Defendants specifically incorporate into this motion by reference their previous filings in this case and all arguments they made at the hearing that produced the aforesaid order.

2. The Defendants argued at the hearing and argue now that what was ordered contravenes Rule 12(b)(8), SCRCP, and the principles of that rule. There is another action pending in which the exact same relief, against the same parties, is sought that the Plaintiff now seeks through its motion that produced the aforesaid order. The Court of Appeals has observed that such multiple actions seeking the same thing may not be pursued, as follows:

> In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between

ELECTRONICALLY FILED - 2022 Nov 17 9:34 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

> the same parties, (3) for the same claim. Rule 12(b)(8), SCRCP. The rule has historic ties to a former statute providing a defendant a similar opportunity to demur; our supreme court traditionally interpreted that statute narrowly, stating that it only applied when there was identity of parties, causes of action and relief. We find this approach consistent with modern day practice under rules similar to our Rule 12(b)(8). Accordingly, we interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8).

Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 531-32 (Ct. App. 2009) (internal citations omitted).

3. These principles illustrate that the court should have denied the Plaintiff what was given to it in the aforesaid order.

4. The court should reconsider its ruling and issue an order denying the Plaintiff's motion that produced the aforesaid November 7 order. See id.

5. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that there would have been no useful purpose in consultation with opposing counsel in an attempt to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
ATTORNEYS FOR DEFENDANTS
KENNETH J. VILCHECK AND RENEE M. VILCHECK

Columbia, South Carolina
November 17, 2022

ELECTRONICALLY FILED - 2022 Nov 17 9:34 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

RECEIVED
Nov 17 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Judge

Appellate Case No. 2022-000958

Southern First Bank, N.A. d/b/a Greenville First Bank,..……...…...Respondent,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc. a South Carolina corporation, Defendants,

Of whom Kenneth J. Vilcheck and Renee M. Vilcheck are the..……Appellants.

MOTION TO EXTEND DEADLINE TO SERVE AND FILE INITITAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant hereby moves pursuant to Rule 263(b), SCACR, for a 30-day extension of the time in which to serve and file the Appellant's initial brief and designation of matter to be included in the record on appeal. The grounds for this motion are that there is good cause to grant the requested extension, as the following shows:

1. The subject deadline is Monday, and Appellant's counsel has not yet completed the initial brief. Appellant's counsel has a number of court events and deadlines to meet lately, and this has affected the time he

has had to complete the brief. Further, Appellant's counsel is drafting another brief in a different appeal that needs to be completed by Monday.

2. Accordingly, an extension is needed.

3. This is the second extension sought of this deadline.

4. There is good cause for the requested extension.

5. The undersigned has served this document on opposing counsel by email to registered AIS email address on the date given below.

WHEREFORE Appellant prays for an order extending the time in which to serve and file the Appellant's initial brief and designation of matter to be included in the record on appeal by 30 days.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
Attorneys for Appellants

November 17, 2022

RECEIVED
Nov 17 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Judge

Appellate Case No. 2022-000958

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc. a South Carolina corporation, Defendants,

Of whom Kenneth J. Vilcheck and Renee M. Vilcheck are the..……Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing motion for extension on the date given below by emailing it to counsel for the Respondent(s) and all other counsel of record in the underlying action at the address(es) noted below.

Paul Simons, Jr., Esq., at psimons@hullbarrett.com
Aaron J. Angel, Esq., at aaron@angellmolony.com

November 17, 2022

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
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(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
Attorneys for Appellants

RECEIVED
Dec 20 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Judge

Appellate Case No. 2022-000958

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc. a South Carolina corporation, Defendants,

Of whom Kenneth J. Vilcheck and Renee M. Vilcheck are the..……Appellants.

MOTION TO CONSOLIDATE APPEAL WITH APPEAL NO. 2022-001678

Appellant hereby moves pursuant to Rule 214, SCACR, for an order that consolidates the instant appeal with Appeal No. 2022-001678 and which holds the deadlines in the instant appeal in abeyance until this motion is decided, as the grant of this motion will result in a single set of briefs encompassing both these appeals.

The grounds for this motion are as follows:

1. Rule 214, SCACR, permits consolidation of appeals where common questions are involved in the appeals.

2. Appeal No. 2022-001678 is an appeal of, among other rulings, the denial of a motion for relief from a judgment on the grounds that the judgment is void for lack of personal jurisdiction.

3. The instant appeal has the same appellants and respondent as does Appeal No. 2022-001678, and this is an appeal brought in an action seeking to enforce the same judgment involved in Appeal No. 2022-001678.

4. Though Appeal No. 2022-001678 was brought later than this appeal, the outcome of Appeal No. 2022-001678 has the potential to affect the issues in this appeal significantly, perhaps even making them moot.

5. Absent consolidation, if the court ultimately decides in Appeal No. 2022-001678 that the judgment is void, both the court and the parties will likely have spent significant time briefing, arguing, and deciding the issues in this appeal, only to have that time all have been spent for nothing.

6. It is in the interest of judicial economy that these appeals, which involve a common question and common subject matter, be consolidated for briefing and argument.

7. The undersigned has served this document on opposing counsel by email to registered AIS email address on the date given below.

WHEREFORE Appellant prays for an order that consolidates the instant appeal with Appeal No. 2022-001678 and which holds the deadlines in the instant appeal in

abeyance until this motion is decided, as the grant of this motion will result in a single set of briefs encompassing both these appeals.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Kovalchek
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
Attorneys for Appellants

December 20, 2022

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Dec 20 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Judge

Appellate Case No. 2022-000958

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Longbridge Financial, LLC, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners' Association, Inc., and the Greenery, Inc. a South Carolina corporation, Defendants,

Of whom Kenneth J. Vilcheck and Renee M. Vilcheck are the..……Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing motion to consolidate on the date given below by emailing it to counsel for the Respondent(s) and all other counsel of record in the underlying action at the address(es) noted below.

Paul Simons, Jr., Esq., at psimons@hullbarrett.com
Aaron J. Angel, Esq., at aaron@angellmolony.com

December 20, 2022

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Kovalchek
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
Attorneys for Appellants

RECEIVED
Feb 01 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2022-001678

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,..…….……Appellants.

MOTION TO PREVENT LOWER COURT FROM PROCEEDING WITH MATTERS AFFECTED BY APPEAL

Appellants hereby submit this motion, pursuant to Rules 205 and 241, SCACR, which seeks for this court to direct the lower court not to proceed with matters affected by this appeal.

There are good grounds for this court to issue an order so directing the lower court, as the following shows:

1. The lower court, the Beaufort County Master-in-Equity, has set a hearing for February 3, 2023, in the underlying case. (Email from Appellant's counsel confirming hearing is set.) Because this appeal is pending, the lower court lacks jurisdiction to hold this hearing, and the master will violate the appellate stay if the hearing goes forward. Rules 205 & 241(a), SCACR.

2. This motion seeks for the Court of Appeals to direct the lower court not to proceed with matters affected by this appeal, including holding the scheduled hearing, while this appeal is pending and unless and until relief from the appellate stay is ordered.

3. Rules 205 and 241(a), SCACR, require that the lower court not go forward with this hearing.

4. One of the orders appealed in this case came about as a ruling on part of a motion made by the Respondent. (Notice of appeal; order joining parties; motion applying defendants' property to execution and to join relevant parties.) In that motion, the Respondent 1) sought for parties to be joined who may have an interest in real property the Appellants own and use as their residence and 2) seeks for the master to order the real property sold, following those parties being added to the action. (Motion applying defendants' property to execution and to join relevant parties.)

5. The Respondent sought a hearing limited to the first part of that motion. (Email from Respondent's counsel requesting hearing on first part of motion.) The court held that hearing and entered an order joining parties, with a hearing on the remainder of the Respondent's motion to follow. (Order joining parties.) That order is on appeal in the instant appeal. (Notice of appeal; order joining parties.)

6. Appellant opposed the entry of the order joining parties on the grounds that there is another action, Case No. 2021-CP-07-00944,

that is pending between the same parties the Respondent sought to add to this case and in which the same relief is sought that the Respondent is seeking through its motion to join parties and have the property sold. This court has held that "dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim" when the claim is "precisely or substantially the same in both proceedings[.]" Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 531-32 (Ct. App. 2009).

7. The order joining parties is critical to the rest of the Respondent's motion. A party who has or claims ownership of an interest in land is a necessary party to a proceeding that could affect that party's ownership interest. See BancOhio Nat. Bank v. Neville, 310 S.C. 323, 329, 426 S.E.2d 773, 777 (1993). A proceeding seeking a judicial lien foreclosure sale (what is sought here) is a case to which every party that has or may claim an interest that could be affected by the sale is required to be joined. Green Tree Servicing, LLC v. Adams, 654 S.E.2d 100 (S.C. App. 2007). In an action seeking a judicial sale of property, any "person who has or may claim an interest in the property should be named as a defendant." Susan B. Berkowitz, et al., South Carolina Foreclosure Law Manual 36 (3d ed. 2013).

8. The Supreme Court has held that "[t]he lower court may not act or issue orders that affect an issue on appeal." Arnal v. Fraser, 371 S.C. 512, 641 S.E.2d 419, 422 (2007). "Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal[.]" Tillman v. Oakes, 398 S.C. 245, 254-55, 728 S.E.2d 45, 50-51 (Ct. App. 2012).

9. This appeal could undo whether the added parties have been joined. It could undo a determination about whether the Respondent is allowed to go down this judicial sale path at all. Accordingly, proceedings that depend on the parties being joined and that have the capacity to move the Respondent further down that path – proceedings like the hearing set for this Friday – are matters that are affected by this appeal. See Rule 205, SCACR.

10. The Respondent has not sought, much less obtained, an order that lifts the appellate stay, though there is a process to seek such relief. Rule 241(c)&(d), SCACR.

11. The matter in question is stayed, and the master is without jurisdiction to hold the hearing. Rule 205, SCACR; Arnal, 641 S.E.2d at 422; Tillman, 398 S.C. at 254-55.

WHEREFORE Appellants pray for an order that directs the lower court not to proceed with matters affected by this appeal, including holding a hearing on the Respondent's motion seeking to have real property of the Appellants sold.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
Attorney for Appellants

February 1, 2023

Drew Radeker

From: Drew Radeker
Sent: Tuesday, January 31, 2023 2:39 PM
To: 'Dukes, Marvin'
Cc: 'Grey, Jacqueline'; 'Browne, Jared'; 'McLeod, Heather'; 'Luke Hoopes'; 'Melissa De Los Santos'; 'Aaron Angell'; Sarah Larabee; Rhonda Schaub; 'robert.sneed@usdoj.gov'; 'kiera.dillon@dor.sc.gov'; 'Kathy Romero'; 'Jim Koutrakos'
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Judge Dukes:

This will confirm that Your Honor has set a hearing for 9:30 Friday morning (February 3) via WebEx on all outstanding motions, including the plaintiff's motion for a sale of real property.

As noted during our phone call right now, we believe that the appeal in this case has stayed these motions and that this court at present lacks jurisdiction to hold this hearing.

Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

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Columbia, South Carolina 29250
Telephone: (803) 779-2211
Facsimile: (803) 779-6700
www.harrisonfirm.com

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From: Drew Radeker
Sent: Monday, January 30, 2023 5:21 PM
To: Dukes, Marvin <mdukes@bcgov.net>
Cc: Grey, Jacqueline <jgrey@bcgov.net>; Browne, Jared <jbrowne@bcgov.net>; McLeod, Heather <hmcleod@bcgov.net>; Luke Hoopes <luke@angellmolony.com>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; Jim Koutrakos <jimkoutrakos@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Judge Dukes:

The order joining parties is on appeal, and so the automatic appellate stay has stayed the question of whether the added parties are properly before the court. The added parties would need to be properly before the court in order for the relief sought in the plaintiff's motion – a sale that would end those added parties' interests in the property – to be possible. With the addition of the parties being subject of the appeal, proceedings that depend upon them having been added cannot go forward.

The appellate stay is in effect, and the motion cannot go forward right now.

Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
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From: Luke Hoopes <luke@angellmolony.com>
Sent: Wednesday, January 25, 2023 10:16 AM
To: McLeod, Heather <hmcleod@bcgov.net>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Grey, Jacqueline <jgrey@bcgov.net>; Dukes, Marvin <mdukes@bcgov.net>; Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; Jim Koutrakos <jimkoutrakos@callisontighe.com>
Subject: Re: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Good morning, Judge Dukes:

Following up on the status conference held last Thursday (January 19, 2023), we are confident that the appeal of the denial of the defendants' Rule 60(b) motion does not stay these proceedings, and neither does the appeal of your Order to Join. Because of this, you have jurisdiction to hear the matters and we may proceed with a hearing on the motion to sell filed back in October.

The first issue the court seemed concerned about was whether the appeal of the denial of Defendants' rule 60(b) motion automatically stays the proceedings under SCACR 241. There is a 2007 SC Supreme Court ruling that directly makes clear that appeals of denials of Rule 60(b) motions do not stay proceedings: "An appeal from a 60(b) denial does not stay the original judgment." Stearns Bank v. Glenwood Falls, 653 S.E.2d 274, 375 S.C. 423 (S.C. 2007). The decision goes on to state that "filing a Rule 60 (b) motion 'does not affect the finality of a judgment or suspend its operation' Rule 60(b). If the debtor wishes to stay enforcement of the judgment pending the trial court's disposition of the debtor's rule 60(b) motion, the burden is on it to make the motion under Rule 62(b), SCRCP". This clears up that issue, so it does not prevent our client from proceeding in the execution and enforcement of its money judgment.

The other issue is whether or not the appeal of the Order to Join stays the proceedings. We maintain that the matter is not currently stayed as the enforcement of the money judgment is not automatically stayed. If it is stayed under SCACR 241 (old 225), we argue that it should not be pursuant to other reasoning in Stearns Bank v. Glenwood Falls, which says:

> “Moreover, when a debtor appeals the denial of its 60(b) motion, Rule 225, SCACR [now Rule 241, SCACR], which governs stays on appeal, comes into play. The general rule is that an appeal acts as an automatic stay of the relief granted below, subject to certain exceptions. Id. Rule 60(b) denials are not subject to an exception, nor is there any logical reason why they would be. The denial of such a motion grants no relief: that "no relief" is automatically stayed leaves the parties in the exact position they were in before the 60(b) motion and appeal, that is, the original judgment is unaffected. Accordingly, absent the grant of some extraordinary relief to the debtor by the appellate court during the pendency of such an appeal, the creditor is entitled to enforce its judgment.”

Stearns Bank v. Glenwood Falls, 653 S.E.2d 274, 375 S.C. 423 (S.C. 2007)

Here, the denials of the Order to Join and subsequent motion to reconsider are similar to those of the Rule 60(b), in that the appeal of the denial of the 60(b) motion and the granting of an order to join parties similarly provide no relief and leave the original judgment unaffected. The biggest difference is that with the denial of a 60(b) motion “absent the grant of some extraordinary relief to the debtor by the appellate court during the pendency of such an appeal, the creditor is entitled to enforce its judgment,” while in this circumstance allowing the appeal of joining parties the simple act of automatically staying proceedings grants extraordinary relief to the debtor from the appellate court, and the creditor is not entitled to enforce its judgment. The “extraordinary relief” is the staying of proceedings until the judgment expires, wiping the debt that is owed. By staying these proceedings, the debtors are prevailing, not on the merits, but rather by abuse of appellate proceedings as their weapon.

Furthermore, in Raby Const., LLP v, Orr., the court made it clear that when there are specific orders stayed on appeal, they do not stay the execution of the underlying order of judgment:

> “In other words, because the only appeal pending at the time the trial court awarded additional attorneys' fees was the denial of the Rule 60(b) motion, that is the only order that would be automatically stayed; the general rule does not authorize a stay of the underlying order of judgment or order of foreclosure. Cf. In re Zapata Gulf Marine Corp., 941 F.2d 293, 295 (5th Cir.1991) (where the court, applying analogous federal rules, reversed the district court's stay of execution of the underlying judgment where the only appeal pending was the denial of the Rule 60(b) motion).”

Raby Const., LLP v. Orr, 358 S.C. 10, 594 S.E.2d 478 (S.C. 2004)

Here, the executing on the judgment by applying the debtors’ real property to it should not be stayed as the execution of the Judgment is not stayed. This leaves the court the jurisdiction to order the property be sold to be applied to the execution of the Judgment.

This defendant's filing of appeals has quite plainly and clearly been the intent of the debtors for over 23 month since the execution was filed. The Debtors refused to attend depositions after being served with notice. When the foreclosure action was initiated, the debtors answered with a demand for a jury trial, which was rejected. When the matter was referred to the Master, debtors moved for the court to reconsider the decisions and file an appeal once that is denied. Once the appeal was initiated, debtors filed for extensions until the appellate court refused to grant any more. In the supplemental proceedings, the debtors refused to provide documents ordered by the court, and avoided appealing the judgment directly, but instead filed other motions skirting around the issue until you, Judge Dukes, forced a hearing on the matter to get to the core of the issue. After their Rule 60 motion was denied, and the order to join parties was denied, they filed motions to reconsider and then an appeal, which they requested the appellate court consolidate with their other appeal such that they could have another practical extension after the appellate court refused to grant more. The point being, that all

this has been a clear and deliberate attempt to use the appellate process as a weapon to kill the judgment, when the debtors clearly owe the debt and are capable of paying.

Again, we state that the appeal does not stay these proceedings. Moreover, the staying of any proceedings relative to the enforcement of the judgment is the duty of the defendant to seek through petition to this court and to rest on the argument of an "automatic stay" is simply unlawful.

Through all this, if the court would prefer, the funds of the sale of the property can be deposited with the court, pursuant to SCRCP 67, to wait to be distributed until the appeals are resolved.

Thank you,

Luke R. Hoopes
Judgment Attorney
Angell Molony, LLC
18 E. North Street, Suite 302
Greenville, SC 29601
P: 864.248.4708
F: 864.752.1422
www.AngellMolony.com

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DEBT COLLECTOR: This firm collects debts for creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

On Thu, Jan 19, 2023 at 2:06 PM McLeod, Heather <hmcleod@bcgov.net> wrote:

> Wonderful, thank you all. We will use the same call-in info that we were going for the 2:00 p.m. conference call but I have provided below for your convenience.

Call your dial-in number: **(202) 926-1130**

Enter the access code: **577627#**

Attention:

We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.

Please contact us immediately if you are:

1. **Waiting on a ruling and it has been more than 30 days.**
2. **Ready to schedule a Trial date.**
3. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

P. (843) 255-5710

F. (843) 255-9505

hmcleod@bcgov.net

Beaufort County Courthouse

Post Office Drawer 1228

Beaufort, SC 29901

Beaufort County Courthouse

102 Ribaut Road, 2nd Floor

(across the hall from the Clerk of Court)

Beaufort, SC 29902

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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, January 19, 2023 2:04 PM
To: Grey, Jacqueline <jgrey@bcgov.net>; Dukes, Marvin <mdukes@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests for sensitive information to the Beaufort County IT Division at helpdesk@bcgov.net or to 843-255-7000.

That's fine with me. Luke Hoopes, Jim Koutrakos, and Robert Sneed were on the line with me, and they say it's fine with them, too.

Thanks.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
Facsimile: (803) 779-6700
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From: Grey, Jacqueline <jgrey@bcgov.net>
Sent: Thursday, January 19, 2023 2:02 PM
To: Drew Radeker <Drew@harrisonfirm.com>; Dukes, Marvin <mdukes@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

To all,

Just to let you all know the judge is running a little behind. Would you all be ok with doing this conference call at 3pm?

Attention:

We no longer have a Court Reporter so you are responsible for bringing your own. If there is live testimony at the hearing, you are REQUIRED to bring your own Court Reporter to this hearing. Failure to do so will result in the cancellation and rescheduling of the hearing.

Jacqueline Grey
Admin Tech III

Foreclosure Clerk
Hon. Marvin H. Dukes, III
Beaufort County Master In Equity
And Special Circuit Court Judge

P. (843) 255-5713
F. (843) 255-9505
jgrey@bcgov.net

Beaufort County Courthouse
102 Ribaut Rd., 2nd Floor, Room 212
Beaufort, SC 29902
Post Office Drawer 1228
Beaufort, SC 29901

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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, January 19, 2023 1:52 PM
To: Dukes, Marvin <mdukes@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>; McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests for sensitive information to the Beaufort County IT Division at helpdesk@bcgov.net or to 843-255-7000.

Judge Dukes:

I write to note some case law about the effect of an appeal. The Court of Appeals, discussing the effect of an appeal (there, in a family court case), noted the following:

> When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. If a stay exists, either automatically under Rule 241(a) or by supersedeas under Rule 241(c), the appealed order may not be carried out or enforced during the pendency of the appeal. This is the purpose of a stay under Rule 241—to determine whether the appealed *order* may be carried out or enforced—not to determine whether the *action* may proceed in the lower court while the appeal is pending.

> The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. The rule provides: "Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal...." Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal. The rule states: "Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal." Rule 205, SCACR; see also Rule 241(a), SCACR ("The lower court ... retains jurisdiction over matters not affected by the appeal...."). Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court's power to proceed with the action and address matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a "matter[ ] affected by the appeal" under Rules 205 and 241(a).

Tillman v. Oakes, 398 S.C. 245, 254-55, 728 S.E.2d 45, 50-51 (Ct. App. 2012) (emphasis in original).

The Supreme Court has observed that "[t]he lower court may not act or issue orders that affect an issue on appeal." Arnal v. Fraser, 371 S.C. 512, 641 S.E.2d 419, 422 (2007).

Thank you. I look forward to speaking with you in a few minutes.

