THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2024-000122

U.S. Bank Trust NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G, Appellant,

v.

Jamie Singleton and Indigo Pointe Homeowners' Association, Defendants,

of which Jamie Singleton is the Respondent.

BRIEF OF APPELLANT U.S. BANK TRUST NA, AS TRUSTEE FOR WATERFALL VICTORIA GRANTOR TRUST II, SERIES G

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TABLE OF CONTENTS

Table of Cases, Statutes, and Other Authorities ……... ii

Statement of the Case ……1

Standard of Review ……...8

Arguments ……..…...9

I. Did the master-in-equity err in the November 21, 2022 order by disallowing Waterfall's request for accrued interest, attorney's fees and costs, which were items to which Waterfall was entitled under the terms of the note and mortgage?.....9

II. Did the master-in-equity err in the November 21, 2022 order by denying Waterfall's request for the escrow charges and the corporate advances because of Waterfall's alleged failure to establish the reasonableness of these charges?.....17

III. Did the master-in-equity err in, *sua sponte*, issuing the March 28, 2023 order that vacated, in total, the November 21, 2022 order when more than ten days had passed since the issuance of the November 21, 2022 order?..... 19

IV. Did the master-in-equity err in the December 12, 2023 order by disallowing Waterfall's request for accrued interest on the note?.....24

V. Did the master-in-equity err in the December 12, 2023 order by holding that Waterfall, although being the holder of the Note, was not the holder of the Mortgage that secured the Note, thereby preventing Waterfall from foreclosing on the Mortgage?..... 28

VI. Did the master-in-equity err in the December 12, 20023 order by awarding a judgment or setoff in favor of Singleton for the amount of $19,183.89?..... 29

Conclusion …… 32

Table of Cases, Statutes, and Other Authorities

Cases

Ballou v. Young, 42 S.C. 170, 20 S.E. 84 (1894)…….. 28, 29

Bank v. Wingard Properties, Inc., 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011)……...19

Bank of Am., N.A. v. Draper, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013)…….. 28

County of Richland v. Simpkins, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002)……. 16

Diamond Swimming Pool Co. v. Broome, 252 S.C. 379, 166 S.E.2d 308 (1969)…… 17

Encore Technology Group, LLC v. Trask, 436 S.C. 289, 871 S.E.2d 608 (Ct. App. 2021)…….. 31

Hahn v. Smith, 157 S.C. 157, 154 S.E. 112 (1930)……... 28

Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 489 S.E.2d 472 (1997)……...8

Heins v. Heins, 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 2001)…… 20, 21, 22

I'On, LLC v. Town of Mount Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000)……. 8

Lee v. University of South Carolina, 407 S.C. 512, 757 S.E.2d 304 (2014)……. 25

Lewis v. Premium Inv. Corp., 351 S.C. 167, 568 S.E.2d 361 (2002)…… 25

Lindsay v. Lindsay, 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997)……. 24

Lowcountry Open Land Trust v. Charleston S. Univ., 376 S.C. 399, 656 S.E.2d 775 (Ct. App. 2008)…….. 8

Ness v. Eckerd Corp., 350 S.C. 399, 566 S.E.2d 193 (Ct. App. 2002)……. 20

Pinckney v. Warren, 344 S.C. 382, 544 S.E.2d 620 (2001)…….. 8

Redfield v. Ystalyfera Iron Co., 110 U.S. 174 (1884)…… 15

Rhodus v. Goins, 129 S.C. 40, 123 S.E. 645 (1924)……..25

Rosemond v. Campbell, 288 S.C. 516, 343 S.E.2d 641 (Ct. App. 1986)…….. 30

Save Charleston Found. v. Murray, 286 S.C. 170, 333 S.E.2d 60 (Ct. App. 1985)……..31

U.S. Bank Trust, N.A. v. Bell, 385 S.C. 364, 684 S.E.2d 199 (Ct. App. 2009)……..14, 15, 25

Statutes

S.C. Code Ann. § 14-3-330 (Supp. 1991)……..23

S.C. Code Ann § 14-8-200 (Supp. 2007)……...23

S.C. Code Ann. § 29-3-40 (Supp. 1982)……18

S.C. Code Ann § 36-3-203 (Supp. 1988)……...28, 29

Other Authorities

Rule 401, SCRE……27

Rule 402, SCRE……27

STATEMENT OF ISSUES ON APPEAL

I. Did the master-in-equity err in the November 21, 2022 order by disallowing Waterfall's request for accrued interest, attorney's fees and costs, which were items to which Waterfall was entitled under the terms of the note and mortgage?

II. Did the master-in-equity err in the November 21, 2022 order by denying Waterfall's request for the escrow charges and the corporate advances because of Waterfall's alleged failure to establish the reasonableness of these charges?

III. Did the master-in-equity err in, *sua sponte*, issuing the March 28, 2023 order that vacated, in total, the November 21, 2022 order when more than ten days had passed since the issuance of the November 21, 2022 order?

IV. Did the master-in-equity err in the December 12, 2023 order by disallowing Waterfall's request for accrued interest on the note?

V. Did the master-in-equity err in the December 12, 2023 order by holding that Waterfall, although being the holder of the Note, was not the holder of the Mortgage that secured the Note, thereby preventing Waterfall from foreclosing on the Mortgage?

VI. Did the master-in-equity err in the December 12, 20023 order by awarding a judgment or setoff in favor of Singleton for the amount of $19,183.89?

STATEMENT OF THE CASE

This is an appeal of a mortgage foreclosure action with a long history. On April 25, 2011, the plaintiff, 50 by 50 REO, LLC ("50 by 50"), filed the lis pendens, summons and complaint in this foreclosure action against the defendants, Jamie Singleton ("Singleton") and Indigo Pointe Homeowners' Association. (R. pp. 209-20). The complaint alleged that, on or about January 4, 2006, Singleton executed an adjustable interest rate note for the principal amount of $212,000.00, payable to People's Choice Home Loans, Inc., its successors and assigns, and on that same date, Singleton executed a mortgage to secure the note. (R. pp. 216-17). The complaint further alleged that Singleton had defaulted in the monthly payments required by the note, that 50 by 50 was the holder of the note, and 50 by 50 had elected to exercise its option to foreclosure on the mortgage that secured the note. (R. pp. 216- 18).

On May 24, 2011, Singleton filed a motion to dismiss the complaint based on the alleged failure of 50 by 50 to join a necessary party under Rule 19, SCRCP. (R. pp. 223-24). According to the motion to dismiss, Singleton had obtained a "mortgage securitization audit" from "Linda Zimmerman, Certified Forensic Loan Auditor," that "detail errors and/or fraud in the Assignment of Mortgage of 2008 from MERS, Inc. on behalf of People's Choice Home Loan, Inc. to GMAC Mortgage, LLC, GMAC Mortgage Corp. [sic] which make it void or, at the very least, dubious as far as the validity of the Assignment of Note and Mortgage." (R. p. 223). If the assignment in question was valid, Singleton's motion alleged the complaint failed to name a necessary party. (R. pp. 223-24).

Pursuant to South Carolina Administrative Order 2011-05-02-01, 50 by 50 notified Singleton of his right to be considered for foreclosure intervention. (R. p. 225). By letter dated July 6, 2011, Singleton's attorney responded to the notice by stating Singleton would like to be

considered for foreclosure intervention. (R. p. 226). Accordingly, by an order signed on August 9, 2011, and filed on August 17, 2011, the case was stayed while Singleton was being considered for foreclosure intervention. (R. pp. 1-4). By an attorney certification filed with the court on December 19, 2011, 50 by 50's attorney notified the court that, after reviewing the information submitted, Singleton did not qualify for any foreclosure intervention options. (R. p. 227).

