

2011-194366

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

RECEIVED

Gordon G. Cooper, Circuit Court Judge

JUN 27 2011

Opinion No. 4815 (S.C. Ct. App. filed April 6, 2011)

S.C. Supreme Court

SunTrust Bank s/b/m National Bank of Commerce,
including its Division, Central Carolina Bank,

Respondent,

v.

Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold
L. Bryant, Phyllis W. Davis and Stephen Ford, as
Spartanburg County Tax Collector, Defendants,

of whom Phyllis W. Davis is the

Petitioner.

APPENDIX

Dean A. Hayes, Esquire
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Columbia, South Carolina 29211-2369
Attorney for Respondent

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John B. Duggan, Esquire
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Attorneys for Petitioner, Phyllis W. Davis

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

Case No. 2008-CP-42-4539

SunTrust Bank s/b/m National Bank of Commerce, including its
Division, Central Carolina Bank Appellant,

v.

Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant,
Phyllis W. Davis, and Stephen Ford, as Spartanburg County
Tax Collector Respondents.

RECORD ON APPEAL

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Post Office Box 12369
Columbia, South Carolina 29211-2369
(803) 252-5817
Attorney for Appellant

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457-B Pennsylvania Avenue (29650)
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(864) 879-0144
Attorney for Respondent Phyllis W. Davis

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT

SunTrust Bank s/b/m to National
Bank of Commerce, including its
Division, Central Carolina Bank,

Plaintiff,

vs.

Brandy K. Bryant a/k/a Brandy K.
McCarthy, Arnold L. Bryant,
Phyllis W. Davis, and Stephen Ford,
as Spartanburg County Tax
Collector,

Defendants.

C/A No.: 2008-CP-42-4539

ORDER

COPY

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CLERK OF COURT
SPARTANBURG COUNTY
2009 MAY -5 AM 11:55
MARC KITCHENS

On February 2, 2009, this matter came before the Court pursuant to the Motion of the Plaintiff for Summary Judgment. Present at the hearing were Dean A. Hayes, counsel for the Plaintiff, and John B. Duggan, counsel for Defendant, Phyllis W. Davis.

FACTUAL SUMMARY

The following facts are not in controversy,

On February 9, 2001, Phyllis W. Davis obtained an Order against Arnold L. Bryant awarding her \$5,205.46, which was entered as a Judgment in the Office of the Clerk of Court for Spartanburg County on February 12, 2001.

On April 27, 2001, Arnold L. Bryant and William Edwards executed a Promissory Note to Central Carolina Bank (now SunTrust Bank) in the principal amount of \$27,846.76. At the

same time, on April 27, 2001, Arnold L. Bryant and Brandy K. Bryant executed a mortgage on real property located in Victor Mill Village to secure the loan from Central Carolina Bank, which was recorded in the Office of the Register of Deeds for Spartanburg County on May 1, 2001, in Deed Book 2477 at Page 879. Subsequently, SunTrust Bank became the successor to Central Carolina Bank.

Thereafter, Stephen Ford, the Spartanburg County Tax Collector, sold the real property secured by the mortgage executed by Arnold L. Bryant and Brandy K. Bryant at Public Sale for non-payment of 2005 taxes. The Plaintiff did not foreclose its mortgage upon the property. The tax deed to Equifunding, Inc. was issued on March 28, 2008, conveying the property to Equifunding, Inc. The tax sale of the property to Equifunding, Inc. resulted in an overage of \$8,832.87.

ISSUES

The Plaintiff asserts that it is entitled to summary judgment because its loan to Arnold L. Bryant and William Edwards was secured by a Purchase Money Mortgage executed by Arnold L. Bryant and Brandy K. Bryant upon the property sold at the tax sale. Therefore, based upon contractual and equitable doctrines, Plaintiff asserts that it is entitled to summary judgment awarding to it all of the proceeds of the tax sale now held by the Spartanburg County Tax Collector.

Defendant, Phyllis W. Davis, asserts that her Judgment constitutes a priority lien upon the basis that her Judgment was entered prior to the loan made by Plaintiff. Therefore, she should receive payment in full for her Judgment plus interest accruing at the legal rate before payment of any net balance is made to the Plaintiff.

FINDINGS AND CONCLUSIONS

Based upon the uncontradicted facts and after careful consideration of the argument of counsel for both parties, the Court finds and concludes that each party is entitled to one-half of the proceeds derived from the tax sale.