Drew Radeker

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From: Drew Radeker
Sent: Wednesday, January 18, 2023 11:47 AM

To: McLeod, Heather <hmcleod@bcgov.net>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Thank you, Heather. I have it on the calendar.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

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From: McLeod, Heather <hmcleod@bcgov.net>
Sent: Wednesday, January 18, 2023 11:24 AM
To: Jim Koutrakos <jimkoutrakos@callisontighe.com>; Drew Radeker <Drew@harrisonfirm.com>; Luke Hoopes <luke@angellmolony.com>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing
Importance: High

Good Morning:
I am scheduling the status conference call for January 19th, 2023 at 2:00 p.m. Please mark your calendars, as this is the only notice you will receive from the Court. We will use the below call-in info for the conference call.

Call your dial-in number: **(202) 926-1130**

Enter the access code: **577627#**

Attention:

We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.

Please contact us immediately if you are:

4. **Waiting on a ruling and it has been more than 30 days.**
5. **Ready to schedule a Trial date.**
6. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

P. (843) 255-5710

F. (843) 255-9505

hmcleod@bcgov.net

Beaufort County Courthouse

Post Office Drawer 1228

Beaufort, SC 29901

Beaufort County Courthouse

102 Ribaut Road, 2nd Floor

(across the hall from the Clerk of Court)

Beaufort, SC 29902

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From: Jim Koutrakos <jimkoutrakos@callisontighe.com>
Sent: Tuesday, January 17, 2023 2:44 PM
To: Drew Radeker <Drew@harrisonfirm.com>; Luke Hoopes <luke@angellmolony.com>; McLeod, Heather <hmcleod@bcgov.net>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

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Heather,

I am available all those times.

Demetri "Jim" K. Koutrakos

CALLISON TIGHE & ROBINSON, LLC

1812 Lincoln Street, 2nd Floor

Post Office Box 1390 (29202-1390)

Columbia, South Carolina 29201

Office: (803) 404-6900

Direct Dial: (803) 404-6966

Mobile: (803) 603-9079

Facsimile: (803) 404-6902

JimKoutrakos@CallisonTighe.com

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Tuesday, January 17, 2023 2:21 PM
To: Luke Hoopes <luke@angellmolony.com>; McLeod, Heather <hmcleod@bcgov.net>
Cc: Jim Koutrakos <jimkoutrakos@callisontighe.com>; Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Heather, I can do any of those times except for the 19th at 3:00.

Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
Facsimile: (803) 779-6700
www.harrisonfirm.com

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From: Luke Hoopes <luke@angellmolony.com>
Sent: Tuesday, January 17, 2023 12:52 PM
To: McLeod, Heather <hmcleod@bcgov.net>
Cc: Drew Radeker <Drew@harrisonfirm.com>; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: Re: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Heather:

All of those dates and times work for me.

Thank you,

Luke R. Hoopes

Judgment Attorney

Angell Molony, LLC

18 E. North Street, Suite 302

Greenville, SC 29601

P: 864.248.4708

F: 864.752.1422

www.AngellMolony.com

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DEBT COLLECTOR: This firm collects debts for creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

On Tue, Jan 17, 2023 at 12:48 PM McLeod, Heather <hmcleod@bcgov.net> wrote:

Good Afternoon All:

As it turns out Jan. 18th no longer works for us. Are parties still available for any of the below dated/times?

Jan. 19th at 9:00 a.m., 2:00 p.m., 2:30 p.m. or 3:00 p.m.

Jan. 20th at 9:00 a.m., 11:00 a.m. or 2:30 p.m.

Attention:

We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.

Please contact us immediately if you are:

1. **Waiting on a ruling and it has been more than 30 days.**
2. **Ready to schedule a Trial date.**
3. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

Hon. Marvin H. Dukes, III

Beaufort County Master In Equity

And Special Circuit Court Judge

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From: Luke Hoopes <luke@angellmolony.com>
Sent: Thursday, January 12, 2023 12:00 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Jim Koutrakos <jimkoutrakos@callisontighe.com>; McLeod, Heather <hmcleod@bcgov.net>; Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Kathy Romero <kathyromero@callisontighe.com>
Subject: Re: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

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Good morning Heather:

The 18th works best for me, but I might be able to move some things around to get the 19th or 20th to work.

Thanks,

Luke R. Hoopes

Judgment Attorney

Angell Molony, LLC

18 E. North Street, Suite 302

Greenville, SC 29601

P: 864.248.4708

F: 864.752.1422

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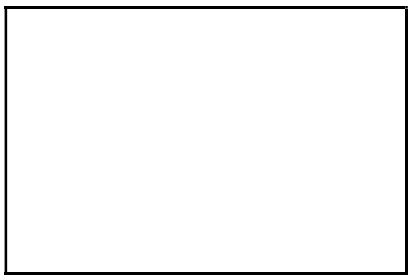

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On Thu, Jan 12, 2023 at 11:09 AM Drew Radeker <Drew@harrisonfirm.com> wrote:

Heather, all of those times work for me except for 2:30 and 3:00 on the 19th. (And I can reschedule something to make one of those work if I need to.)

Thank you.

Drew Radeker

HARRISON & RADEKER & SMITH P.A.
ATTORNEYS AT LAW

923 Calhoun Street,
Columbia, South Carolina 29201
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Columbia, South Carolina 29250
Telephone: (803) 779-2211
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From: Jim Koutrakos <jimkoutrakos@callisontighe.com>
Sent: Thursday, January 12, 2023 11:08 AM
To: McLeod, Heather <hmcleod@bcgov.net>; Drew Radeker <Drew@harrisonfirm.com>; Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Luke Hoopes <luke@angellmolony.com>; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Heather- All those work for me.

Demetri "Jim" K. Koutrakos

CALLISON TIGHE & ROBINSON, LLC

1812 Lincoln Street, 2nd Floor

Post Office Box 1390 (29202-1390)

Columbia, South Carolina 29201

Office: (803) 404-6900

Direct Dial: (803) 404-6966

Mobile: (803) 603-9079

Facsimile: (803) 404-6902

JimKoutrakos@CallisonTighe.com

From: McLeod, Heather <hmcleod@bcgov.net>
Sent: Thursday, January 12, 2023 11:00 AM
To: Jim Koutrakos <jimkoutrakos@callisontighe.com>; Drew Radeker <Drew@harrisonfirm.com>; Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda

Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Luke Hoopes <luke@angellmolony.com>; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

No worries. I have listed additional dates/times below. Please let me know the availability of counsel; no clients at this time.

Jan. 18th at 9:00 a.m.

Jan. 19th at 9:00 a.m., 2:00 p.m., 2:30 p.m. or 3:00 p.m.

Jan. 20th at 9:00 a.m., 11:00 a.m. or 2:30 p.m.

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2. **Ready to schedule a Trial date.**
3. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

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Judicial Assistant to

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From: Jim Koutrakos <jimkoutrakos@callisontighe.com>
Sent: Thursday, January 12, 2023 10:39 AM
To: Drew Radeker <Drew@harrisonfirm.com>; McLeod, Heather <hmcleod@bcgov.net>; Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Luke Hoopes <luke@angellmolony.com>; Kathy Romero <kathyromero@callisontighe.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

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I am sorry but I am in depositions out of town that day. I am flexible for the rest of next week.

Demetri "Jim" K. Koutrakos

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Facsimile: (803) 404-6902

JimKoutrakos@CallisonTighe.com

From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Thursday, January 12, 2023 9:49 AM
To: McLeod, Heather <hmcleod@bcgov.net>; Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

I can do any of those times. Thank you.

Drew Radeker

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From: McLeod, Heather <hmcleod@bcgov.net>
Sent: Thursday, January 12, 2023 9:28 AM
To: Drew Radeker <Drew@harrisonfirm.com>; Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Good Morning:
Judge Dukes would like to have a conference call with parties. How are parties on Tuesday, Jan. 17th ? We have the below times available.

9:00 a.m., 10:30 a.m., 11:00 a.m., 1:30 p.m., 2:30 p.m.

Attention:

We no longer have a Court Reporter, therefore you are responsible for bringing your own, should you choose to have one. If there is even a possibility of live testimony at the hearing, you are REQUIRED to bring your own Court Reporter. Failure to do so will result in the cancellation and rescheduling of the hearing.

Please contact us immediately if you are:

4. **Waiting on a ruling and it has been more than 30 days.**
5. **Ready to schedule a Trial date.**
6. **Have a motion older than 30 days and need to schedule a hearing.**

Thanking You in Advance,

Heather R. H. McLeod,

Judicial Assistant to

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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Wednesday, January 11, 2023 5:10 PM
To: Browne, Jared <jbrowne@bcgov.net>
Cc: Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; McLeod, Heather <hmcleod@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov;

kiera.dillon@dor.sc.gov; Jim Koutrakos <jimkoutrakos@callisontighe.com>; Luke Hoopes <luke@angellmolony.com>
Subject: RE: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

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Jared:

As far as I am aware, whether a hearing goes forward is not a decision Mr. Hoopes' client gets to make. Below are Rule 241(a)&(b) of the South Carolina Appellate Court Rules. Subsection (a) sets forth the general rule – that an appeal stays the matters subject of the appealed order, here the joining of parties in relevant part to this discussion – and subsection (b) sets forth the exceptions to the general rule, none of which apply. Also set forth below is Rule 205 of the SCACR, and that rule provides that the Court of Appeals now has jurisdiction over whether the added parties necessary for the hearing are properly parties.

The hearing cannot lawfully go forward. Thank you.

RULE 241
STAY AND SUPERSEDEAS IN CIVIL ACTIONS

(a) General Rule. As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

(b) Exceptions. The exceptions to the general rule are found in statutes, court rules, and case law. Where specific conditions must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all, of the exceptions to the general rule is:

(1) Money judgments as provided in S.C. Code Ann. § 18-9-130.

(2) Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150.

(3) Judgments directing the execution of conveyances or other instruments as provided in S.C. Code Ann. § 18-9-160.

(4) Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170.

(5) Judgments directing the sale of perishable property as provided in S.C. Code Ann. § 18-9-220.

(6) Family court orders regarding a child or requiring payment of support for a spouse or child as provided in S.C. Code Ann. § 63-3-630.

(7) Worker's compensation awards as provided in S.C. Code Ann. § 42-17-60.

(8) An appeal from an order granting an injunction or temporary restraining order.

(9) Family court orders awarding temporary suit costs or attorney's fees as provided in S.C. Code Ann. § 63-3-530(A)(2).

(10) Ejectment orders as provided in S.C. Code Ann. § 27-37-130 and S.C. Code Ann. § 27-40-800.

(11) Appeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2) and § 1-23-600 (G)(5).

RULE 205
EFFECT OF APPEAL

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Drew Radeker

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From: Luke Hoopes <luke@angellmolony.com>
Sent: Wednesday, January 11, 2023 4:53 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Browne, Jared <jbrowne@bcgov.net>; Melissa De Los Santos <melissa@angellmolony.com>; Aaron Angell <aaron@angellmolony.com>; Dukes, Marvin <mdukes@bcgov.net>; McLeod, Heather <hmcleod@bcgov.net>; Grey, Jacqueline <jgrey@bcgov.net>; Sarah Larabee <sarah@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; robert.sneed@usdoj.gov; kiera.dillon@dor.sc.gov; Jim Koutrakos <jimkoutrakos@callisontighe.com>
Subject: Re: 2012-CP-07-04253 SFB v. Vilchecks et al. Hearing

Drew:

If you have any grounds for your claim, then you can make them known at the hearing. For now, it is being scheduled.