Therefore, by an order filed on June 1, 2012, the court restored the case to the active roster. (R. p. 5). The case was referred to the master in equity for Dorchester County by an order of reference filed on June 8, 2012. (R. p. 7). On June 14, 2012, 50 by 50 filed a motion for summary judgment. (R. p. 228). After a hearing on Singleton's motion to dismiss on June 27, 2012, the master in equity denied the motion to dismiss by an order filed on July 26, 2012. (R. p. 204). Singleton filed an answer and counterclaim on July 11, 2012. (R. pp. 232-41). 50 by 50 responded to the counterclaims by filing a reply on August 13, 2012. (R. pp. 242-46). On September 6, 2012, Singleton filed a motion to disburse insurance proceeds that had been paid to the mortgagee because of a fire at Singleton's home. (R. pp. 247-48). On September 25, 2012, 50 by 50 filed a motion to substitute US Bank, N.A., as Trustee of the FRT 2011-1 Trust ("US Bank") for 50 by 50 as plaintiff in the case. (R. p. 249). After a hearing, Maite Murphy, the master in equity at the time, issued an order that was filed on November 8, 2012, and the order denied Singleton's motion to disburse insurance proceeds, denied Singleton's motion for a more definite statement, denied Singleton's motion to dismiss or motion to stay, granted 50 by 50's motion to substitute US Bank as plaintiff, and continued 50 by 50's motion for summary judgment. (R. pp. 9-18). On June 25, 2013, an order was filed admitting William Jeff Barnes pro hac vice as co-counsel for Singleton. (R. pp. 20-21). Singleton filed a motion for summary judgment with the court on September 26, 2013. (R. pp. 266-365).

A consent scheduling order was filed in the case on October 23, 2013, by James E. Chellis, the new and current master in equity. (R. pp. 22-23). By a motion dated January 17, 2014, filed February 10, 2014, US Bank filed a motion to continue a motions hearing scheduled before the master in equity for January 22, 2014. (R. pp. 366-67). After a hearing on January 22, 2014, an order was filed on March 19, 2014 that granted US Bank's motion for a continuance and scheduled both US Bank's motion for summary judgment and Singleton's motion for summary judgment for hearing on April 24, 2014. (R. pp. 24-25). Plaintiff's memorandum in opposition to Singleton's motion for summary judgment was filed on April 21, 2014. (R. pp. 371-88). An order denying Singleton's motion for summary judgment was filed on May 13, 2014. (R. pp. 26-32). On July 23, 2014, Singleton filed a motion to compel US Bank to provide discovery responses. (R. pp. 389-90). A hearing on Singleton's motion to compel was scheduled for September 4, 2014, but the hearing was continued at Singleton's request by a consent order filed on August 28, 2014. (R. pp. 33-34). An order denying Singleton's motion to compel was filed on September 30, 2014; however, the order did grant Singleton leave to file a motion to amend his answer and counterclaim "to bring third-party claims against persons or entities [Singleton] asserts are necessary and proper parties to a fair and just determination of the issues before the Court." (R. pp. 35-36). On October 28, 2014, Singleton filed a motion to amend his answer to add counterclaims and additional defendants. (R. pp. 394-413). US Bank's memorandum in opposition to Singleton's motion to amend was filed on December 15, 2014. (R. pp. 415-18). On February 2, 2015, Singleton filed another motion to amend his answer to add counterclaims and additional defendants. (R. pp. 419-36). An order was filed on April 13, 2015 granting Singleton's motion to amend his answer to add counterclaims and cross-claims. (R. pp. 37-58). Singleton's amended answer and cross-claim added eight new cross-defendants

as parties to the action. (R. pp. 425-35). U.S. Bank filed its reply to Singleton's amended answer and cross-claim on July 2, 2015. (R. pp. 446-49). On September 21, 2015, US Bank filed a motion to substitute US Bank Trust, National Association, not in its individual capacity but solely as owner trustee of Westvue NPL Trust, Series 2014-1 ("US Bank Trust") as plaintiff in the case. (R. pp. 456-61).

Singleton filed a "motion for case management conference" on September 30, 2015. (R. pp. 462-509). On February 29, 2016, a memorandum was filed in support of substituting US Bank Trust as plaintiff in the action. Also on February 29, 2016, Singleton filed his response to have US Bank Trust substituted as plaintiff in the action. On March 1, 2016, the master-in-equity issued an order substituting US Bank Trust as plaintiff in the action. (R. pp. 59-61).

On May 25, 2016, Singleton filed a motion to compel U.S. Bank, the counter-defendant and prior plaintiff, to respond to discovery requests. (R. pp. 524-25). After a hearing on June 16, 2016, the master-in-equity filed an order on August 31, 2016 that granted Singleton's motion to compel. (R. pp. 66-70). Singleton filed a second motion to disburse insurance proceeds on September 5, 2017. (R. pp. 530-39). On September 22, 2017, US Bank Trust filed a motion to substitute Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 ("Wilmington Savings") as plaintiff in the case. (R. pp. 540-41). On September 29, 2017, a stipulation as to amendment of the pleadings and substitution of the plaintiff and an order granting plaintiff's motion to substitute plaintiff were filed. (R. pp. 79-80, 542-43). A second amended scheduling order was filed on July 17, 2018. (R. pp. 87-90). Singleton filed his third amended answer, counterclaim and cross-claim on July 29, 2018. (R. pp. 545-46). The third amended answer, counterclaim and cross-claim also set forth the following defenses: lack of

standing; waiver and laches; unclean hands; bad faith and unfair dealing; "separation of the note and mortgage;" and judicial estoppel. (R. pp. 547-50). The counterclaims set forth in the amended answer and counterclaim were for quiet title and declaratory judgment. (R. pp. 551-65). Wilmington Savings responded to the amended answer, counterclaim and cross-claim by a reply filed on August 28, 2018. (R. pp. 580-87). On September 5, 2018, a third amended scheduling order was issued in the case. (R. pp. 95-97).

The cross-claim defendant, U.S. Bank, NA, as Trustee for FRT 2011-1("FRT Trust") filed a motion for summary judgment on November 28, 2018. (R. pp. 597-600). On December 14, 2018, Singleton also filed a motion for summary judgment. (R. pp. 601-739). Wilmington Savings filed a motion for summary judgment on December 31, 2018. (R. pp. 742-66). An order granting FRT Trust's motion for summary judgment and dismissing FRT Trust as a party to the action was filed on February 7, 2019. (R. pp. 98-100). Singleton filed a motion to dismiss the action on October 16, 2019. (R. pp. 810-20).

On February 6, 2020, the plaintiff, Wilmington Savings, filed a motion and a proposed order to substitute U.S. Bank Trust N.A. as Trustee for Waterfall Victoria Grantor Trust II, Series G ("Waterfall") as plaintiff in the action. (R. pp. 105, 839-41). By an order filed on February 7, 2020, the master-in-equity denied the motion to substitute Waterfall as the plaintiff. (R. pp. 105-06). After a status conference on October 28, 2019, the master-in-equity, on February 11, 2020, filed an order that denied Singleton's motion to dismiss the action, granted Singleton's motion to continue the trial, and granted Singleton's motion to compel Wilmington Savings to provide Singleton with certain information regarding the assignment of the note and mortgage in question to Waterfall. (R. pp. 107-09). Another status conference was held in the action on July 29, 2020, and after this conference, an order was filed on August 5, 2020 that

allowed Singleton to take the Rule 30(b)(6) deposition of a representative of Wilmington Savings. (R. pp. 110-13). On September 20, 2020, Wilmington Savings filed a motion to dismiss the foreclosure action without prejudice on the basis that it was no longer the holder of the note and mortgage and the court had denied Wilmington Savings' motion to substitute the current holder; therefore, Wilmington Savings could no longer move forward with the action. (R. pp. 853-56). The master-in-equity held a hearing on November 16, 2020, and the result of the hearing was an order filed on March 16, 2021 that vacated the previous order filed on February 7, 2020 that denied Wilmington Savings' motion to substitute Waterfall as the plaintiff in the action. (R. pp. 114-17). This March 16, 2021 order also denied as moot the motions to dismiss filed by both Wilmington Savings and Singleton. (R. p. 116).