The Court first finds that Plaintiff had the opportunity to foreclose its mortgage upon the real property which secured the loan but chose not to do so. Thus, after the property was sold at the tax sale, Plaintiff lost any security interest therein. As a result, Plaintiff became a creditor like the Defendant, Phyllis W. Davis, and lost any basis to assert that it was entitled to a priority to the proceeds of the tax sale. Therefore, the Court concludes that both parties are entitled to share equally the net proceeds of the tax sale.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Stephen Ford, in his capacity as Tax Collector for Spartanburg County, pay to SunTrust Bank and to Phyllis W. Davis one-half (1/2) of the excess proceeds of the tax sale in the amount of \$4,416.43 to each party.

IT IS SO ORDERED.



GORDON G. COOPER
MASTER-IN-EQUITY
SPARTANBURG COUNTY

Spartanburg, S. C.

Dated: May 15, 2009.

FORM 4

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
 IN THE COMMON PLEAS COURT)

JUDGMENT IN A CIVIL CASE

CASE NO. 08 - CP - 42 - 4539

SUNTRUST BANK

BRANDY K. BRYANT A/K/A BRANDY K. MCGARTHY, ARNOLD L. BRYANT, PHYLLIS W. DAVIS, SPARTANBURG CO. TAX COLLECTOR

PLAINTIFF(S)

DEFENDANT(S)

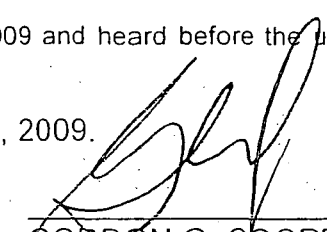
CHECK ONE:

- ☐ **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), S.C.R.C.P.; ☐ Rule 41(a), S.C.R.C.P. (Vol. Non-suit); ☐ Rule 43(k), S.C.R.C.P. (Settled); ☐ Other _____
 - ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), S.C.R.C.P.; ☐ 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:

The Plaintiff's Motion to Alter or Amend Judgment filed on July 6, 2009 and heard before the undersigned on July 23, 2009 is hereby denied.

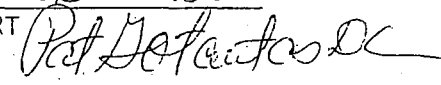
Dated at Spartanburg, South Carolina, this 24th day of July, 2009.


 GORDON G. COOPER
 Master In Equity for Spartanburg County

This judgment was entered on the 27 day of July, 2009, and a copy mailed first class this 29 day of July, 2009 to attorneys of record or to parties as follows:

JEAN A. HAYES, ESQUIRE
 P. O. BOX 12369
 COLUMBIA, SC 29211-2369
 Attorney for the Plaintiff(s)

JOHN B. DUGGAN, ESQUIRE
 P. O. BOX 449
 GREER, SC 29652-0449
 Attorney for the Defendant(s)


 CLERK OF COURT 

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SunTrust Bank s/b/m to National Bank of
Commerce, including its division, Central
Carolina Bank,

PLAINTIFF,

vs.

Brandy K. Bryant a/k/a Brandy K. McGarthy,
Arnold L. Bryant, Phyllis W. Davis, and
Stephen Ford, as Spartanburg County Tax
Collector,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

COMPLAINT

ACTION TO
OBTAIN TAX SALE OVERAGE

C/A No.

2008-CP-42-4539

K28-06112

The plaintiff, complaining of the defendants above-named would respectfully show:

FOR A FIRST CAUSE OF ACTION
(Contractual Right to Overage)

1. That plaintiff is a corporation authorized to do business in the State of South Carolina.
2. That the defendants, Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant, and Phyllis W. Davis, are citizens and residents of the County of Spartanburg, State of South Carolina.
3. That the defendant, Stephen Ford, is named as a party by virtue of his being the tax collector for Spartanburg County, and Spartanburg County represents a body politic located in the State of South Carolina.
4. That on or about April 27, 2001, Arnold L. Bryant and William Edwards, for good and valuable consideration, did execute and deliver to Central Carolina Bank a promissory note agreeing to pay to Central Carolina Bank, its successors and assigns, the principal amount of \$27,846.76, together with interest thereon at an annual rate of 8.999%.
5. That on or about April 27, 2001, in order to better secure the payments of the promissory note, Arnold L. Bryant and Brandy K. Bryant, executed and delivered to Central Carolina Bank, its successors and assigns, a mortgage covering the following described property:

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CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA
2008 AUG 28 PM 1:55

Legal Description and Property Address:

All that certain piece, parcel, lot of land, with all improvements thereon, or hereafter constructed thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, Beech Springs Township, being known and designated as lot number 41, section 1, on a plat of property entitled "Subdivision of Victor Mill Village, Greer, S.C." made by Dalton & Neves, July, 1950, recorded in the ROD Office for Spartanburg County in plat book number 26 at pages 46-55 and 58-67, inclusive, said lot is also known as number 10 20th Street and fronts thereon 124 feet.