Thanks,

Luke R. Hoopes

Judgment Attorney

Angell Molony, LLC

18 E. North Street, Suite 302

Greenville, SC 29601

P: 864.248.4708

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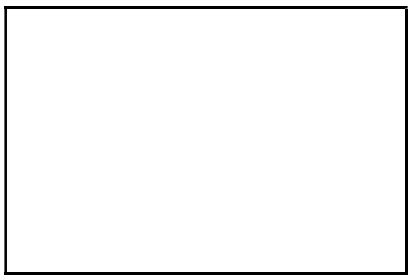

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On Wed, Jan 11, 2023 at 4:21 PM Drew Radeker <Drew@harrisonfirm.com> wrote:

Jared:

As the order joining the parties is being appealed, it is stayed right now. Accordingly, we believe that hearing could not lawfully go forward.

Thank you.

Drew Radeker

Sent from my iPhone - please excuse any typos

On Jan 11, 2023, at 4:17 PM, Luke Hoopes <luke@angellmolony.com> wrote:

Jared:

Since the last hearing in this matter, several parties have been joined and appeared. In these supplementals, we need to schedule a hearing on our Motion Applying Defendant's Real Property to Execution, filed October 21, 2022 (attached).

We anticipate this hearing taking no longer than 45 minutes, but as this will be the first opportunity for at least 3 new parties to speak, an hour might be a safer bet. What dates does Judge Dukes have available for this hearing?

Please let us know if this can be a virtual hearing, or if it must be in person.

Thank you,

Luke R. Hoopes

Judgment Attorney

Angell Molony, LLC

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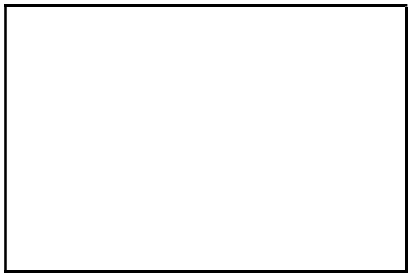

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DEBT COLLECTOR: This firm collects debts for creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

Drew Radeker

From: Luke Hoopes <luke@angellmolony.com>
Sent: Monday, October 24, 2022 2:31 PM
To: McLeod, Heather
Cc: Drew Radeker; Sarah Larabee; Aaron J. Angell (aaron@angellmolony.com); Rhonda Schaub; Melissa De Los Santos; Dukes, Marvin; Grey, Jacqueline; Browne, Jared
Subject: Re: 12-4253 Southern First et al vs Vilcheck et al

Good afternoon Heather:

With the Order entered on Friday, we went ahead and submitted our motion for a judicial sale of the Vilcheck's real property. Included in that was a motion to join the third parties with potential interests in the property. Could you check with Judge Dukes to see if he approves of my proposed plan, or if he has a different suggestion?

I propose we schedule a date to have a hearing on our motion for a judicial sale with all parties involved. I can submit a proposed order to join the parties laid out in my motion to carry out a judicial sale, and once that is entered we serve all of them with the order to join, motion to sell, and notice of the hearing date. If Judge Dukes would prefer, we can schedule a quick, virtual hearing solely on the issues of joining so that we can move forward as quickly as possible.

Let me know how the Judge wishes to proceed, and we will act accordingly.

For reference, here are the parties we have moved to join:

1. Portfolio Recovery Associates, LLC (as judgment creditor of a junior judgment lien)
2. Longbridge Financial, LLC (as holder of junior mortgage lien)
3. the Federal Housing Commissioner (as holder of junior mortgage lien)
4. Department of the Treasury - Internal Revenue Service (as holder of junior federal tax lien)
5. South Carolina Department of Revenue (as holder of junior state tax lien)

Thank you,
Luke R. Hoopes
Associate Attorney
Angell Molony, LLC
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Greenville, SC 29601
P 864-248-4708
F 864-752-1422
www.AngellMolony.com

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiffs, v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendant(s).	IN THE COURT OF COMMON PLEAS THE FOURTEENTH JUDICIAL CIRCUIT County C/A No.: 2012-CP-07-04253 **NOTICE OF MOTIONS AND MOTIONS APPLYING DEFENDANT'S REAL PROPERTY TO EXECUTION AND TO JOIN RELEVANT PARTIES**

TO: DEFENDANTS KENNETH J. VILCHECK AND RENEE M. VILCHECK

PLEASE TAKE NOTICE THAT, the Plaintiff, Southern First Bank, N.A. (hereinafter referred to as "Plaintiff"), by and through its undersigned counsel, will move before this Court at a date and time to be determined, at the **Beaufort County Courthouse on the Second Floor, 102 Ribaut Road, Beaufort, South Carolina 29901**, or at such other place and time as to be determined, before the **Honorable Marvin H. Dukes, III**, **Master-in-Equity for Beaufort County** for (1) an Order applying the non-exempt real property of Defendants Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter referred to as "Defendant") which bears Beaufort County Parcel # R600 023 00F 0112 0000, to the Execution towards satisfaction of the Judgment by selling such property at a judicial sale according to South Carolina Law; (2) an Order any other costs, fees, and/or expenses that the Plaintiff may necessarily incur by virtue of the properties being sold at auction via judicial sale or otherwise; and (3) an Order joining all relevant parties with interests in the real property such that a judicial sale may be carried out. The facts and law upon which this Motion is based are detailed further below in this Motion.

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FACTS & PROCEDURAL BACKGROUND

On December 19, 2012, Plaintiff filed a Summons and Complaint initiating this matter as Case Number 2012-CP-07-04253.

On or about December 21, 2012, the Defendants, individually or collectively, caused Bald Eagle 2, LLC, a Wyoming limited liability company, to be organized.

On January 16, 2013, Defendants Kenneth J. Vilcheck and Renee M. Vilcheck were properly served with the Summons and Complaint in this matter.

On March 27, 2013, a judgment was entered in this matter in favor of the Plaintiff Southern First Bank, N.A. and against the Defendants Kenneth J. Vilcheck and Renee M. Vilcheck in the amount of Three Hundred Ninety-One Thousand, Two Hundred Eighty-Four Dollars and Forty-Six Cents ($391,284.46) as it appears at Judgment Roll no. 2012-CP-07-04253. From that point in time forward, the Judgment attaches as a lien on all real property owned by the Defendants in Beaufort County.

On April 15, 2013, Beaufort County Register of Deeds recorded in Book 3231 at Page 1843 a deed dated April 11, 2013 which conveyed from Linda A. Delcher to Bald Eagle 2, LLC the real property with Beaufort County TMS# R600 023 00F 0112 0000, located at 318 Bamberg Drive, Bluffton, SC 29910 (the "Property"). Deed attached as Exhibit A.

The Property is currently described as follows:

> ALL that certain lot, piece or parcel of land, situate, lying and being in Belfair, Beaufort County, South Carolina, more particularly described as Lot 357, phase VI-A; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat Phase of VI-A Belfair (Lots 313-319, 319A-368)(416 -417, 434-443, 449) Beaufort County, South Carolina," Sheet 1 of 1, said plat being prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, Octavio Arango, S.C.R.L.S. #12066, said plat being dated December 30, 1996, and recorded in the Beaufort County Records in Plat Book 59 at Page 2, as revised in Plat Book 70 at Page 170. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

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> This being the same property conveyed to Kenneth J. Vilcheck and Renee M. Vilcheck by deed of Renee M. Vilcheck a/k/a Renee Marsh Vilcheck and Kenneth Joseph Vilcheck, dated May 9, 2019, and recorded in the aforesaid records on May 16, 2019 in Book 3760, at Page 1585.

On January 16, 2014, a judgment was entered in favor of Portfolio Recovery Associates, LLC and against Kenneth J. Vilcheck in the amount of Twenty-Six Thousand, Four Hundred Ninety-Six Dollars, and Twenty-Seven Cents ($26,496.27) at Judgment Roll 2013-CP-07-02756. Judgment attached as Exhibit B.

On July 8, 2015, the Beaufort County Register of Deeds recorded in Book 3412 at Page 2628 a deed dated June 26, 2015 conveying the Property from Bald Eagle 2, LLC (with Renee M. Vilcheck signing as Sole Member) to Renee M. Vilcheck as Trustee of the Bermuda Trust Agreement UAD November 9, 2012. Deed attached as Exhibit C.

On July 8, 2015, the Beaufort County Register of Deeds recorded in Book 3412 at Page 2631 a deed dated June 26, 2015 conveying the Property from Renee M. Vilcheck as Trustee of the Bermuda Trust Agreement UAD November 9, 2012 to Renee M. Vilcheck. Deed attached as Exhibit D.

On February 5, 2019, the Beaufort County Register of Deeds recorded in Book 3735 at Page 2438 a Quitclaim Deed dated February 5, 2019 conveying the Property from Renee Marsh Vilcheck to Kenneth Joseph Vilcheck and Renee Marsh Vilcheck. Deed attached as Exhibit E.

On May 16, 2019, the Beaufort County Register of Deeds recorded in Book 3760 at Page 1585 a deed dated May 9, 2019 conveying the Property from Renee M. Vilcheck a/k/a Renee Marsh Vilcheck and Kenneth Joseph Vilcheck to Kenneth J. Vilcheck and Renee M. Vilcheck. Deed attached as Exhibit F.

ELECTRONICALLY FILED - 2022 Oct 21 3:55 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

On May 16, 2019, the Beaufort County Register of Deeds recorded in Book 3760 at Page 1588 MERS for TowneBank Mortgage's Adjustable Rate Home Equity Conversion Mortgage secured by the Property dated May 9, 2019. Mortgage attached as Exhibit G.

On May 16, 2019, the Beaufort County Register of Deeds recorded in book 3760 at Page 1607 the Federal Housing Commissioner's Adjustable Rate Home Equity Conversion Second Mortgage secured by the Property, dated May 9, 2019. Mortgage attached as Exhibit H.

On October 8, 2019, the Beaufort County Register of Deeds recorded in Book 141 at Page 951 the Department of the Treasury – Internal Revenue Service's Notice of Federal Tax Lien on the Property in the amount of Two Hundred Eighty-Five Thousand, Seven Hundred Ninety-Nine Dollars and Zero Cents ($285,799.00). Notice attached as Exhibit I.

On June 12, 2020; April 10, 2020; and June 10, 2022 the South Carolina Department of Revenue filed state tax liens against both Defendants as follows:

LIEN ID:	**LIEN AMOUNT:**	**DATE FILED:**
863513	$1,373.93	06/12/2020
802729	$18,723.30	04/10/2021
949023	$2,084.34	06/10/2022

SCDOR Liens attached as Exhibit J.

On February 9, 2021, Plaintiff filed an Execution on the Judgment in this matter. This Execution was returned *Nulla Bona* by the Beaufort County Sheriff's Office, and filed February 22, 2021.

On March 2, 2021, an Order of Reference to the Honorable Marvin H. Dukes, III, pursuant to SCRCP 53, was entered, granting him full authority to rule on any and all motions as necessary to resolve this matter, with any appeal directly to the South Carolina Supreme Court, or Court of Appeals of South Carolina, as appropriate.