On November 2, 2021, Singleton filed his third motion for summary judgment. (R. pp. 900-76). By an order filed on February 8, 2022, the master-in-equity denied Singleton's third motion for summary judgment. (R. p. 118-20). Waterfall filed a motion for summary judgment, with supporting documents, on September 16, 2022. (R. pp. 991-1076). On October 6, 2022, Singleton filed his own motion for summary judgment, his fourth in the action, and he also filed a memorandum in opposition to Waterfalls' motion for summary judgment. (R. pp. 1068-97). After a hearing on October 12, 2022, the master-in-equity issued an order filed on November 21, 2022 ("November 21, 2022 Order") that granted Waterfall's motion for summary judgment by finding that Waterfall was the holder of the note and mortgage in question and was entitled to foreclose; however, the November 21, 2022 Order denied Waterfall any interest on the principal debt from the date of default through the date of the judgment and also denied Waterfall any "escrow" charges, any "corporate advances," and any attorney's fees and costs. (R. pp. 121-138). On December 1, 2022, Waterfall filed a Rule 59(e), SCRCP, motion to alter or amend the

November 21, 2022 Order with regard to the master-in-equity's denial of the pre-judgment interest, the escrow, the corporate advances, and the attorney's fees and costs. (R. pp. 1098-1149). Singleton did not file a motion with regard to the November 21, 2022 Order, but Singleton did file a memorandum in opposition to Waterfall's motion. (R. pp. 1150-60). Waterfall filed a memorandum in reply to Singleton's memorandum in opposition. (R. pp. 1163-75). The master-in-equity issued a Form 4 order on March 28, 2023 ("March 28, 2023 Order Vacating"), that vacated, in full, the November 21, 2022 Order and dismissed Waterfall's Rule 59(e) motion as being moot. (R. pp. 206-08).

After a hearing on March 29, 2023, an order was filed on April 20, 2023 that denied Singleton's fourth motion for summary judgment. (R. pp. 139-40). A three-day trial in the case was held between June 12, 2023 and June 14, 2023, and from this trial, the master-in-equity filed an order on December 12, 2023 ("December 12, 2023 Trial Order") that granted Waterfall judgment for the principal balance of the note but denied foreclosure or judgment to Waterfall for anything but the principal balance due on the note. (R. pp. 144-197). On December 22, 2023, Waterfall filed a Rule 59(e) motion to alter or amend the December 12, 2023 Trial Order with regard to the master-in-equity's denial of interest, costs and attorney's fees to Waterfall, the conclusion that Waterfall, although holding the Note, did not also hold the Mortgage, thereby preventing it from foreclosing, and the awarding of a judgment to Singleton. (R. pp. 1237-77). Singleton filed a memorandum in opposition to Waterfall's 59(e) motion, but Singleton did not file his own Rule 59(e) motion with regard to the December 12, 2023 Trial Order. (R. pp.). The master-in-equity, without a hearing, filed an order on December 29, 2023 ("December 29, 202 Order") that granted Waterfalls' 59(e) motion to the extent the note and mortgage provided reasonable attorney's fees to Waterfall. (R. pp. 198-203). The December 29, 2023 Order did not

address Waterfall's request for interest on the principal balance owed on the note. (R. pp. 198-203).

On January 29, 2024, Waterfall filed a notice of appeal with regard to the following orders: the November 21, 2022 order granting plaintiff's motion for summary judgment; the March 28, 2023 Form 4 order setting aside the November 21, 2023 order and finding the Waterfall's 59(e) motion to be moot; the December 12, 2023 order denying Waterfall foreclosure and granting judgment on the note; and the December 29, 2023 order granting in part and denying in part Waterfall's 59(e) motion. (R. pp. 1359-1441).

STANDARD OF REVIEW

"A mortgage foreclosure is an action in equity." *Hayne Fed. Credit Union v. Bailey,* 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). In an appeal from an action in equity, tried by a judge alone, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008). However, this broad scope of review does not require an appellate court to disregard the findings of the trial court or to ignore that the trial court is in a better position to assess the credibility of the witnesses. *Pinckney v. Warren,* 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001). Moreover, the appellant is not relieved of the burden of convincing the appellate court that the trial court committed error in its findings. *Id.* at 387-88, 544 S.E.2d at 623. The appellate court may decide questions of law in an equity case without any particular deference to the trial court. *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000) (citing S.C. Code Ann. § 14-8-200 (Supp. 1998)).

ARGUMENTS

I. The master-in-equity erred in the November 21, 2022 order by disallowing Waterfall's request for accrued interest, attorney's fees, and costs, which were items to which Waterfall was entitled under the terms of the note and mortgage.

In the master-in-equity's November 21, 2022 Order (**in this argument I and in arguments II and III below, the November 21, 2022 Order will simply be referred to as "Order"**) that granted Waterfall's motion for summary judgment, the master-in-equity properly found that Singleton, on or about January 4, 2006, executed an adjustable interest rate note ("Note"), payable in monthly amortized installments, to People's Choice Home Loans, Inc. for the principal amount of $212,000.00. (R. p. 122). The Order also properly found that Singleton, in order to secure payment of the Note, executed a mortgage ("Mortgage") encumbering real property generally described as 5505 Rowsham Place, North Charleston, South Carolina 29418, and that the Mortgage was a purchase-money mortgage. (R. p. 122). In the Order, the master-in-equity also correctly found that Singleton failed to make the payment on the Note due for January 1, 2010 and that he remained in default thereafter. (R. p. 122). As set forth in Waterfall's memorandum in support of its motion for summary judgment, Singleton admitted these facts in his deposition. (R. pp. 992-93, p. 1002, line 9-p. 1003, line 2, p. 1005, line 23-p. 1018, line 20, pp. 1023-57).

The Order found that Singleton's failure to make the required payments on Note was a breach of the terms of the Note and that Waterfall's predecessor in interest had properly exercised its right to declare the entire balance, including interest, due and payable. (R. pp. 122-23). The Order also found that Waterfall was the holder of the Note was therefore entitled to enforce the Note and Mortgage pursuant to S.C. Code Ann. § 36-3-301. (R. p. 123, pp. 1062-67). The Order also found that Waterfall's affidavit claimed, as of the date of the hearing, that it

was entitled to principal, accrued interest, advances, late charges, costs and disbursements, and attorney's fees totaling $552,705.56. (R. p. 123, pp. 1058-1061). All of these findings were supported by the record and by the memorandum and supporting documents Waterfall filed in support of its motion for summary judgment. (R. pp. 991-1067). At the hearing, the master-in-equity noted, "there is no counter affidavit filed by the defendant as to the amount of the debt." (R. p. 1612, line 25-p. 1613, line 1).

The Order also addressed Singleton's defenses. The master-in-equity concluded that Singleton's lack of standing defense failed because Waterfall had proven that it was the holder of the Note and therefore had standing to foreclose the Note and Mortgage. (R. pp. 126-29). The master-in-equity concluded that Singleton had abandoned his waiver and laches defense by failing to raise the defense at the summary judgment hearing. (R. p. 129). Even if the waiver and laches defense had been argued at the hearing, the master-in-equity concluded the argument had "no merit" and that Singleton had "no evidence" to support the defense. (R. p. 129). Singleton's third and fourth defenses were that the foreclosure action was brought with "unclean hands" and with bad faith and unfair dealing based on Singleton's allegation that Waterfall's predecessor-in-interest had offered Singleton a "take it or leave it mortgage modification offer." (R. pp. 129-30). The Order concluded that "[Singleton] was questioned extensively in his deposition about these defenses and offered no evidence to support his claims." (R. pp. 129-30). Addressing Singleton's fifth defense, the defense that "the note and mortgage have been split forever," the master-in-equity concluded that Singleton had abandoned this "separation of the note and mortgage" defense by failing to raise it at the summary judgment hearing. (R. p. 130). Nevertheless, the master-in-equity found that the "record is devoid of evidence to support this allegation." (R. p. 130). Singleton's sixth defense was that because a previous holder of the

Note and Mortgage had filed a foreclosure action and had not sought a deficiency judgment, Waterfall was estopped from seeking a deficiency judgment against Singleton. (R. pp. 130-31). The master-in-equity concluded that Singleton had failed to preserve this judicial estoppel defense by offering any evidence to support it at the summary judgment hearing. (R. pp. 130-31). The Order also concluded that "there was not even a scintilla of evidence submitted to support this argument, so it also must fail." (R. p. 131).