This being the same property conveyed unto Arnold L. Bryant and Brandy K. Bryant by deed of Joe H. Marcus and Dorothy W. Marcus dated April 27, 2001 and recorded May 1, 2001 in the ROD Office for Spartanburg County in deed book 73-U at page 338.

TMS# 9 04-05 072.00

Property Address: 10 20th Street, Greer, SC 29651

6. The mortgage, which was a purchase money mortgage, was subsequently recorded on May 1, 2001 in the Office of the Register of Deeds for Spartanburg County. in book 2477 at page 879.

7. That Central Carolina Bank subsequently merged into the National Bank of Commerce, which thereafter merged into SunTrust Bank, making SunTrust Bank, the plaintiff in this case, the holder of the note and mortgage.

8. That on or about November 6, 2006, Stephen Ford, as Spartanburg County Tax Collector, did cause to be sold the aforementioned real property at public sale for non-payment of 2005 taxes to Equifunding, Inc., as the highest bidder at the sale, and a tax deed was issued March 28, 2008 conveying the property to Equifunding, Inc.

9. That the highest bid by Equifunding, Inc. resulted in an overage of approximately \$8,832.87.

10. That at the time of the tax sale, the mortgage referred to above was a lien on the real property sold at tax sale, and SunTrust Bank, as the successor to Central Carolina Bank, had an interest in the real property by virtue of the mortgage lien.

11. That the principal balance currently due on the note is in excess of \$13,000.00.

12. That SunTrust Bank, as the current holder of the note mortgage, is entitled to the overage of \$8,832.87 by virtue of the terms of the mortgage, which assigns to the mortgage holder any proceeds from a taking of the property.

13. That Phyllis W. Davis is named as a party to this action by virtue of an order, dated February 9, 2001, filed February 12, 2001, as a judgment against Arnold Bryant.

FOR A SECOND CAUSE OF ACTION
(Equitable Lien on Overage)

14. The allegations set forth above in paragraphs 1 through 13 are realleged.

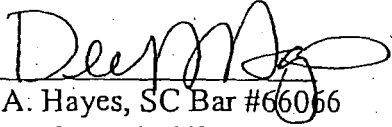
15. That SunTrust Bank, as the current holder of the note and mortgage, is entitled to an equitable lien on the overage from the tax sale proceeds.

WHEREFORE, having fully set forth its complaint, the plaintiff prays for the following:

(a) Under both causes of action, that plaintiff be granted the overage in the amount of \$8,832.87 currently being held by the Tax Collector for Spartanburg County; and

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

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 12369
Columbia, S.C. 29211-2369
(803) 252-5817


Dean A. Hayes, SC Bar #66066
Attorney for Plaintiff

August 26, 2008
Columbia, South Carolina,

2008 AUG 26 PM 1:56
CLERK OF COURT
SPARTANBURG COUNTY
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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

SunTrust Bank s/b/m to National Bank
of Commerce, including its division,
Central Carolina Bank,)

Plaintiff,)

vs.)

Brandy K. Bryant a/k/a Brandy K.
McCarthy, Arnold L. Bryant,
Phyllis W. Davis, and Stephen Ford,
as Spartanburg County Tax Collector,)

Defendants.)

Civil Action No. 2008-CP-42-4539

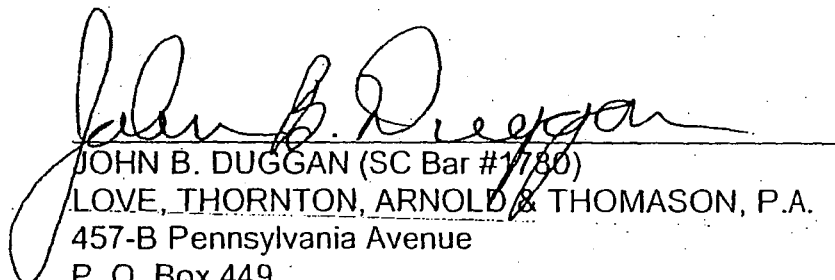
ANSWER OF DEFENDANT,
PHYLLIS W. DAVIS

The Defendant, Phyllis W. Davis, answering the Complaint herein, alleges that:

1. All allegations of the Complaint not expressly admitted herein are hereby denied.
2. Said Defendant admits the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 13 of the Complaint.
3. Said Defendant lacks sufficient information to admit the allegations of Paragraphs 11, 12, 14 and 15 of the Complaint.
4. Defendant, Phyllis W. Davis, obtained judgment against Defendant, Arnold L. Bryant, in the amount of \$5,205.46 by Order dated February 12, 2001. Therefore, said Defendant is entitled to recover the amount of her judgment plus interest at the legal rate from the overage resulting from the sale of the property of Mr. Bryant and is entitled

to an equitable lien against said overage to the extent of the monies owed to her by Mr. Bryant. In addition, the lien of Defendant Davis is entitled to priority over and is superior to the lien claimed by Plaintiff to the proceeds held by the Spartanburg County Tax Collector which resulted from an overage derived from the sale of the property of Defendant, Arnold L. Bryant.