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On March 5, 2021, a Petition for Supplemental Proceedings was filed in this matter, along with an Affidavit in support.

On May 17, 2021, Plaintiff filed a Summons and Complaint to foreclose on this Judgment lien as it attached to the Property in case number 2021-CP-07-00944 (the "Foreclosure Action").

On July 7, 2021, the Beaufort County Register of Deeds recorded in Book 4034 at Page 1582 an assignment of TowneBank Mortgage's mortgage to Longbridge Financial, LLC. Assignment attached as Exhibit K.

On May 10, 2022, a Rule to Show Cause Order was entered in this matter, demanding the Defendants supply the Plaintiffs with several documents and appear for a Rule to Show Cause hearing on July 25, 2022. The Defendants were properly served with this Rule to Show Cause Order and other documents on May 20, 2022.

On July 6, 2022, Plaintiff filed a motion for contempt and sanctions against the Defendants.

On July 11, 2022, in the Foreclosure Action, Defendants filed notices of appeal of the orders entered on May 9, 2022 (Order granting Plaintiff's motion to strike Defendants' demand for a jury trial), May 10, 2022 (Order of Reference of Foreclosure Action to the Beaufort Master in Equity), and June 15, 2022 (Order denying Defendants' motion to reconsider the two prior orders).

On July 13, 2022, Defendants filed a motion for Relief from the Rule to Show Cause Order, and a Motion to Stay proceedings.

On July 20, 2022, a hearing was held on the pending motions, and it was determined that the Rule to Show Cause hearing scheduled for July 25, 2022 should be stayed until the Defendants' Rule 60 arguments to have the Judgment declared void could be heard with live testimony on September 29, 2022.

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On September 29, 2022 it was confirmed that the motion hearing to be held on that date was to be continued to October 17, 2022, due to Beaufort County shutting down for Hurricane Ian.

On October 17, 2022 the hearing on Defendants' Rule 60 motion was held, with testimony given by the Defendants and by Pamela J. Jezewski.

On October 21, 2022, the Court entered an Order denying Defendants' Rule 60 motion, declaring that the Summons and Complaint was properly served on the Defendants on January 16, 2013, that the Court had personal jurisdiction over the Defendants, and that the Judgment is not void.

ORDER APPLYING REAL PROPERTY OF DEFENDANT TO EXECUTION

The Plaintiff moves for this Court to issue an Order applying the non-exempt real property of the Defendants to the Execution towards satisfaction of the Judgment by selling such property at auction according to South Carolina Law. *S.C. Code §15-39-410*; which is titled "Property which may be ordered to be applied to execution", states in pertinent part the following:

> The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied.

Furthermore, *S.C. Code §15-39-610*; which is titled "Property taken under execution shall be sold", states in relevant part that:

> When any sheriff or other officer shall take the lands … of any person whatsoever by virtue of any execution and the owner of such lands … shall not, within five days after such taking, satisfy the debt, damages and costs of the party issuing such execution, such sheriff or officer shall and may sell, by auction, the lands, tenements, goods and chattels so taken or so much thereof as shall be sufficient to satisfy the judgment for the best price that can be got for them.

Plaintiff is informed and believes that Defendant owns the Property, a non-exempt parcel of real property in Beaufort County, South Carolina. Plaintiff is informed and believes that its Judgment lien is the priority lien on the property, with subsequent and junior liens possibly held

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by Portfolio Recovery Associates, LLC; Longbridge Financial, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue. Plaintiff elects to have the Property applied towards its Judgment lien and ordered to be sold at public auction pursuant to the preceding statutes.

WHEREFORE, Plaintiff prays this Court for the following relief:

(1) An Order applying the non-exempt real property of Defendants Kenneth J. Vilcheck and Renee M. Vilcheck; which bears Beaufort County TMS #'s R600 023 00F 0112 0000, to the Execution towards satisfaction of the Judgment by selling such property at auction according to South Carolina Law;

(2) An Order for any other costs, fees, and/or expenses that the Plaintiff may necessarily incur by virtue of the properties being sold at auction via judicial sale or otherwise;

(3) An Order joining Portfolio Recovery Associates, LLC; Longbridge Financial, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue as defendants in this matter given their possible interests in the real property held by Defendants; and

(4) For such other and further relief as the Court may deem just and proper.

Respectfully Submitted by:

s/Luke R. Hoopes
SC Bar No. 103644
Angell Molony, LLC
18 E. North St., Ste. 302
Greenville, SC 29601
P: 864.248.4708
F: 864.752.1422
LUKE@ANGELLMOLONY.COM

October 21, 2022
Greenville, South Carolina

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Nov 28 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master-in-Equity

Common Pleas Case No. 2012-CP-07-04253

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,..…….……Appellants.

NOTICE OF APPEAL

Kenneth J. Vilcheck and Renee M. Vilcheck (hereinafter "Appellants") appeal from the orders of the Honorable Marvin H. Dukes III filed October 21, November 7 (two orders), and November 22, 2022. Copies of these four orders are submitted to the Court of Appeals herewith. Appellants received written notice of the entry of these orders on the day each was filed.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
drew@harrisonfirm.com
sarah@harrisonfirm.com
Attorneys for Appellants

November 28, 2022

Other Counsel of Record:

Luke R. Hoopes
S.C. Bar No. 103644
200 North Main St., Suite 301
Greenville, South Carolina 29601
(864) 625-2523
luke@angellmolony.com
Attorney for Respondent

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APPEAL FROM BEAUFORT COUNTY
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Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,..…….……Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing notice of appeal on the date given below by emailing it to counsel for the Respondent(s) and all other counsel of record in the underlying action at the address(es) noted below.

Luke R. Hoopes, Esq., at luke@angellmolony.com

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
Sarah M. Larabee
S.C. Bar No. 105298
Harrison, Radeker & Smith, P.A.
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Attorneys for Appellants

November 28, 2022

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SC Court of Appeals
ELECTRONICALLY FILED - 2022 Nov 07 3:19 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiff(s), v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendant(s).	County C/A No.: 2012-CP-07-04253 **ORDER JOINING: PORTFOLIO RECOVERY ASSOCIATES, LLC; LONGBRIDGE FINANCIAL, LLC; THE FEDERAL HOUSING COMMISSIONER; THE DEPARTMENT OF THE TREASURY – INTERNAL REVENUE SERVICE; AND THE SOUTH CAROLINA DEPARTMENT OF REVENUE**

WHEREAS, this matter is before the Court pursuant to Plaintiff's Notice of Motion and Motions Applying Defendants' Real Property to Execution and to Join Relevant Parties. Plaintiff has moved for a Judicial Sale of the Defendants' real property in Beaufort County located at 318 Bamberg Drive, Bluffton, SC 29910, and bearing Beaufort County Parcel # R600 023 00F 0112 0000 (hereinafter the "Property").

WHEREAS, Portfolio Recovery Associates, LLC has or may have an interest in the Property by its judgment numbered 2013-CP-07-02756;

WHEREAS, Longbridge Financial, LLC has or may have an interest in the Property by its being assigned TowneBank Mortgage's Adjustable Rate Home Equity Conversion Mortgage secured by the Property;

WHEREAS, the Federal Housing Commissioner has or may have an interest in the Property by its Adjustable Rate Home Equity Conversion Second Mortgage secured by the Property;

WHEREAS, the Department of the Treasury – Internal Revenue Service has or may have an interest in the Property by its Notice of Federal Tax Lien recorded in Beaufort County; and

WHEREAS, the South Carolina Department of Revenue has or may have an interest in the Property by its filed state tax liens numbering 863513, 802729, and 949023;

IT IS THEREFORE ORDERED that pursuant to Rule 19, SCRCP, Portfolio Recovery Associates, LLC; Longbridge Financial, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue are made parties to this matter, as defendants and not as Judgment Debtors, and the Clerk of Court is directed to change the Defendant(s) in the caption to "Kenneth J. Vilcheck; Renee M. Vilcheck; Portfolio Recovery Associates, LLC; Longbridge Financial, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue".

AND IT IS ORDERED.

[MASTER-IN-EQUITY'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

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Beaufort Common Pleas

Case Caption: Southern First Bank , plaintiff, et al VS Kenneth J Vilcheck , defendant, et al

Case Number: 2012CP0704253

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2022-001678

Southern First Bank, N.A. d/b/a Greenville First Bank,.....Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,.....Appellants.

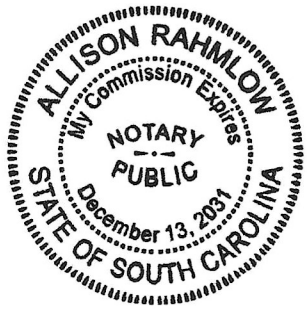
VERIFICATION

I, Kenneth J. Vilcheck, being duly sworn and being an Appellant in the above-captioned appeal, hereby certify, depose, say, and verify that I have read the foregoing motion to prevent lower court from proceeding with matters affected by appeal and that the facts stated in that motion are true.

Kenneth J. Vilcheck

SWORN to before me this
1st day of February, 2023.

Allison Rahmlow (L.S.)
Notary Public for South Carolina
My Commission Expires 12-13-2031



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2022-001678

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,..…….……Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing motion to prevent lower court from proceeding with matters affected by appeal on the date given below by emailing it to counsel for the Respondent(s) and all other counsel of record in the underlying action at the address(es) noted below.

Aaron J. Angel, Esq., at aaron@angellmolony.com
Luke R. Hoopes, Esq., at luke@angellmolony.com

February 1, 2023

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
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Columbia, South Carolina 29250
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Attorney for Appellants

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2022-001678

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,..…….……Appellants.

MOTION FOR REVIEW BY FULL COURT OF DENIAL OF
MOTION TO PREVENT LOWER COURT FROM PROCEEDING WITH
MATTERS AFFECTED BY APPEAL

Appellants hereby submit this motion, pursuant to Rule 205 and 241(d)(2), SCACR, which seeks review by the full court of the denial by an individual judge hereof, Chief Judge H. Bruce Williams, of Appellants' motion for this court to direct the lower court not to proceed with matters affected by this appeal.

There are good grounds for this court to review that decision and issue an order directing the lower court not to proceed with matters affected by this appeal, as the following shows:

1. Appellants' motion for this court to direct the lower court not to proceed with matters affected by this appeal was filed, served, and

ruled on yesterday, February 1, 2023. That motion is incorporated herein by reference as if here set forth verbatim.

2. Rule 241(d)(2), SCACR, provides that, once an individual judge of this court has ruled on a stay or supersedeas motion, "an aggrieved party may petition the full appellate court for review of that decision." That review is what this motion seeks.

3. Chief Judge Williams' order denied Appellant's motion on the basis that an appeal of the denial of a Rule 60(b) motion does not stay execution of the underlying judgment and because an order adding a party is not ordinarily immediately appealable.

4. While those principles of law are correct, His Honor respectfully misapprehended the procedural posture of this case and why the companion appeal of the order adding parties means the hearing now set by the master for tomorrow morning is stayed and cannot go forward.