Nevertheless, in the Order, even after determining that Waterfall was the holder of the Note and Mortgage with the ability to foreclose and that all of Singleton's defenses failed, the master-in-equity denied several items of the debt owed by Singleton to Waterfall. First, the master-in-equity "applied the principle of equitable set-off" to deny Waterfall the accrued interest of $278,102.34. (R. pp. 131-32). The Order stated that "[t]he facts indicating the injustice of denying the insurance company a set-off in the present case have been sufficiently presented." (R. pp. 131-32). However, nothing was argued at the summary judgment hearing or set forth in any of the memorandums in support of or in opposition to summary judgment regarding an insurance company. (R. pp. 991-1097, pp. 1554-1620). At the summary judgment hearing, the master-in-equity, when discussing the interest, stated the following:

> I have no authority as a court to modify to an agreement. What the parties agreed to is what the parties agreed to. But what seems extremely unfair to me is that this case has gone through, as Mr. Barnes detailed, a number of transformations in the way of how this note has traveled in and about in the various and sundry corporate entities that may have at one time touched on possession of the particular obligation.
>
> All the while, plaintiff has been receiving interest at the rate of something like 10.65 percent, I think is what the actual interest is on the obligation. What I'm inclined to do is exercise my equitable jurisdiction and enter an equitable set-off that would make a set-off for the cost and expenses that Mr. Singleton has gone through to be set off against the amount of the debt that the plaintiff is claiming. So what — the setoff amount is the amount of the interest that has accrued since the beginning of the lawsuit. I'm going to offset that amount of interest,

> equitably, such that the plaintiff is only entitled to recover its principal amount under the note.

(R. p. 1613, line 7-p. 1614, line 4). Later, the master-in-equity stated:

> Excuse me. Let me clarify that. Interest accrued since the date of default. Since the date of default. Interest accrued since the date of default is gonna be equitably set-off because of what is by Mr. Barnes' litany of the course of travel that this particular instrument that you're seeking to enforce has taken over the ten-year period.

(R. p. 1614, line 21-p. 1615 line 2).

Waiver of the interest based on the equitable powers of the court was not raised by Singleton. (R. pp. 545-66, pp. 900-76, pp. 1068-1097, pp. 1554-1620). Thus, the master-in-equity, *sua sponte,* decided to waive the interest from the date of default based on equitable grounds- and even though Singelton had admittedly not paid any property taxes nor payments on the Note in more than twelve years at the time of the hearing. (R. p. 1611, line 3-p. 1614, line 14). The basis for the master-in-equity's decision on the waiver of the interest is clear from the transcript of the hearing: the master-in-equity did not like the fact that the Note had been assigned several times over the course of the foreclosure action.[1] (R. pp. 123-125, p. 1611, line 3-p. 1616, line 19).

The Order also found that Waterfall had "failed to establish reasonableness of the escrow by failing to itemize what constitutes escrow charges" and denied Waterfall's request for the payments Waterfall had expended in escrow charges on the account. (R. p. 132). Similarly, the Order denied Waterfall's request for reimbursement of "corporate advances" because the master-

[1] Waterfall believes that the master-in-equity's displeasure with the transfer of the note and mortgage is also seen in the fact that the master-in-equity, in the order filed on February 7, 2020, denied, without a hearing, the motion to substitute Waterfall as the plaintiff in the case, even though the motion alleged Waterfall had been assigned the note and mortgage and was now the real party in interest. After a hearing on November 16, 2020, the master-in-equity issued an order on March 16, 2021 that admitted the order of February 7, 2020 had been issued in error, vacated it, and substituted Waterfall as the plaintiff. (R. pp. 105-06, 114-17).

in-equity found that Waterfall had failed to establish the reasonableness of these charges on the account. (R. p. 132). Notably, the Order denied these items based on Waterfall's alleged failure to establish the reasonableness of these charges, but the master-in-equity, *sua sponte*, decided the amount of interest to waive in order to offset Singleton's alleged costs and expenses *even though there was nothing in the record to establish Singleton's costs and expenses.* (R. pp. 1068-1097, 1554-1620).

On December 1, 2022, Waterfall timely filed a Rule 59(e) motion to alter or amend the Order with regard to the master-in-equity's denial of the accrued interest, escrow charges, corporate advances, and attorney's fees and costs (collectively "expenses"). (R. pp. 1098-1149). Waterfall's motion argued that it was an abuse of discretion to deny these expenses because of alleged "bad faith" by Waterfall's predecessors transferring the Note, especially when there was no finding that any transfer was done for the purposes of hindrance or delay or without any reasonable basis. (R. pp. 1100-05). The motion also argued that it was an abuse of discretion for the master-in-equity to, *sua sponte*, decide to disallow these charges. (R. p. 1099 n. 3, p. 1655, line 20-p. 1656, line 9, p. 1666, line 18-p. 1674, line 3, p. 1676, line 18-p. 1680, line 12). The motion noted that Singleton did not dispute the accuracy of any of the expenses in Waterfall's affidavit in support of Waterfall's motion for summary judgment, which was attached as Exhibit D to Waterfall's motion. (R. p. 1099). Neither the master-in-equity nor Singleton requested additional information from Waterfall regarding the expenses, and Waterfall's motion argued that denying these expenses without providing Waterfall notice and an opportunity to be heard deprived Waterfall of fundamental procedural rights. (R. pp. 1105-07). Waterfall's motion also argued that when a contract is clear and unambiguous, like Note and

Mortgage in this case, the court's role is to enforce the contract as written and not re-write the contract. (R. pp. 1104-07).

Singleton did not file a Rule 59(e) motion with regard to the Order. This is true even though Singleton, in his memorandum in opposition to Waterfall's motion for summary judgment and at the summary judgment hearing, argued, at great length, that there was a genuine issue of material of fact as to whether Waterfall was the holder of the Note. (R. pp. 1068-97, p. 1575, line 2-p. 1604, line 9). This argument was basically the only argument asserted by Singleton in opposition to Waterfall's motion for summary judgment. (R. pp. 1068-97, p. 1575, line 2-p. 1604, line 9). However, after the Order was issued finding that Waterfall was the holder of the Note and Mortgage but that Singleton only had to pay the principal amount of the debt through the date of judgment, without any interest or other expenses, Singleton did not file a motion to alter or amend this finding by the master-in-equity. In fact, on November 21, 2022, *the very day the Order was issued*, Singleton's attorney, in an email to Waterfall's attorney, requested wiring instructions so that Singleton could wire the principal amount of $207,389.66 to Waterfall the next day. (R. pp. 1151, 1174-75). Singleton also filed a memorandum in opposition to Waterfall's Rule 59(e) motion to alter or amend the Order. (R. pp. 1150-60).