WHEREFORE, Plaintiff prays for an equitable lien upon the proceeds held by the Spartanburg County Tax Collector arising from the sale of the property of Defendant, Arnold L. Bryant, described in the Complaint and for a priority lien against said proceeds and for the recovery of the amount of Defendant Davis' judgment plus interest at the legal rate to be paid from the proceeds held by the Spartanburg County Tax Collector.


JOHN B. DUGGAN (SC Bar #1780)
LOVE, THORNTON, ARNOLD & THOMASON, P.A.
457-B Pennsylvania Avenue
P. O. Box 449
Greer, SC 29652-0449
Telephone: 864-879-0144
Fax: 864-879-0149

ATTORNEY FOR DEFENDANT, PHYLLIS W. DAVIS

October 30, 2008.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT

SunTrust Bank,

CASE NO. 2008-CP-42-4539

[X] Plaintiff,

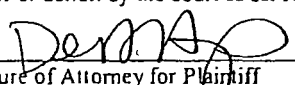
vs.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Brandy K. Bryant, et al.,

[] Defendant

check box above indicating submitting party

name, SC Bar no. and address of plaintiff's attorney Dean A. Hayes, SC Bar No. 66066 Post Office Box 12369 Columbia, SC 29211 telephone: (803) 252-5817 fax: (803) 779-2845 e-mail: other:		name, SC Bar no. and address of defendant's attorney John B. Duggan, SC Bar No. 1780 Post Office Box 449 Greer, SC 29652-0449 telephone: (864) 879-0144 fax: (864) 879-0149 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: Motion for Summary Judgment 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		December 16, 2008 Date Submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect (check reason) ☐ 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:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ Date:	
CLERK'S VERIFICATION			
Collected by: _____ (print name)		Date Filed:	
☐ MOTION FEE COLLECTED: ☐ CONTESTED - AMOUNT DUE:			

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2008 DEC 18 AM 9:05
 MARC KITCHENS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
SunTrust Bank s/b/m to National	)	C/A NO: 2008-CP-42-4539
Bank of Commerce, including its	)	
Division, Central Carolina Bank,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S NOTICE OF MOTION
	)	AND MOTION
	)	FOR SUMMARY JUDGMENT
Brandy K. Bryant a/k/a Brandy K.	)	
McCarthy, Arnold L. Bryant,	)	
Phyllis W. Davis and Stephen Ford,	)	
as Spartanburg County Tax	)	
Collector,	)	
	)	
Defendants.	)	
	)	

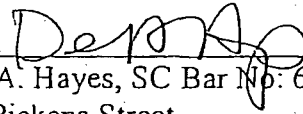
TO: DEFENDANTS ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the attorney for the Plaintiff, SunTrust Bank, will, on the tenth (10th) day after service hereof or as soon thereafter as counsel may be heard, move before this Honorable Court, pursuant to Rule 56 of the SCRCF, for an Order granting the Plaintiff summary judgment in this action to obtain a tax sale overage in the amount of \$8,832.87.

This Motion is made on the grounds that there is no genuine issue as to any material fact and that the Plaintiff is entitled to judgment as a matter of law. This motion is based on the pleadings in this case, affidavits and applicable South Carolina case law.

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2008 DEC 18 AM 9:06
 MERCY KITCHENS

KORN LAW FIRM, P.A.