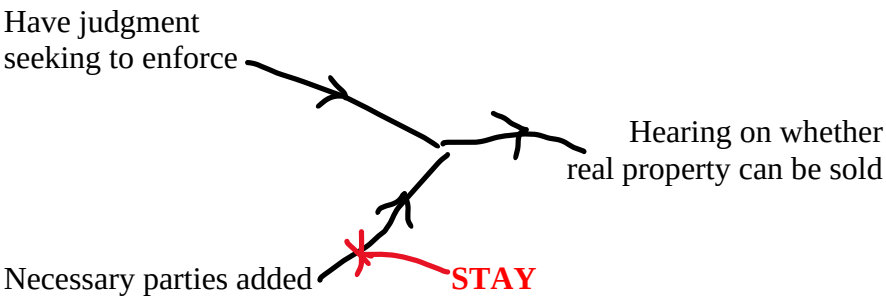
5. The order denying Appellants' motion under Rule 60(b), SCRCP, is an immediately appealable order, Ateyeh v. United Omaha Life Ins. Co., 293 S.C. 436, 437, 361 S.E.2d 340 (Ct. App. 1987), and no one has voiced any disagreement with that. The order joining parties – the order that is stayed as a result of this appeal – is properly before this court because "[an] order that is not directly appealable may be considered if there is an appealable issue before the court." Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 517, 623 S.E.2d 387,

390 (2005); accord Briggs v. Richardson, 273 S.C. 376, 379 & n.1, 256 S.E.2d 544, 546 & n.1 (1979); Cox v. Woodmen of World Ins. Co., 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001).

6. To get to the procedural point where a hearing is being held on whether real property will be sold, the parties necessary for such sale to occur must be made parties to the proceeding. See BancOhio Nat. Bank v. Neville, 310 S.C. 323, 329, 426 S.E.2d 773, 777 (1993); Green Tree Servicing, LLC v. Adams, 654 S.E.2d 100 (S.C. App. 2007); Susan B. Berkowitz, et al., South Carolina Foreclosure Law Manual 36 (3d ed. 2013).

7. The order that joined those parties is an order that is on appeal here. Accordingly, Rules 205 and 241(a), SCACR, apply to that order.

8. Mapped out, the stay analysis looks like this:



9. Please forgive my poor drawing skills.

10. Proceedings seeking to sell the real property are currently stayed and are within the jurisdiction of this court, because whether the required parties have been joined is a decision that has been appealed to this

court. Rules 205 & 241(a), SCACR. It is for *that* reason that the hearing now scheduled for tomorrow morning cannot go forward.

11. The Respondent has not sought a supersedeas under S.C. Code Ann. § 18-9-130(A)(2) or in any other way. The stay is in effect.

12. Whether the appellate stay applies in a particular situation is not always straightforward. A close examination of the proceedings at issue here shows that they are stayed and that the lower court lacks jurisdiction to proceed with them unless and until an order lifting the stay is granted.

WHEREFORE Appellants pray for an order that directs the lower court not to proceed with matters affected by this appeal, including holding a hearing on the Respondent's motion seeking to have real property of the Appellants sold.

Respectfully submitted,

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February 2, 2023

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2022-001678

Southern First Bank, N.A. d/b/a Greenville First Bank,..……..…...Respondent,

v.

Kenneth J. Vilcheck and Renee M. Vilcheck,..…….……Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing motion for review by full court of denial of motion to prevent lower court from proceeding with matters affected by appeal on the date given below by emailing it to counsel for the Respondent(s) and all other counsel of record in the underlying action at the address(es) noted below.

Aaron J. Angel, Esq., at aaron@angellmolony.com
Luke R. Hoopes, Esq., at luke@angellmolony.com

February 2, 2023

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Southern First Bank, N.A. d/b/a Greenville First Bank, Plaintiff, v. Kenneth J. Vilcheck; Renee M. Vilcheck; Portfolio Recovery Associates, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue, Respondent(s).	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT Docket No.: 2012-CP-07-04253 **PLAINTIFF'S MOTION TO RECONSIDER ORDER DENYING MOTION FOR JUDICIAL SALE**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Southern First Bank, N.A. d/b/a Greenville First Bank, (the "Plaintiff"), moves before this court, pursuant to Rules 52 and 59 SCRCP, for an order reconsidering, altering, amending, and/or clarifying the Order Denying Motion for Judicial Sale entered in this matter on February 9, 2023 (the "Order").

Plaintiff makes this motion on the following grounds:

1. The Plaintiff specifically incorporates into this motion by reference its previous filings in this case and all arguments it made at the hearing that produced the Order.
2. Plaintiff argued at the hearing and argues here that the Order, contrary to current law and precedent, prevents Plaintiff from enforcing its Judgment in a legal and equitable manner on the basis of overly-broad interpretations of Gordon v. Lancaster, 425 S.C. 386, 823 S.E.2d 173 (2018) and Garrison v. Owens, 258 S.C. 442, 446-47, 189 S.E.2d 31 (1972) and an underdeveloped assertion of when proceedings are completed.
3. Plaintiff contends that Gordon does not create the precedent that absolutely no proceedings concerning the enforcement of a judgment may occur more than 10 years after the entry of

judgment. The South Carolina Supreme Court used Gordon to answer the questions of "does a judgment's ten-year active energy terminate when the judgment debtor's [sic] enforcement action remains *untried* when the ten-year period expires, or conversely does a judgment debtor's [sic] *mere institution of the enforcement action* within ten years extend that ten-year period indefinitely until trial is held and a final order is issued?" Emphasis added.

4. The first question in Gordon is not relevant to this matter, as the enforcement of this action has been *tried* on the merits, and the Order even states that the "Court rules that… the Plaintiff would be entitled to have the Property sold in execution" as provided in South Carolina law. This ruling shows that the court has sufficiently tried the merits of the enforcement and has determined that such a sale is proper, but for the issue of whether expiration makes the enforcement moot.

5. The converse, or second question in Gordon, of whether mere institution of the enforcement within ten years extends the period indefinitely until trial held and a final order is issued, is also outside the scope of the facts in this matter. As established above, this Court has tried this matter on the merits within the ten-year period so far as to rule that a sale of the property would be proper. While there was not a final order for such a proper sale entered at the time of the hearing, an order for the sale before the end of the ten-year period would be a final order, regardless of whether or not the administration of such an order was complete.

6. The Order improperly concludes from Garrison that "if a judgment's 10-year duration expires before the collection proceedings are complete, no matter how close they might be to complete, the collection proceedings stop because the expiration of the judgment has made collection efforts moot." This is an assertion improperly made in the Order from the determination in Garrison that "'the lien of a judgment is absolutely extinguished and ended after the expiration of ten years from the date of entry.' Garrison v. Owens, 258 S.C. 442, 446-47, 189 S.E.2d 31 (1972)." The facts of Garrison, similar to Gordon, only involve an initial action *being brought*

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to enforce the judgment the ten years and the question of whether bringing that action extends the life of the judgment. The Court in Gordon is seeking to prevent creditors from extending their rights beyond the 10 years and from having further hearings on the merits of the case.

7. It should be noted that Gordon overturned the bright line exception in Linda Mc, that allowed creditors to extend enforcement proceedings past the ten years from the date of judgment so long as the case had "active energy." The Court in Linda Mc found "so long as parties take action to enforce a judgment within the ten-year statutory period of active energy, the resulting order will be effective even if issued after the ten-year period has expired." Linda Mc Co. v. Shore, 390 SC 543 (2010).
8. In its Order, the Court states that the Judgment lien expires on March 27, 2023 and that there is sufficient time to properly advertise the sale if it is to be held on the next judicial sale date of March 6, 2023, and that therefore the main issue before the Court is whether keeping the bidding open to receive upset bids for 30 days after the judicial sale date would be *executing* on the judgment and therefore improper.
9. Plaintiff contends that an order for the sale of the property would be the final order in the matter at trial before the expiration of the judgment and therefore ministerial actions or the necessary carrying out of that order would not be extending the life of the judgment or executing on it past its expiration. Plaintiff further contends that neither Gordon nor Garrison contradict or undermine this position. The details and facts of those cases are in stark contrast to the present facts of this Case where the Plaintiff has moved for an Order for judicial sale and the trial on the merits has already been completed, again unlike in the Gordon case. Again, the facts in Gordon and Garrison involve a creditor *instituting* supplemental proceedings before the ten-year period and then holding trial on the merits of the case *after* the ten-year mark.
10. Moreover, Plaintiff contends that there is no deficiency demanded in this sale and that there should be no deficiency, Plaintiff expressly waives its right to a deficiency, and therefore there

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is no need to keep the bidding open to receive upset bids for 30 days. Plaintiff has never asserted that a deficiency judgment be granted nor is seeking a deficiency judgment in any way. Further, the legislature has used the term foreclosure loosely in a number of statutes as it pertains to executions. Plaintiff contends that it is absolutely entitled to foreclose on its Judicial lien and in no way should be bound by 15-39-720 requiring a 30-day period for upset bids after the initial sale date. A creditor can foreclose on its mortgage, mechanics lien and judicial lien. Plaintiff contends that as a result of waiving its deficiency, nothing prevents this Court from selling the property on the March 6th date of the sale and that the bidding will not remain open for 30 days to alleviate any issue of going past the ten-year mark. The South Carolina Appellate case of Goethe v. Cleland, 323 S.C. 50, 448 S.E.2d 574 (S.C. App. 1994) addresses a matter where a judgment creditor is foreclosing on its judgment lien pursuant to Title 15, Chapter 39 of the South Carolina Code of Laws, as in this matter. The Appellate Court in Goethe applied Rule 71(b) SCRCP and S.C. Code Ann. § 15-39-720 & 760 (1976) to reach the conclusion that

> "S.C.Code Ann. § 15-39-760 (1976) provides the provisions of Section 15-39-720 do not apply to foreclosure actions if the complaint states no personal or deficiency judgment is demanded, and any right to such judgment is expressly waived."

The Appellate Court in Goethe further discusses Perpetual Bldg. & Loan Ass'n v. Braun, 270 S.C. 338, 242 S.E.2d 407 (1978) to state:

> the Supreme Court held that the language of § 15-39-760 indicates the legislature's intention to deny a deficiency judgment only when such has been expressly waived. Thus, § 15-39-720, § 15-39-760 and Rule 71(b) unambiguously required the bidding to remain open for thirty days unless the plaintiff expressly waived the deficiency.

In this matter, Plaintiff expressly waives the deficiency, and therefore the bidding need not stay open for 30 days.

11. Notwithstanding that issue, again the Final Order of the case on its merits is the Order for

Judicial Sale, unlike in Gordon and Garrison as those cases were *pending* trial and proceedings.