On January 26, 2023, a hearing was held on Waterfall's Rule 59(e) motion. At the hearing and in its memoranda, Waterfall cited *U.S. Bank Trust, N.A. v. Bell,* 385 S.C. 364, 684 S.E.2d 199 (Ct. App. 2009) in support of its position that the Note and Mortgage were unambiguous contracts that the master-in-equity was without authority to alter. (R. pp. 1104-06, p. 1678, line 21-p. 1679, line 16). *Bell* was a mortgage foreclosure action in which the master-in-equity ruled U.S. Bank, the foreclosing plaintiff, was not entitled to collect interest accrued on the loan. *Bell* at 372, 684 S.E.2d at 203-04. The court of appeals stated that "[t]he construction

of a clear and unambiguous contract presents a question of law for the court." *Id.* (citing *Ward v. West Oil Co.,* 379 S.C. 225, 238, 665 S.E.2d 618, 625 (Ct. App. 2008). "We are without authority to alter an unambiguous contract by construction or to make new contracts for the parties." (citing *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988). "'A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully.'" *Id.* (quoting *S.C. Dept. of Transp. v. M &T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 655, 667 SW.E.2d 7, 13 (Ct. App. 2008)). In *Bell,* the court of appeals ruled that the master-in-equity did not have the authority to change the plain and unambiguous terms of the Note with regard to the accrued interest and reversed the master-in-equity's denial of the interest. *Id.*

The United States Supreme Court also addressed the interest issue in the case of *Redfield v. Ystalyfera Iron Co.*, 110 U.S. 174 (1884). In *Redfield,* the Supreme Court stated that "[i]nterest is given on money demands as damages for delay in payment, being just compensation to the plaintiff for a delay on the part of his debtor." *Id.* at 176. However, the Supreme Court ruled the "[w]here [interest] is *reserved expressly in the contract . . . ,* it becomes part of the debt, and is *recoverable as of right*; but when it is damages, it is often a matter of discretion." *Id.* (emphasis added). (R, p. 1168, p. 1668, line 11-p. 1669, line 20).

In the present case, the Note and Mortgage are unambiguous, and the interest to be paid by Singleton is expressly reserved in the Note; therefore, the master-in-equity had no authority to deny the accrued interest to Waterfall. Section 2 of the Note provides: "Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 10.450%. The interest rate I pay may change in accordance of Section 4 of this

Note." (R. p. 1024). Paragraph 4(D) of the Note also provides the minimum and maximum interest rates, as it states that the interest will ever be less than 10.450% nor greater than 16.450%. (R. p. 1025). Neither Singleton nor the master-in-equity contested the calculation of the interest. The provisions providing for Waterfall's right to reasonable attorney's fees is set forth in paragraph 7(e) of the Note and in paragraph 22 of the Mortgage. (R. pp. 1026, 1048). The master-in-equity therefore erred in the Order by denying Waterfall accrued interest on the principal balance and in denying Waterfall's request for reasonable attorney's fees and costs.

In Waterfall's 59(e) memorandum and at the hearing on January 26, 2023, Waterfall also argued that the master-in-equity's denial of interest, costs, and attorney's fees was an abuse of discretion. (R. pp. 1099-1108, p. 1666, line 18-p. 1679, line 16). "An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law." *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002) (citing *Ledford v. Pennsylvania Life Ins. Co.,* 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976)). Waterfall argued that the master-in-equity abused his discretion because the decision was both unsupported by the evidence and controlled by an error of law. (R. pp. 1099-1108, p. 1666, line 18-p. 1679, line 16). The error of law is, as set forth above, that both the Note and Mortgage were unambiguous contracts in which the right to interest and reasonable attorney's fees were clearly set forth; therefore, the master-in-equity was without authority to deny interest and attorney's fees and costs to Waterfall.

The master-in-equity's use of equitable setoff to deny interest and attorney's fees is also unsupported by the evidence. The transcript from the hearing on October 12, 2022, makes it clear that the reason the master-in-equity, *sua sponte*, used the doctrine of equitable setoff to deny Waterfall any accrued interest was because the master-in-equity was upset by the number

of times the Note and Mortgage had been transferred. (R. p. 1611, line 3-p. 1618, line 6). However, the master-in-equity made no findings that any of the transfers of the Note were done in bad faith or for the purposes of hindering or delaying the foreclosure action. (R. pp. 121-38, 1554-1620). As Waterfall argued at the hearing on its 59(e) motion on January 26, 2023, the master-in-equity also made no finding as to the alleged damages suffered by Singleton. (R. p. 1671, line 18-p. 1677, line 2). In order to know the amount of the setoff, the damages must be calculated. *See Diamond Swimming Pool Co. v. Broome,* 252 S.C. 379, 385-86, 166 S.E.2d 308, 312 (1969) (Court held that in order to obtain setoff, defendants had two burdens: the burden of proving the existence of the defects and the burden of proving with reasonable certainty the amount of damages occasioned by the defects).

As to Singleton's alleged attempts through the years to "just find out who he needed to pay," Waterfall cited the May 13, 2014 order denying Singleton's motion for summary judgment in which the master-in-equity stated of the April 24, 2014 hearing on Singleton's motion:

> At the hearing, Plaintiff's counsel demonstrated her client possessed the original Note holding it in her hand and referring to it a number of times. Plaintiff also argues that it has standing to prosecute the foreclosure of the mortgage pursuant to §36-3-301, et seq., S.C. Code, as Plaintiff is a holder of the Note and therefore entitled to enforce the mortgage, which derives from the Note the Plaintiff holds.

(R. p. 29, p. 1650, line 3-p. 1657, line 16, p. 1664, line 13-p. 1665, line 22, p. 1679, line 17-p. 1680, line 12, p. 1688, line 23-p. 1689, line 12). Singleton had known who to pay all along, and as shown by the May 13, 2014 order, had seen the original Note at the hearing on April 24, 2014, but had not taken steps to pay the debt.

For all of these reasons, the master-in-equity erred in the Order of November 12, 2012 by denying accrued interest, attorney's fees and costs to Waterfall.

II. The master-in-equity erred in the November 21, 2022 order by denying Waterfall's request for the escrow charges and the corporate advances because of Waterfall's alleged failure to establish the reasonableness of these charges.

In the Order of November 21, 2022, the reason stated for Waterfall being denied reimbursement for the escrow charges was that Waterfall "failed to establish the reasonableness of the escrow by failing to itemize what constitutes the escrow charges." (R. p. 132). The reason for Waterfall being denied its "corporate advances" on the account was similarly that Waterfall "failed to establish the reasonableness of its "corporate advances."" (R. p. 132). However, the hearing on October 12, 2022 was only on the summary judgment motion that Waterfall filed. (R. p. 1559, lines 6-8). Waterfall provided the amount of the escrow advances and the amount of the corporate advances by affidavit, and no one questioned the numbers, the itemization of the numbers, or the reasonableness of the numbers at the summary judgment hearing. (R. pp. 1554-1644). It was an abuse of discretion for the master-in-equity to deny the escrow advances and corporate advances on "reasonableness" grounds without Singleton nor the master-in-equity raising an issue regarding the numbers at the summary judgment hearing.

South Carolina Code § 29-3-40 provides, in part, that "[t]he holder of any mortgage of real property, when the mortgage contains provisions authorizing advancements thereunder for taxes, insurance premiums, public assessments and repairs, may make such advancements, and when made, they *shall* be secured by the mortgage and have the same rank and priority as the principal debt thereby secured and bear interest of such advancements as provided by the mortgage." S.C. Code Ann. § 29-3-40 (Supp. 1982) (emphasis added). This statute makes it clear that when a mortgage provides for the advancement of money for taxes, insurance premiums and other items, when the mortgagee does advance payment for those items, the advances shall be secured by the mortgage and have the same rank as the principal debt. (R. p.

1677, line 9-p. 1678, line 2). Sections 4, 5 and 9 of the Mortgage address Singleton's obligation to pay the taxes, property insurance, and other items on the real property secured by the mortgage and provide that to the extent Waterfall advances payment for these items, Waterfall is entitled to be repaid by the mortgagor, Singleton. (R. pp. 1040-43). Therefore, to the extent the master-in-equity may have used the court's equitable powers to deny Waterfall the escrow advances and the corporate advances, it was an error of law. See *Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 254, -55, 715 S.E.2d 348, 356 (Ct. App. 2011) (When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent, as "'[t]the court's equitable powers must yield in the face of an unambiguously worded statute.'") (quoting *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n,* 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).

For the reasons set forth above-the master in equity erred in the November 21, 2022 Order by denying Waterfall its escrow advances and corporate advances.

III. The master-in-equity erred by, *sua sponte*, issuing the March 28, 2023 order that vacated, in total, the November 21, 2022 order when more than ten days had passed since the issuance of the November 21, 2022 order.