Dean A. Hayes, SC Bar No: 66066

1300 Pickens Street

Post Office Box 12369

Columbia, SC 29211-2369

Telephone: (803) 252-5817

ATTORNEY FOR PLAINTIFF

December 16, 2008
Columbia, South Carolina
hfhV28-06112

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2008 DEC 18 AM 9:06
MARC KITCHENS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
SunTrust Bank s/b/m to National	)	C/A NO: 2008-CP-42-4539
Bank of Commerce, including its	)	
Division, Central Carolina Bank,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF DEBT
	)	
Brandy K. Bryant a/k/a Brandy K.	)	
McGarthy, Arnold L. Bryant,	)	
Phyllis W. Davis and Stephen Ford,	)	
as Spartanburg County Tax	)	
Collector,	)	
	)	
Defendants.	)	

The undersigned, an employee of SunTrust Bank, Inc. s/b/m to National Bank of Commerce, including its Division, Central Carolina Bank, states that SunTrust Bank, Inc., in its regular course of business, keeps records of all loans held by it. The undersigned further states that he/she is employed as a foreclosure Specialist with SunTrust Bank, Inc. and that in that position he/she has access to, and personal knowledge of, the information contained in the loan file at issue in this case.

Further, the undersigned states that SunTrust Bank s/b/m to National Bank of Commerce, including its Division, Central Carolina Bank is the holder of the note and mortgage at issue in this case. Attached as Exhibits A and B, respectively, are copies of the note and mortgage. The mortgagors, Brandy K. Bryant a/k/a Brandy K. McCarthy,

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 SPARTANBURG COUNTY
 2008 DEC 18 AM 9:06
 JAMES KITCHENS

Arnold L. Bryant, are in default for failing to make the monthly payments on said note.

A copy of the payment history for the loan at issue is attached hereto as Exhibit C.

The following amounts, exclusive of attorney's fees and costs, are due on this loan:

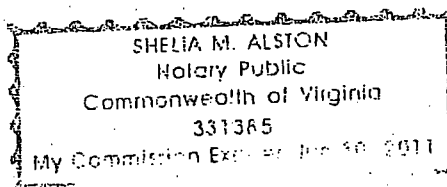
Principal	\$ 13,282.01
Interest due from 09/01/2007	
to 11/30/2008 @ 9.0%	862.25
Late charges	280.22
Appraisal	225.00
Title Search	<u>105.00</u>
 TOTAL JUDGMENT	 \$ 14,754.48

SUNTRUST BANK, INC.

Kimberly Goodlet
By: Kimberly Goodlet
Its: Foreclosure Specialist

SWORN TO BEFORE ME this
5th day of December, 2008.

Shelia M. Alston (L.S.)
NOTARY PUBLIC FOR Commonwealth of VIRGINIA
My Commission expires: June 30, 2011



FILED
CLERK OF COURT
SPARTANBURG COUNTY
2008 DEC 18 AM 9:06
MARC KITCHENS

Borrower ARNOLD L BRYANT & William Edwards Date 4-27-2001 Loan Amount \$ 27,846.76
Address #10 20th Street, Greer SC 29651

We are happy to be able to make this loan to you. We want you to understand how your loan works, so read this agreement carefully and ask us if we have not made part of it clear to you. If you agree to be bound by the promises in this agreement, sign your name below. If more than one person signs, each will be responsible for repaying the loan in full. The words "you" and "your" refer to the borrower and anyone else who signs this agreement. The "Bank" means Central Carolina Bank.

Amount Financed	FINANCE CHARGE	Total of Payments	ANNUAL PERCENTAGE RATE	You have the right to receive at this time an itemization of the Amount Financed. Please initial here if you want an itemization.
The amount of credit provided to you or on your behalf	The dollar amount the credit will cost you	The amount you will have paid after you have made all payments as scheduled	The cost of your credit as a yearly rate	
\$ <u>27,846.76</u>	\$ <u>14,536.04</u>	\$ <u>42,382.80</u>	<u>8.999</u> %	

Registration and Filing Fees \$

Total Sales Price: The total cost of your purchase on credit, including your down payment of \$ is \$

Your payment schedule will be:

Number of Payments	Amount of Payments	Monthly Beginning for as Follows
<u>120</u>	<u>353.19</u>	<u>JUNE 01, 2001</u>

Late Charge: If any installment is 15 days late, you will be charged a late fee of 5% of the unpaid amount of the installment payment but not less than \$5.40 and not more than \$13.50. The minimum and maximum late fee may increase during the term of this loan as allowed by S.C. Law 37-1-109.

Security: You are giving the Bank a security interest in: #10 20th Street, Greer, SC 29651
Collateral securing other loans with the Bank (but not including your primary residence or household goods) may also secure this loan.

Prepayment: If you pay off early, you will not have to pay a penalty; however, you may be charged a minimum finance charge. You may be entitled to a refund of part of the finance charge if this is a precomputed loan.

Assumption (Residential Mortgage Transaction Only) Someone buying your house cannot assume the remainder of the mortgage on the original terms.

Required Deposit: ☐ If checked here, your loan is secured by a deposit account, and the annual percentage rate does not take into account your required deposit.