12. Plaintiff contends that all collection efforts are not moot immediately upon the expiration of the judgment, as "collection efforts" is broader than the impact of the judgment lien. According to Wachesaw Plantation E. Cmty. Servs. Ass'n, Inc. v. Alexander, 420 S.C. 251 (2017), at a judicial sale, "when Bidder 'became the successful bidder' and paid the required deposit, 'he became the equitable owner' of the property." This equitable ownership was the result of the property being sold at a judicial sale to satisfy a lien, but the lien becomes irrelevant once a new equitable owner arises. If this Court issues an order for the sale of the property, and a bidder makes the highest bid on the judicial sale date, then the equitable owner of the property holds claim to the property on the basis of his successful bid, not on the basis of the judgment lien. Because of this, even if the lien is extinguished afterwards, the sale has gone through and there is no invalid enforcement of the lien or extension of its life after the expiration.

13. The Order references In Re Riverfront Properties, LLC, 405 B.R. 570 (Bankr. S.C. 2009), which was a federal court interpreting South Carolina state law, leaving it with no binding authority over this court. The court in the Riverfront case determined that

> Because the bidding is reopened, the hammer does not fall on a foreclosure sale when deficiency judgment is not waived until the sales officer closes the sale on the thirtieth day. The high bidder on the first day of sale has no right that cannot be extinguished by a subsequent bidder and thus no rights or obligations arise in the first day bidder that diminish the title of the mortgagor.

The court omitted the fact that, while the highest bidder on the first day has no right that cannot be extinguished by a subsequent bidder, the only way for such a right can be extinguished is for it to be replaced by another right in the property created by a higher bid. Once there has been a successful highest bid on the day of the judicial sale date, equitable ownership is immediately gone from the defendant debtor and into the hands of the highest bidder, Wachesaw, at 262. From this it must be concluded that, at the moment of the first successful

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highest bid on the first day, the equitable ownership is vested in a bidder, whether the initial bidder or an upset bidder, thereby completely extinguishing the original owner's equitable interest in the property (apart from if the previous owner is the highest bidder or highest upset bidder). The matter is no longer whether the defendant debtor holds equitable title as that has passed, but instead to which highest bidder the property will go to.

14. The Plaintiff maintains further that this Court has full authority to enter the Final Order and carry out that Order entered and to deny Plaintiff's lawful motion would create a greater injury to equity than in granting its motion. The Supreme Court has made it clear no further enforcement *proceedings* can take place beyond ten years from date of entry of judgment so to the extent Plaintiff prevailed in a having the case remanded back down for consideration, the Judgment would be years past its expiration and no more proceedings would be allowed, absent a special narrow exception for this one case. Additionally, there is no guarantee of preservation of the Defendant's non-exempt assets to be applied towards satisfaction of the judgment years later. Put a different way, should this Court Order the property sold, Plaintiff is required to post a surety bond for double the amount of the Defendant's home in the event the matter be overturned. Defendant would have ample recourse should the Court of Appeals or Supreme Court find that the Order for Sale and subsequent Order of Disbursement was beyond its reach and overturns the Court's ruling granting the Plaintiff's motion for sale, namely double the value of his house in cash. Here, to deny Plaintiff's motion is to effectively leave the Plaintiff with no relief or recourse in the future and do great injury to Equity in a matter where Defendant has raised no argument, merely delayed and stalled all efforts by the Plaintiff as evidenced in the **attached timeline of events**.

15. Lastly, the Court's Order ignores the plain meaning of what constitutes an "execution" under S.C. Code Ann. Section 15-39-30. Section 15-39-30 provides,

> *Executions* may issue upon final judgments or decrees at any time within ten years

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> from the date of the original entry thereof and *shall have active energy during such period*, without any renewal or renewals there, and this whether any return may or may not have been made during such period on such executions.
>
> S.C. Code Ann. Section 15-39-30 (Emphasis added)

According to Defendant's rationale, an "execution" as applied to this case is the complete process whereby (1) the Court issues its Order selling the Vilcheck's property, (2) the property is advertised for sale once a week for three (3) consecutive weeks, (3) the opening bid is made by Plaintiff, (4) bidding is held open for thirty (30) days, (5) any supplemental orders such as a report on sale and disbursements and disbursement of surplus funds are issued, and (6) the deed is issued to the purchaser at the tax sale and recorded in the public records.

However, an execution is "[a] court order directing a sheriff or other officer to enforce a judgment, usu. by seizing and selling the judgment debtor's property." Black's Law Dictionary 590 (7th ed. 1999) (Emphasis added). So, the "execution" is the Order itself directing the sale of the property. Provided the Court Order directing the sale is entered prior to the date that is 10 years from its entry, the judgment has been executed during its "active energy". This is in complete agreement with our Supreme Court's holding in Gordon.

16. The Plaintiff respectfully prays that this Court reconsider its ruling denying its motion for sale and issue an order for the sale of the real property as requested in the Plaintiff's Motion. In borrowing language from a 2021 Order entered by the Greenville County Master in Equity in a similar case where Defendant used only delay and stall tactics to hinder Plaintiff's enforcement efforts in an attempt to run the clock out to the ten year deadline-the Master ordered the sale of both defendant's primary residence and beach house property by private auction two months before expiration and noted, "if this case were not to fall within the Linda Mc, exception discussed in Gordon, there will likely be an outcome that rewards the machinations and delays orchestrated by a judgment debtor. This Court believes strong policy

considerations and practical reasons exist for a Linda Mc analysis or a hybrid approach whereby appeals by a judgment debtor arising out of an order that is not reversed or modified would toll the collection period." In other words, the Court in that matter said that simply delaying a matter at all costs to reach the ten-year deadline was imprudent and would reward orchestrated delays and he was neither amused nor persuaded by the Defendant's stall antics and ordered the properties sold within 21 days by private auction.

17. To deny Plaintiff's motion would be to reward Defendant's scheme to delay this matter at all costs and take full advantage of the ten-year expiration with no substantive or meritorious defense having been raised by Defendant. The Defendant erroneously contended that this Court could lacked standing to hear Plaintiff's motion for judicial sale due to the matter being stayed on appeal, creating yet another delay adversely affecting the Plaintiff's position as the clock just continued to tick. The Court of Appeals rejected Defendant's position that the matter was stayed and in the very next issue up, the Defendant is back to the same old tactics-seeking to paint with the same broad strokes as he did when contending the matter should be stayed. The Defendant now seeks to cast the general bright line rule that all Judgments are dead after ten years when in fact Gordon never explicitly states that. Defendant seeks to persuade this court that there's nothing to see by misstating and misapplying the ruling in Gordon. While the Defendant argues nothing to see here-after ten years the judgment is dead application, to treat the facts of this case and ignore the facts of Gordon with so generic a broad stroke statement is entirely improper and misleading strategy employed by the Defendant. The Supreme Court found in Gordon that *initiation* of Supplemental proceedings cannot extend the life of the Judgment past ten years and that a creditor may not *execute* on a judgment more than ten years old. If the case has not been *tried* on the merits and no final Order issued, it cannot be continued at will beyond the ten-year period. Again, in the case at hand the matter has been tried and the Execution (Order for Judicial Sale) will have been entered prior to the

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ten-year deadline, creating a stark contrast to the facts in Gordon v. Lancaster. Neither our legislature nor our Supreme Court intended to afford defendant debtors with such overarching protection from vigilant creditors by dancing around the statutory deadline through appeals, delays, or other technical or legal wizardry apart from an argument on the merits. To reward such tactics and petty strategy makes light of the rule of law in this State and carries a very low view of available relief for creditors and promotes further frivolous appeals in our overcrowded dockets. To summarize Gordon, the intent and spirit of the legislation's statute of repose and Supreme Court's ruling was to put an end to creditors going on fishing expeditions post expiration of a judgment and the Plaintiff supports that ruling and is not asking for any further fishing hearings. Here, an Order for Judicial Sale would represent the fish caught and in the boat. Gordon said no more lines in the water after ten years and that the case must have been tried on the merits; the case before your Honor has been tried on the merits.

18. Absent a true and legal defense, the Defendant has brazenly sought to reach the ten-year deadline and thumb its nose at the Rule of Law. To deny Plaintiff's motion for Judicial sale is to reward conduct and mechanisms that are both unlawful and imprudent, and for the foregoing we pray for relief, after two years of collection efforts by the Plaintiff. Equity demands it, the law demands it and we respectfully pray this Court recognize its opportunity for justice and grant the Plaintiff's motion for Judicial Sale.

Respectfully submitted,

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February 13, 2023
Greenville, South Carolina

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STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **FOR THE FOURTEENTH JUDICIAL CIRCUIT**
Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiff, vs. Kenneth J. Vilcheck; Renee M. Vilcheck; Portfolio Recovery Associates, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue, Defendants.	County C/A No.: 2012-CP-07-04253 **Timeline of Events**

Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., (the "Plaintiff") has submitted, or is submitting concurrently with this Memo, a Motion to Reconsider this Court's Order Denying Motion for Judicial Sale entered in this matter on February 9, 2023.

On March 27, 2013, in this matter, a Judgment (the "Judgment") was entered in Beaufort County (2012-CP-07-04253) in favor of the "Plaintiff" and against Kenneth J. Vilcheck and Renee M. Vilcheck (the "Debtors") in the amount of Three Hundred Ninety-One Thousand, Two Hundred Eighty-Four Dollars and Forty-Six Cents ($391,284.46).

On February 9, 2021, in this matter, the Plaintiff filed an Execution in Beaufort County.

On February 10 2021, Plaintiff sent the Execution via the United Postal Service to the Beaufort County Sheriff's Office, who received it on February 11, 2021 and returned the *Nulla Bona* return on the Execution to the Plaintiff, which was filed in this matter on February 22, 2021.

On February 16, 2021, Plaintiff sent a letter to the Debtors in an attempt to settle the matter, along with copies of subpoenas to LLCs in which Plaintiff suspected the Debtors had interests. It was delivered on February 17, 2021.

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On March 2, 2021, pursuant to Rule 53, SCRCP, an Order of Reference to the Master in Equity for Beaufort County, the Honorable Marvin H. Dukes, III, was entered. This order granted the Master in Equity authority to entertain and rule upon all motions necessary to dispose of this matter, to include, but not limited to, motions to dismiss, motions to appoint Receiver, motions to continue the matter, and motions to sell all or certain property of the judgment Debtor in satisfaction of the Debtors' debt, and has authority to enter a Final Order, with any appeal directly to the South Carolina Supreme Court, or Court of Appeals of South Carolina, as appropriate.

On March 5, 2021, Plaintiff filed a Petition for Supplemental Proceedings along with an Affidavit in support.

On May 17, 2021, Plaintiff filed the Summons & Complaint in an action numbered 2021-CP-07-00944 to foreclose on its judicial lien on the Vilcheck's real property (the "Foreclosure Action").

On July 9, 2021, the Plaintiff was contacted by the Judicial Assistant of Master in Equity Dukes to see if Plaintiff wanted to schedule a hearing in supplemental proceedings in this matter. Plaintiff continued the matter as the Foreclosure Action was pending, and so the Court entered a form order stating that "Plaintiff withdrawls [sic] their Petition for Supplemental Proceedings, filed March 5th, 2021, with leave to refile."

On November 18, 2021 the Vilchecks Answer the Summons and Complaint in the Foreclosure Action with a demand for a jury trial.

On March 3, 2022, Plaintiff files motions to strike the jury trial demand and to refer the matter to the Master in Equity in the Foreclosure Action.