After the hearing on January 26, 2023 on Waterfall's 59(e) motion, the master-in-equity issued a Form 4 order on March 28, 2023 ("Order Vacating") that stated:

> This Court's Order granting Summary Judgment to the Plaintiff entered November 21, 2022, is set aside. After revisiting the facts arising from Plaintiff's Motion to Amend that Order, filed December 1, 2022, the Court revisited the original note, mortgage and initial assignment of the mortgage. The Court again recognized that a particular disconnect is apparent in the propriety of the initial recorded assignment of the note and mortgage. A peculiar question arises. The original Lender filed bankruptcy in March 2007. The initial Lender's nominee, Mortgage Electronic Registration Systems, purported to assign the note and mortgage to a third party in June 2008. Hence, this crucial oversight by this Court requires the Court to set aside it Order dated November 21, 2022. Since the Order is set aside, Plaintiff's Motion to Amend that Order is moot.

(R. pp. 206-208). Thus, in the Order Vacating, instead of addressing Waterfall's 59(e) motion, the master-in-equity, *sua sponte*, "revisited the facts," vacated the Order in full, and dismissed Waterfall's 59(e) motion as being moot. The master-in-equity erred in issuing the Order Vacating, as the master-in-equity lacked subject matter jurisdiction to vacate the Order in full. Instead, the master-in-equity was limited to addressing those issues raised in Waterfall's 59(e) motion.

"Issues relating to subject matter jurisdiction may be raised at any time . . . and should be taken notice of by this court on our own motion." *Ness v. Eckerd Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002) (quoting *Bunkum v. Manor Props.*, 321 S.C. 95, 99-100, 467 S.E.2d 758, 761 (Ct. App. 1996)). In *Ness*, the court of appeals cited *Heins v. Heins,* 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 2001) in holding that "[a]though trial judges retain jurisdiction to alter judgments on their own initiative for ten days if a Rule 59(e) motion is filed, after ten days that jurisdiction is lost." *Ness,* 350 S.C. at 402, 566 S.E.2d at 195.

The relevant facts in *Ness* and *Heins* are remarkably similar to the facts of this case. In *Ness,* Eckerd had filed a motion to set aside the entry of default entered against it. *Id.* at 401, 566 S.E.2d at 195. On May 28, 1998, the trial judge issued an order denying Eckerd's motion to set aside the entry of default. *Id. "*Eckerd then filed a Rule 59(e), SCRCP, motion, requesting that [the trial judge] reconsider his determination that Eckerd had not shown good cause for the default." *Id.* at 401-402, 566 S.E.2d. at 195. "In an order dated July 13, 1998, [the trial judge] stated '[he] discovered that one of [his] brothers has a relationship to [Eckerd] which was unknown [to me] at the time this Court heard the Motions in question and entered the Order of May 28, 1998.'" *Id.* at 402, 566 S.E.2d at 195. The trial judge then vacated the May 28, 1998

order and recused himself from the case. *Id.* Subsequently, a second trial judge heard Eckerd's motion and granted Eckerd's request for relief. *Id.*

Ness appealed both the second trial judge's order granting Eckerd's motion for relief and the first judge's "earlier order in which the circuit court judge *sua sponte* vacated his prior order denying Eckerd's relief from entry of default." *Id.* at 401, 566 S.E.2d at 194. The court of appeals stated that "[i]n this case as in *Heins,* the trial judge modified an order not as requested in a Rule 59(e) motion, but rather on his own initiative and after more than ten days had passed." *Id*. at 402-403, 566 S.E.2d at 195. The court of appeals therefore held the first trial judge lacked the jurisdiction to vacate the May 28, 1998 order. *Id.* at 403, 566 S.E.2d at 195.

In *Heins*, a wife brought an action against her husband for divorce. *Heins,* 344 S.C. at 149, 543 S.E.2d at 225. On the day of the trial, the spouses reached a settlement agreement that was, after a final hearing, incorporated into a written order issued by the family court judge. *Id.* Some five months after issuance of the written order, the wife moved for a contempt order against her husband. *Id.* at 150, 543 S.E.2d 226. In her motion, the wife alleged that her husband had violated the settlement agreement by failing to (1) indemnify and hold her harmless for personal debt husband incurred after the separation; (2) disclose to wife before the final hearing personal debt the husband had incurred on behalf of the family business; and (3) surrender the family business assets to wife. *Id.* After a hearing, the family court issued an order holding husband in contempt for willfully failing to surrender the business assets to wife; however, the order found that husband was under no obligation to repay either the personal debt husband had incurred after the separation or the undisclosed debt incurred on behalf of the business. *Id.*

Wife moved for reconsideration of the portions of the order that found husband was under no obligation to repay either the personal debt husband had incurred after the separation or the undisclosed debt incurred on behalf of the business. *Id.* at 151, 543 S.E.2d at 226. In his return to wife's motion, husband denied wife was entitled to the relief she requested, but husband did not seek reconsideration of the portion of the order holding husband in contempt for willfully failing to surrender the business assets to wife. *Id.* The family court denied wife's motion to reconsider, and, in addition, rescinded its earlier order holding husband in contempt for willfully failing to surrender the business assets. *Id.* Wife again moved for reconsideration, but her motion was denied. *Id.* Wife then appealed. *Id.*

The court of appeals in *Heins* ruled that the family court judge did not have the authority to alter or amend the judgment once the judgment is more than ten days old. *Id.* at 157, 543 S.E.2d at 229. The family court order finding husband in contempt was filed on January 29, 1999, and the order vacating this order was filed on June 3, 1999. *Id.* at 157, 543 S.E.2d 229-230. The court of appeals therefore reversed the June 3, 1999 order that rescinded the January 29, 1999 order. *Id.*

In the present case, as in *Ness* and *Heins,* the master-in-equity, *sua sponte,* vacated an order more than ten days after the order was issued. The master in equity issued the Order granting summary judgment in this case on November 21, 2022. After Waterfall filed its 59(e) motion for reconsideration of certain portions of this Order, the master in equity issued the March 28, 2023 Order Vacating the November 21, 2022 Order in its entirety. Under the holdings in both *Ness* and *Heins,* the master in equity lacked the authority to issue the March 28, 2023 Order Vacating. The master-in-equity's authority was limited to addressing the issues raised in Waterfall's 59(e) motion to alter of amend the Order.

Also, under both cases, the March 28, 2023 Order Vacating can be considered on appeal even though Waterfall did not appeal the Order Vacating within thirty days of the date it was issued. As stated above, it is an issue of subject matter jurisdiction, which can be raised at any time. Appeal of the Order Vacating is also allowed by the South Carolina Code of Laws. South Carolina Code § 14-3-330(1) provides:

> The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that *if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from . . . .*

S.C. Code Ann. § 14-3-330(1) (1976, as amended) (emphasis added). This jurisdiction also extends to the court of appeals. *See* S.C. Code § 14-8-200(a) ("Except as limited by subsection (b) and Section 14-8-260, the court has jurisdiction over any case in which an appeal is taken from an order, judgment or decree of the circuit court . . . ."). In this appeal, Singleton previously filed a motion to dismiss Waterfall's appeal of the Order Vacating on the basis that Waterfall failed to appeal the Order Vacating within thirty days of the dated the Order Vacating being issued; therefore, according to Singleton, the court of appeals does not have jurisdiction to hear the issue. However, as stated above, "[i]ssues relating to subject matter jurisdiction may be raised at any time . . . and should be taken notice of by this court on our own motion." *Ness,* at 399*,* 566 S.E.2d at 195.

Therefore, the court of appeals should conclude that the master-in-equity erred by issuing the Order Vacating on March 28, 2023. If the Order Vacating is set aside, the Order of November 21, 2022 is still in effect, and the court of appeals should grant Waterfall's request for

the interest, escrow advances and attorney's fees and costs as set forth in arguments I and II above.

IV. The master-in-equity erred in the December 12, 2023 order by disallowing Waterfall's request for accrued interest on the Note.