Please read the rest of this Agreement, both front and back, for additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Optional Credit Insurance: CREDIT LIFE INSURANCE, ACCIDENT AND HEALTH INSURANCE, AND/OR UNEMPLOYMENT INSURANCE ARE NOT REQUIRED TO OBTAIN THIS LOAN AND WILL NOT BE PROVIDED UNLESS YOU SIGN FOR THEM AND AGREE TO PAY THE PREMIUM SHOWN BELOW. If you want this insurance, check the insurance desired below.

☒ I DESIRE TO OBTAIN CREDIT LIFE INSURANCE

☒ Borrower Signature Arnold L Bryant Date of Birth 9/11/56 For Term of 8 Months
☒ Co-Borrower Signature William Edwards Date of Birth 1/1/56 For Term of 8 Months
☒ Joint Signature Arnold L Bryant Date of Birth 9/11/56 For Term of 120 Months
Signature William Edwards Date of Birth 1/1/56 For Term of 120 Months

☐ I DESIRE TO OBTAIN ACCIDENT AND HEALTH INSURANCE (Borrower only)

Signature _____ For Term of _____ Months

☐ I DESIRE TO OBTAIN INVOLUNTARY UNEMPLOYMENT INSURANCE (One Debtor)

Signature _____ For Term of _____ Months

Promise to Pay: You promise to pay the Bank the amount financed plus finance charges calculated before and after maturity at the rate of 9.0%, according to the payment schedule(s) and at the office disclosed above.

Borrower Arnold L Bryant (SEAL) For CC Summit Bank Emp # 13591
Borrower William Edwards (SEAL) Interest Accrual Date 4-27-01
Borrower _____ (SEAL) Purpose Purchase home

Security Agreement: If this section is not completed, there is no specific collateral for this loan. "You" in this section refers to anyone who signs as "owner." Each person in whose name the collateral is titled must sign this section.

☒ The collateral for this loan is described on the Mortgage dated 4-27-2001 for \$ 27,846.76

☐ As collateral for this loan, you give the Bank a security interest in the following property.

New or Used	Year	Make	Model	Type of Body	Serial Number	Year Exp if Truck

☒ (See Schedule A attached)

Unless the security you pledge is in the possession of the Bank, you promise to maintain adequate insurance on the collateral, with the Bank named as lienholder on the policy. You may obtain insurance from anyone you want that is acceptable to the Bank. If you fail to purchase this insurance, the Bank may purchase the insurance and add its cost to your loan. Brandy Bryant

Owner Arnold L Bryant Owner William Edwards

You agree to make payment for the purchase of the goods and services of this date. You agree that the Bank may extend the time for any payment or release any borrower or collateral without notice to you.

Waiver

You agree to make payment for the purchase of the goods and services of this date. You agree that the Bank may extend the time for any payment or release any borrower or collateral without notice to you.

Prepayment in Full

This loan may be prepaid in full at any time. If you pay this loan off early, you will only have to pay advance charges for the period you have had the loan. However, if you pay the loan off before the Bank has earned \$15, the Bank will charge you a \$15 minimum charge. This is the only penalty you may have to pay for prepayment in full.

Default

If you are more than fifteen (15) days late with any payment, you may have an opportunity to cure your payment default. If you do not cure your payment default within the time period, we may exercise our right to demand immediate payment of the loan. If you are late with another payment, or if we have reason to believe the prospect of payment, your name, or character of collateral is being abused, we may demand this and all other loans you have with the Bank to be paid immediately. You acknowledge and consent to the Bank's right under South Carolina law to take funds from your deposit accounts to pay this loan if you default.

If you do not pay the whole balance due when we ask you to pay, we may declare the loan to be in default and we may demand that it be paid.

If we take possession of the collateral, we may not have to apply the money received to what you owe us. This includes our costs in representing, storing, and preparing it for sale.

If there are any personal items in the property described in the loan, we may keep them for a period of ten (10) days, after which you agree that the lender may dispose of the property in the lender's sole discretion, and, without the lender from any and all claims of damage to the property and items. Any such disposal, including disposal of parts, will be in with the representation property.

Interest and Defaults

If the Bank is not paid, if the installment payment is late, or if you do not pay, you agree to pay a default charge instead of a late charge. If a default charge is assessed by multiplying the balance of the loan by the annual percentage rate for the time period the loan is late, extended, or defaulted.

Simple Interest Loans

If this is a simple interest loan, interest will accrue daily on the unpaid balance. The disclosures on the front of this loan are based on payments being made on each due date. If payments are not made on the due date, additional interest will accrue resulting in a larger final payment.