On April 20, 2022, in the Foreclosure Action, the motions to strike and refer were heard, and both were granted on May 9, 2022 and May 10, 2022.

On April 28, 2022 Plaintiff refiled its Petition for Supplemental Proceedings in this matter and its Affidavit in support. A Rule to Show Cause Order was entered May 10, and Plaintiff filed a motion for charging orders against the judgment debtor's distributional interests in their companies on May 11, 2022.

On May 16, 2022, the Debtors submitted motions to reconsider the orders striking a jury demand and granting the reference to the Master in Equity in the Foreclosure Action.

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On May 20, 2022 the Debtors were served with the Rule to Show Cause Order, subpoenas to be deposed on June 21, 2022, the motion for charging orders, the petition for supplemental proceedings, and the original letter attempting to settle sent on February 16, 2021.

On June 13, 2022, Debtor emails Plaintiff's counsel to not contact him, but instead his attorney, Drew Radeker.

On June 15, 2022, the court in the Foreclosure action issues an order denying the Vilchecks' motions to reconsider.

On June 20, 2022, Drew Radeker emails Plaintiff's counsel confirming that he does not represent the Debtors in this matter.

On June 21, 2022, the Debtors fail to appear at the scheduled depositions for which they were served the subpoenas to depose a month prior.

On July 9, 2022, Plaintiff's counsel received an email from Drew Radeker confirming his representation of the Debtors in this matter.

On July 11, 2022, in the Foreclosure Action, the Attorney for the Vilchecks filed their notice of appeals of the court's orders striking a jury trial and referring to the Master in Equity filed May 9 and May 10, 2022. This stayed the Foreclosure Action.

On July 13, Attorney for the Debtors filed a motion to Stay and for relief from the Rule to Show Cause Order entered May 10, 2022.

On July 20, 2022 a hearing was held on the pending motions, and attorney for the Debtors verbally moved for a Rule 60(b) motion.

On September 13, 2022, regarding the appeals on the Foreclosure Action, the Appellate Court issued a letter notifying parties that the Transcript due from the Appellants was overdue, and the transcript was delivered on September 21, 2022.

On October 17, 2022, a hearing was held on the Rule 60 Motion, and on October 21, 2022 the Court issued an order denying the motion.

On October 21, 2022, this court entered an order denying Debtors' Rule 60 Motion, and the Plaintiff subsequently filed a motion to sell the Debtors' real property and to join all necessary parties for such a sale to be ordered.

On October 21, 2022, regarding the appeals on the Foreclosure Action, the Appellants filed its first request for an extension of time to file the initial appeal, which the Appellate Court granted on October 25, 2022.

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On November 7, 2022, this court issued orders denying the Debtors' motion to reconsider the court's denial of their rule 60 Motion, along with an order joining the necessary parties for the sale of the Debtor's real property.

On November 17, 2022, regarding the appeals on the Foreclosure Action, the Appellants filed a second request for extension to file the initial appeal, which the Appellate Court granted an extension to December 21, 2022 on November 17, 2022, with the caveat that it would grant no further extensions.

On November 28, 2022, an initial notice of appeals of orders in this matter are filed.

On December 20, 2022, the day before the final extension granted by the Appellate Court expired, regarding the appeals on the Foreclosure Action, Appellant filed a motion to consolidate its appeals in the Foreclosure Action with its appeals of this matter, extending the deadline of all appeals to the deadlines of the later appeals. To date, the Appellants have not filed an Initial Brief in any of their appeals.

On February 1, 2023, concerning the appeals in this matter, the Appellants filed a motion to stay the proceedings of this court, which was denied by the Appellate Court the same day.

On February 2, 2023, concerning the appeals in this matter, the Appellants filed a motion to rehear their motion to stay the lower court, and on February 6, 2023, the Appellate Court denied the motion to rehear, and dismissed Appellants' appeal of the November 7, 2022 motion joining parties as not immediately appealable.

Since the Execution on the Judgment in this matter, Plaintiffs have been working to resolve this matter, and the judgment Debtors sole tactic has been to delay until the expiration of the judgment on March 27, 2023.

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Southern First Bank, N.A. d/b/a Greenville First Bank, Plaintiff, v. Kenneth J. Vilcheck; Renee M. Vilcheck; Portfolio Recovery Associates, LLC; the Federal Housing Commissioner; the Department of the Treasury – Internal Revenue Service; and the South Carolina Department of Revenue, Respondent(s).	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT Docket No.: 2012-CP-07-04253 **MOTION TO ESTABLISH SALES PROCEDURES FOR SALE OF PROPERTY**

PLEASE TAKE NOTICE THAT the Plaintiff, Southern First Bank, N.A. d/b/a Greenville First Bank, (the "Plaintiff"), hereby moves the Court for an Order establishing the Sale and Sales Procedures for sale of property (the "Sale Procedure Motion").

Plaintiff makes this motion on the following grounds:

1. This matter was referred to the Honorable Marvin H. Dukes, III, as Master in Equity for Beaufort County, by Order of Reference filed on March 2, 2021. This Order of Reference directed and gave Judge Dukes authority to "entertain and rule upon all motions necessary to dispose of this matter, to include, but not limited to, motions to dismiss, motions to appoint Receiver, motions to continue the matter, and motions to sell all or certain property of the judgment debtor in satisfaction of the Defendants' debt, and has authority to enter a Final Order, with any appeal directly to the South Carolina Supreme Court, or Court of Appeals of South Carolina, as appropriate."
2. Plaintiff petitioned this court on April 28, 2022 for Supplemental Proceedings to enforce its Judgment against Kenneth J. Vilcheck and Renee M. Vilcheck (the "Defendants").
3. In these Supplemental Proceedings, it has been established that the Defendants own the

property located at 318 Bamberg Dr., Bluffton, SC 29910 (the "Property").

4. Plaintiff intends to have the Property sold or otherwise disposed of.
5. Pursuant to this Motion, Plaintiff respectfully requests entry of an order providing for the procedures by which an independent third party may sell or otherwise dispose of the Property, including, but not limited to, procedures involving retention of sales professionals as well as time, place, and manner of sale, along with establishing the leins to which the sale will be subject, rights of redemption, and other necessary matters concerning interests in the property.
6. Plaintiff certifies pursuant to Rule 11 of the South Carolina Rules of Procedure that consultation with opposing counsel regarding this Motion would serve no useful purpose.
7. Plaintiff respectfully requests the Court schedule a hearing to Enter and Order for Sale and to Set and establish the Procedures by which the Property may be sold or otherwise disposed of herein and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/Aaron J. Angell
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18 E. North St., Ste. 302
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s/Luke R. Hoopes
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Attorneys for the Plaintiff

February 17, 2023
Greenville, South Carolina

ELECTRONICALLY FILED - 2023 Feb 17 11:16 AM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

P. J. Tanner
Sheriff

OFFICE OF SHERIFF
BEAUFORT COUNTY
POST OFFICE BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF	255-3200
CHIEF DEPUTY	255-3192
CRIMINAL RECORDS	255-3232
CRIMINAL WARRANTS	255-3228
CIVIL RECORDS	255-3188
JUDGMENTS	255-3189
FAX #	255-9405
WEB SITE	www.bcso.net

ELECTRONICALLY FILED - 2021 Feb 22 2:06 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

February 18, 2021

Aaron J. Angell, Esquire
200 North Main Street, Suite 301
Greenville, South Carolina 29601

Re: Southern First Bank, N.A., d/b/a Greenville First Bank, N.A. vs Kenneth J. Vilcheck and Renee M. Vilcheck
Judgment Roll No: 2012CP0704253

Dear Sir or Madam:

This is to inform you that the Execution Against Property in the above referenced matter is being forwarded to the Clerk of Court for Beaufort County and stamped as follows:

> "NULLA BONA" February 18, 2021. I hereby certify that, after diligent search. I have been unable to locate any property in the name of the defendant on which to levy and the within Execution is being returned to the Clerk of Court for Beaufort County, "NULLA BONA", as of this date by request of the Plaintiff's Attorney.

Sincerely,

P. J. TANNER
SHERIFF

PJT/lkb

cc: Clerk of Court

ELECTRONICALLY FILED - 2021 Feb 22 2:06 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253
ELECTRONICALLY FILED - 2021 Feb 09 4:25 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., Plaintiff, v. Kenneth J. Vilcheck and Renee M. Vilcheck, Defendant(s).	County C/A No.: 2012-CP-07-04253 **EXECUTION**

TO: P.J. TANNER, SHERIFF OF BEAUFORT COUNTY

WHEREAS, the Judgment Creditor, Southern First Bank, N.A. d/b/a Greenville First Bank, N.A., obtained its Judgment against the Defendant(s), Kenneth J. Vilcheck and Renee M. Vilcheck, in the amount of Three Hundred Ninety-One Thousand Two Hundred Eighty-Four Dollars and Forty-Six Cents ($391,284.46), as it appears at Judgment Roll No. 2012-CP-07-04253, filed in the Office of the Clerk of Court for Beaufort County on March 27 2013;

WHEREAS, the Judgment remains unpaid in its entirety;

Therefore, I request that you satisfy the Judgment out of the personal property of the Defendant(s), Kenneth J. Vilcheck and Renee M. Vilcheck, or if sufficient non-exempt personal property cannot be found, then out of the real property in your County belonging to such Judgment Debtors on the day when the Judgment was so docketed in your County or at any time thereafter in whose hands whomsoever this property may be and return this Execution according to law to the Clerk of Court of Beaufort County.

NOW THEREFORE, we command that you satisfy this Judgment in the above amount.

WITNESS the Honorable Clerk of Court for Beaufort County, South Carolina on this _____ day of _____, 2021.

_____
Clerk of Court for Beaufort County

Submitted by:

s/Aaron J. Angell
Aaron J. Angell
Angell Molony, LLC
SC Bar No. 80867
200 N. Main Street, Suite 301
Greenville, SC 29601
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Common Pleas

Case Caption: Southern First Bank VS Kenneth J Vilcheck

Case Number: 2012CP0704253

Type: Motion/Execution of Judgment

So Ordered

s/Jerri Ann Roseneau, Beaufort County Clerk of Court

"NULLA BONA" 02/18/21 I herby certify that after diligent search, I have been unable to locate any property in the name of the defendent on which to levy and the within execution is being returned to the Clerk of Court for Beaufort County, marked "Nulla Bona" as of this date.

Sheriff

ELECTRONICALLY FILED - 2021 Feb 22 2:06 PM - BEAUFORT - COMMON PLEAS - CASE#2012CP0704253

RECEIVED
Feb 02 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2023-000421

Southern First Bank……. Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, The Federal Housing Commissioner, The Department of the Treasury – Internal Revenue Service, and The South Carolina Department of Revenue……..... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on February 2, 2024, he served the foregoing Record on Appeal by emailing a copy to the persons below listed for opposing counsel on AIS pursuant to SCACR 262 as amended by the Supreme Court's August 25, 2021 Order, addressed as follows:

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SMITH HUDSON LAW, LLC

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Attorneys for Appellants

February 2, 2024
Greenville, South Carolina