After a three-day trial of the case from June 12, 2023 through June 14, 2023, the master-in-equity issued a fifty-three-page order on December 12, 2023 ("Trial Order"). (R. pp. 144-97). This Trial Order goes into great detail with the findings of fact and conclusions of law. Waterfall disagrees with almost all of the findings of fact and conclusions of law in the Trial Order, as almost everything is construed against Waterfall and in favor of Singleton, and a lot of the findings of fact are, in Waterfall's opinion, irrelevant. However, it would have been impracticable, if not impossible, to address in a ten-day period everything in the Trial Order with which Waterfall believed were incorrect, so Waterfall chose to focus on a few issues. On December 22, 2023, Waterfall filed its 59(e) motion to alter or amend the Trial Order. (R. pp. 1237-1277).

The Trial Order's findings of fact go into great detail disputing the assignment of the Note to Waterfall. (R. pp. 145-188). Waterfall disagrees with most of these findings of fact, but the ultimate conclusion of law in the Trial Order with regard to this issue is that "[Waterfall] is the holder of a Note and is entitled to enforce it." (R. p. 188). The master-in-equity did not issue a later order changing the conclusion that Waterfall was the holder of the Note, nor did Singleton file an appeal. It is therefore the law of this case that Waterfall is the holder of the Note. *See Lindsay v. Lindsay,* 328 S.C. 329, 339, 491 S.E.2d 583, 588 (Ct. App. 1997) ("It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling.") (citing *Biales v. Young,* 315 S.C. 166,, 432 S.E.2d 482 (1993)). "The

unchallenged ruling, 'right or wrong, is the law of the case and requires affirmance.'" *Id.* (quoting *Buckner v. Preferred Mut. Ins. Co.,* 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970)).

Just as in the November 21, 2022 Order, the Trial Order denies Waterfall any accrued interest on the unpaid principal balance of the Note. As stated above, in the November 21, 2022 Order, the master-in-equity, *sua sponte*, based the denial on the court's equitable powers. In the Trial Order, the master-in-equity based his denial on the fact that the Note had an adjustable interest rate based on fluctuations in the LIBOR rate, and "[Waterfall] did not produce sufficient evidence of the LIBOR rate 45 days before each change date." (R. pp. 154-55).

As set forth in Waterfall's 59(e) motion to alter or amend the Trial Order, the master-in equity erred in failing to award accrued interest. "A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Lee v. University of South Carolina*, 407 S.C. 512, 518, 757 S.E.2d 304, 397 (2014) (*internal quotations omitted*). "It is not the function of the court to rewrite contracts for parties." *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 171, 568 S.E.2d 361, 363 (2002). It is long-settled that "[a] note is a written instrument, and in computing the amount due thereon in principal and interest the computation must be made in accordance with the terms of said note." *Rhodus v. Goins*, 129 S.C. 40, 41, 123 S.E. 645, 645-46 (1924); *see also U.S. Bank Trust Nat. Ass'n. v. Bell*, 385 S.C. 364, 379, 684 S.E.2d 199, 207 (Ct. App. 2009) ("[T]he underlying Note controls the issue of interest.").

Section 2 of the note at issue in this case ("Note") provides:

> Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 10.450%. The interest rate I will pay may change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(R. p. 2590). Waterfall's witness, Giovani Amaya, read Section 2 of the Note into the record. (R. p. 1783, lines 15-24). Also, Mr. Amaya read into the record Section 4 of the Note, which addresses interest rate and monthly payment changes. (R. p. 1785, line 3-p. 1787, line 20). Although Section 4 of the Note addresses how the interest rate of the Note may change, Section 4(D) of the Note provides, in relevant part: "My interest rate will never be less than 10.450%." (R. p. 1787, lines 3-5). Thus, the Note's interest rate floor is unambiguous.

Mr. Amaya testified that the interest rate was 10.45 % per annum throughout the time the loan was in default. (R. p. 1880, lines 13-19, p. 1881, lines 15-23, p. 2168, line 12-p. 2169, line 4). Therefore, the loan's interest rate was never in question. In its extensive questioning of Mr. Amaya, the master-in-equity even stated to Mr. Amaya: "Now why would an investor choose not to . . . I'll remind you that the interest rate is 10.45 percent variable, with a floor of 10.45 percent . . . ." (R. p. 2136, lines 10-14). Further, the master-in-equity queried: "All right. Now in your review of this loan, the interest rate – I think you testified the interest rate is calculated at the rate of 10.45 percent and it still remains that way?" (R. p. 2153, lines 6-9). Mr. Amaya's response to this question was "Correct, Your Honor." ((R. p. 2153, line 10). Singleton likewise testified to the interest rate actually charged, to wit:

> Q [by M. Hayes]: Do you admit -- so you admit signing the note; correct?
> A [Singleton]: Correct.
> Q: Okay. And you admit that -- do you admit the terms of the note?
> A: Correct.
> Q: Okay. The terms of the note being that you borrowed $212,000 and the interest rate was adjustable. It was to be between 16.45 percent and 10.45 percent and that *it never has gone above 10.45 percent*?
> A: That's correct.

(R. p. 2194, lines 5-16) (emphasis added). Since the evidence presented clearly shows that the

Note's interest rate was at the minimum rate of 10.45% per annum as set forth in the Note throughout the time the loan was in default, it was error for the master-in-equity to rule that Waterfall failed to "produce sufficient evidence of the LIBOR rate 45 days before each change date" and to find "Plaintiff failed to prove the amount of interest according to the terms of the Note." (R. pp. 154, 186). There was no dispute that the interest rate remained at 10.45% per annum through the life of the loan, so evidence of the change in the LIBOR rate every six months would not have been relevant evidence. *See* Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of *any fact that is of consequence to the determination of the action* more probable or less probable than it would be without the evidence.'") (emphasis added). Since the testimony regarding the change in the LIBOR rate was not of consequence to the determination of the interest rate in this action, such testimony was not relevant evidence and therefore not admissible. *See* Rule 402, SCRE ("Evidence which is not relevant is not admissible"). Therefore, the master-in-equity erred in requiring testimony regarding the change in the LIBOR rate every six months.

Waterfall provided evidence of the due date on the loan being January 1, 2010 and that the interest was calculated from the due date. (R. p. 1881, line 5-p. 1882, line 1). Waterfall also provided evidence that the principal balance due on the Note is the amount of $207,389.66. (R. p. 1879, line 23-p. 1880, line 6). The Trial Order also found the principal balance due on the Note to be $207,389.66. (R. pp. 187, 193). Knowing these facts, as shown by Mr. Amaya's testimony, the calculation of the interest becomes merely a mathematical calculation. (R. p. 1880, line 8-p. 1882, line 1). Therefore, the master-in-equity erred in not awarding Waterfall interest on the principal balance due on the Note, which the testimony showed was the amount of $293,228.37 through June 13, 2023. (R. p. 1884, line 25-p. 1885, line 2).

In its 59(e) motion to alter or amend the Trial Order, Waterfall presented this argument to the master-in-equity, but in the master-in-equity's subsequent order in response, dated December 29, 2023, he did not address the issue of interest. (R. pp. 198-203, 1237-1240). The master-in-equity erred in not awarding Waterfall interest on the unpaid principal balance of the Note.

V. The master-in-equity erred in the December 12, 2023 order by holding that Waterfall, although being the holder of the Note, was not the holder of the Mortgage that secured the Note, thereby preventing Waterfall from foreclosing on the Mortgage.

The Trial Order correctly found that Waterfall is the holder of the Note and is therefore entitled to enforce the Note pursuant to S.C. Code Ann. § 36-3-301. (R. pp. 186, 188). However, the master-in-equity erred in finding that Waterfall "cannot possess the Mortgage since it is held by the bankruptcy estate of People's Choice Home Loans, Inc." (R. p. 183). This finding of fact is erroneous because the holder of a note secured by a mortgage must also be the holder of the mortgage. *See Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013) ("[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but . . . the assignment of the mortgage alone does not carry with it an assignment of the note." *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); *see also Ballou v. Young*, 42 S.C. 170, 176, 20 S.E. 84, 85 (1894) ("The transfer of a note carries with it a mortgage given to secure payment of such note."). (R. pp. 1242-1243).