Interest After Maturity

A default charge will be figured on the unpaid balance of the loan as if it were the annual percentage rate. If the charge on the front of this Agreement for each day after maturity is not a default charge, it will be a default charge.

Collateral

Except for a security interest in your principal dwelling or home, if you have, the security interest under this Agreement also secures payment of any other debt to the lender that you have with us or with otherwise provided by law.

Consent to Collateral

We agree to return to you the collateral if you do not complete the loan by the date when we agreed to return it to you. We do not agree to return the collateral to you if you do not complete the loan by the date when we agreed to return it to you. We do not agree to return the collateral to you if you do not complete the loan by the date when we agreed to return it to you. We do not agree to return the collateral to you if you do not complete the loan by the date when we agreed to return it to you.

Use of Collateral

If you do not complete the loan by the date when we agreed to return it to you, we may use the collateral to pay the loan. We do not agree to return the collateral to you if you do not complete the loan by the date when we agreed to return it to you. We do not agree to return the collateral to you if you do not complete the loan by the date when we agreed to return it to you.

If You Die

If you die, we will continue to pay the loan for you. If you die, we will continue to pay the loan for you. If you die, we will continue to pay the loan for you. If you die, we will continue to pay the loan for you. If you die, we will continue to pay the loan for you.

Our Other Rights

We reserve the right to take any action that we believe is necessary to protect our interest in the collateral. We do not agree to return the collateral to you if you do not complete the loan by the date when we agreed to return it to you. We do not agree to return the collateral to you if you do not complete the loan by the date when we agreed to return it to you.

Attorney's Fees

If we have to hire an attorney who is not a South Carolina attorney to help collect this loan, we will use the reasonable attorney's fees. If we have to hire an attorney who is not a South Carolina attorney to help collect this loan, we will use the reasonable attorney's fees. If we have to hire an attorney who is not a South Carolina attorney to help collect this loan, we will use the reasonable attorney's fees.

State Law

This agreement is governed by the laws of the State of South Carolina.

You agree that you do not have either a secured or unsecured claim against the laws of the United States or of any state relating to Equity or otherwise.

NOTICE

IF THIS LOAN IS A "PURCHASE MONEY LOAN" AS DEFINED BY THE FEDERAL TRADE COMMISSION RULE CONCERNING PRESERVATION OF CONSUMER'S CLAIMS AND DEFENSES, THE BELOW SHALL APPLY: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE SELLER HEREUNDER.

Consent to Payment

To ensure the Bank to make the loan to the borrower, you agree that the Bank will pay the loan according to the payment schedule agreed to in the loan agreement. If you do not complete the loan by the date when we agreed to return it to you, we may use the collateral to pay the loan. We do not agree to return the collateral to you if you do not complete the loan by the date when we agreed to return it to you.

Guarantor

Date

Guarantor

Date

THIS MORTGAGE is made this 27th day of April, 2001,
between the Mortgagor, Arnold L. Bryant and Brandy R. Bryant
(herein "Borrower"), and the Mortgagee, Central Carolina
Bank, a corporation organized and
existing under the laws of The United States of America
whose address is 713 W. Wade Hampton Blvd, Greer SC 29650
(herein "Lender").

WHEREAS BORROWER has entered into an agreement with Lender under which the Lender agrees to lend to the Borrower up to a total amount outstanding at any point in time Twenty five thousand (\$25,000) Dollars which indebtedness is evidenced by Borrower's Note/Agreement of same date with all principal and interest due and payable in full on May 01, 2011.

TO SECURE TO Lender (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 21 hereof (herein "Future Advances"), Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the County of Spartanburg State of South Carolina.

See Schedule A attached

RECORDED
01 MAY - 1 AM 9:35
P.M.
SPARTANBURG, S.C.

which has the address of 10 20th Street Greer
(Street) (City)
South Carolina 29651 (herein "Property Address")
(Zip Code)

TO HAVE AND TO HOLD unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or at the option of the Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made.

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If the amount of the sums secured by this Mortgage, together with the interest thereon, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, then to the principal of the Note and last, to any late charges due under the Note.

4. Prior Mortgages and Deeds of Trust; Charges; Liens. Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

5. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. Inspections. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

10. Borrower Not Released; Forbearance by Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

REN 2477 PAGE 882

13. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note at the time of execution.