It is unclear from the Trial Order, but it appears that the master-in-equity may be holding that, although Waterfall is the holder of the Note, the Note was not properly assigned to Waterfall, therefore, Waterfall was not assigned the mortgage. If so, Waterfall disputes this conclusion. If Waterfall is the holder of the Note, the Note had to be transferred in some way to Waterfall. *See* S.C. Code Ann § 36-3-203(a) (Supp. 1988) ("'An instrument is transferred when it is delivered by a person other than the issuer for the purpose of giving to the person receiving

the delivery the right to enforce the instrument."). The transfer of the Note carried with it the transfer of the Mortgage given to secure payment of the Note. *Ballou,* at 176, 20 S.E. at 85.

Waterfall also believes the master-in-equity erred in the Trial Order in analyzing the bankruptcy filing of People's Choice Home Loans, Inc., the original holder of the Note and Mortgage. At trial, the master-in-equity took judicial notice of this bankruptcy filing (*In re People's Choice Home Loan, Inc., et al.*, Case 8:07-bk-10765-RK, Bankr. C.D.CA, Santa Ana Div.) (R. p. 2153, line 22-p. 2158, line 22). The master-in-equity was concerned that mortgage may have remained with the bankruptcy estate. (R. p. 2155, line 20-p. 2157, line 4). Waterfall timely provided documents to the master-in-equity showing that there was clearly an order, dated April 19, 2007, in the bankruptcy case allowing the mortgage loans to be sold from the bankruptcy estate. (R. pp. 198-201, 1243-44, 1250, 1267-74). However, it appears from the master-in-equity's December 29, 2023 order that granted in part and denied in part Waterfall's 59(e) motion that the master-in-equity believes Waterfall has to provide proof that this particular Note and Mortgage were sold pursuant to the bankruptcy order. (R. pp. 199-200). The master in equity erred in this regard. As stated above, it is the law of this case that Waterfall is the holder of the Note, and the transfer of the Note to Waterfall also transferred to Waterfall the Mortgage given to secure the Note.

By being the holder of the Note, Waterfall is also the holder of the Mortgage, with the ability to foreclose on the Mortgage since the Note is in default. The master-in-equity therefore erred by holding that Waterfall was not the holder of the Mortgage and did not have the ability to foreclose the Mortgage.

VI. The master-in-equity erred in the December 12, 2023 order by awarding judgment in favor of Singleton in the amount of $19,183.89.

In the Trial Order, the master-in-equity awarded judgment in favor of Singleton and against Waterfall for the amount of $19,183.89. (R. pp. 183-185, 188, 190, 193). This judgment was for insurance proceeds that Waterfall was holding because of a fire. (R. pp. 149-50, 184-84). The master-in-equity erred in this ruling. The prior master-in-equity, Judge Maite Murphy, entered an order on November 8, 2012, denying Singleton's motion to disburse the insurance proceeds as violative of Rule 13, SCRCP. (R. pp. 9-19). Judge Murphy held Singleton's request for the insurance proceeds was a breach of contract action that should be set forth in a counterclaim.[2] (R. p. 10-11). As additional grounds for the denial, Judge Murphy refused to exercise the court's equitable powers when the complaining party, Singleton, has an adequate remedy at law. (R. p. 12). ("The Court finds that the disbursement of the insurance proceeds is governed exclusively by the Mortgage contract."). Singleton has failed to plead breach of contract as a counterclaim with regard to the insurance proceeds, and any award to him for insurance proceeds is error. Secondly, as a matter of law, Singleton has provided insufficient evidence that he ever fulfilled his preconditions to obtaining the insurance said proceeds. Under South Carolina law, an assignee "takes only the benefits, not the burdens of the assigned obligation." *Rosemond v. Campbell*, 288 S.C. 516, 522-523, 343 S.E.2d 641, 644-45 (Ct. App. 1986) (*citing Koppers Company v. Kaiser Aluminum and Chemical Corp*., 9 N.C. App. 118, 175 S.E.2d 761 (1970)). "Thus, as against the assignee, the obligor can only assert a claim defensively when the assignee seeks to enforce the obligation; he has no common law right to sue the assignee affirmatively on a claim against the assignor arising from the underlying

[2] The November 8, 2012, order did not rule on the merits of the time of accrual of any counterclaim; however, as the master-in-equity decided Singleton's motion in November 2012, the statute of limitations on any breach of contract claim by Singleton expired, at the latest, in November 2015. At no point did Singleton bring a breach of contract counterclaim in this or any other proceeding.

obligation." *Id.* (*emphasis added*) (*citing Langel v. Betz*, 250 N.Y. 159, 164 N.E. 890 (1928); *Pargman v. Maguth*, 2 N.J. Super. 33, 64 A.2d 456 (1949).

Third, and most importantly, even setting off Waterfall's judgment against Singleton in this amount is improper, both for the reasons stated above and because the amount results in practicality in a prohibited double recovery for Singleton. The uncontroverted evidence shows that the proceeds were applied to ten overdue payments by a prior servicer.[3] (R. p. 1857, lines 6-21). The award to Waterfall would necessarily be reduced by this amount even though this amount has already been applied to the balance owed by Singleton. Therefore, the setoff would result in a double recovery for Singleton.

"'[E]lection of remedies' refers to the fact that a party may not receive a double recovery. There may be multiple ways to recover for a single injury or set of injuries, but a party may only recover once for those injuries." *Encore Technology Group, LLC v. Trask*, 436 S.C. 289, 299, 871 S.E.2d 608, 614 (Ct. App. 2021) (*citing Austin v. Stokes-Craven Holding Corp*., 387 S.C. 22, 56, 691 S.E.2d 135, 153 (2010) (noting the purpose of election of remedies is to prevent double recovery)). "When an identical set of facts entitle the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both." *Save Charleston Found. v. Murray*, 286 S.C. 170, 175, 333 S.E.2d 60, 64 (Ct. App. 1985).

The master-in-equity therefore erred in granting a judgment in favor of Singleton for $19,183.89.

[3] It is noted for record purposes and chronology of events that the application of insurance proceeds to satisfy overdue payments occurred August 17, 2016, subsequent to the November 8, 2012 Order denying Defendant's claim to the proceeds, and well after the statute of limitations expired on any breach of contract claim thereon. (R. p. 1857, lines 6-21).

CONCLUSION

The master-in-equity erred in the November 21, 2022 order by, *sua sponte*, deciding to waive interest on the Note from the date of Singleton's default and denying Waterfall any attorney's fees or costs. The master-in-equity also erred in the November 21, 2022 order by denying Waterfall's request for reimbursement for escrow advances and corporate advances on the Note and Mortgage. The master-in-equity further erred in, *sua sponte*, issuing the March 28, 2023 order that vacated the November 21, 2022 order in full, as the master-in-equity lacked subject matter jurisdiction to do so. The court of appeals should vacate the master-in-equity's March 28, 2023 order, leaving the November 21, 2022 order granting summary judgment to Waterfall as the standing order, but the court of appeals should then reverse those portions of the November 21, 2022 order that denied accrued interest, corporate advances, escrow advances, attorney's fees and costs to Waterfall.

If the court of appeals vacates the March 28, 2023 order, thereby reviving the November 21, 2022 order, the consideration of the issues with the December 12, 2023 trial order denying foreclosure and granting judgment become moot, and the December 12, 2023 trial order and the December 29, 2023 order regarding Waterfall's 59(e) motion should therefore be vacated. If the issues with the December 12, 2023 trial order are reached, the court of appeals should decide the master-in-equity erred in the December 12, 2023 trial order- and in the subsequent December 29, 2023 order in response to Waterfall's 59(e) motion- by concluding that Waterfall, although being the holder of the Note, did not also hold the Mortgage, by denying foreclosure to Waterfall, by denying accrued interest to Waterfall, by denying escrow advances and corporate advances to Waterfall and by granting a judgment to Singleton for the insurance proceeds.