15. **Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. **Transfer of the Property; Assumption.** If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this mortgage; (b) the creation of a purchase money security interest for household appliances; (c) a transfer by devise, descent, or operation of law upon the death of a joint tenant; or (d) the grant of any leasehold interest of three (3) years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this mortgage to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this mortgage shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this Paragraph (16) and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this mortgage and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with Paragraph (12) hereof. Such notice shall provide a period of not less than thirty (30) days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by Paragraph (17) hereof.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Acceleration; Remedies.** Except as provided in paragraph 16 hereof and subject to any notices required by law, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenant to pay when due any sum secured by this Mortgage, Lender may place Borrower in default and accelerate the balance owing and secured by this Mortgage. Lender shall be entitled to collect in any proceeding concerning this Mortgage all expenses of foreclosure, including reasonable attorneys fees not exceeding 15% of the outstanding balance, and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this mortgage.

18. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

19. **Release.** This mortgage shall remain an open mortgage of record to secure future advances even in the event all sums secured by this mortgage may be fully paid at any one time; however, upon request of the Borrower, Lender will cause this mortgage to be released and cancelled of record upon full payment of all sums secured by this mortgage by the Borrower, and upon such cancellation of the mortgage of record, this mortgage shall become null and void. Such release shall be without charge to the Borrower; however, Borrower shall pay all costs of recordation, if any, and all documentary stamps due on any notes or instruments evidencing future advances secured by this mortgage.

20. **Waiver of Homestead.** Borrower hereby waives all rights of homestead exemption in the Property.

21. **Future Advances.** Upon request of Borrower and prior to release of this Mortgage, Lender shall make future advances to the Borrower pursuant to the terms of the Note, or any other Note referring to this Mortgage. Such future advances, with interest thereon, shall be secured by this Mortgage when advanced pursuant to the terms and conditions of the Note/Agreement. Interest may be deferred, accrued, or capitalized. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed at any one time the total amount of \$25,000.00.

LEGAL DESCRIPTION - BRYANT

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH ALL IMPROVEMENTS THEREON, OR HEREAFTER CONSTRUCTED THEREON, SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEECH SPRINGS TOWNSHIP, BEING KNOWN AND DESIGNATED AS LOT NO. 41, SECTION 1, ON A PLAT OF PROPERTY ENTITLED "SUBDIVISION OF VICTOR MILL VILLAGE, GREER, S.C." MADE BY DALTON & NEVES, JULY, 1950, RECORDED IN THE ROD OFFICE FOR SPARTANBURG COUNTY IN PLAT BOOK NO. 26 AT PAGES 46-55 AND 58-67, INCLUSIVE. SAID LOT IS ALSO KNOWN AS NO. 10 20TH STREET AND FRONTS THEREON 124 FEET.

THIS BEING THE SAME PROPERTY AS CONVEYED UNTO ARNOLD L. BRYANT AND BRANDY K. BRYANT BY DEED OF JOE H. MARCUS AND DOROTHY W. MARCUS DATED April 27th, 2001 AND RECORDED SIMULTANEOUSLY HERewith.

REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Signed, sealed and delivered in the presence of:

[Signature] (Seal)
Arnold L. Bryant
[Signature] (Seal)
Brandy K. Bryant
[Signature] (Seal)
Brandy K. Bryant

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA, Greenville County ss:

Before me personally appeared Reverly Burrell and made oath that she saw the within named Borrower sign, seal, and as their act and deed, deliver the within written Mortgage; and that she with Tammy S. Hill witnessed the execution thereof. Sworn before me this day of .

[Signature] (Seal) Reverly Burrell
Notary Public for South Carolina witness
My commission expires 8-15-2007

TAMMY HILL, ATTORNEY

Office of Register of Deeds
Spartanburg, South Carolina
Recorded 11/14/07
11/14/07
Register of Deeds
Spartanburg, South Carolina

09:42:39 Mon Nov 24, 2008

EXHIBIT C PAGE 1 OF 10

00000001

DATE 11/24/2008
PROGRAM LLNCFHISSUNTRUST BANK
OLD NCF ACCOUNT HISTORYPAGE 002
TIME 10:42:42BANK-NBR: 088 ACCOUNT-NBR: 01120000463380
NCF-BANK: 01 AFS-OBLIGOR: 0100097061 AFS-OBLIGATION-NBR: 00000463380NAME: ARNOLD L BRYANT
ADDR: 10 20TH ST
CITY/STATE/ZIP: GREER

SC 296510000

HOME-PHONE: [REDACTED]
BUS-PHONE: [REDACTED]
SS-NUMBER: [REDACTED]

EFF DATE	TRAN	DESCRIPTION	TRAN AMT	CHG	DBID	POST DATE
09/15/03	3502	DISEURSE SIMPLE INTE	23017.68	001	MC061	09/12/03
09/15/03	3812	CHANGE DISCOUNT AMT	2846.76-	341	PP730	09/12/03
09/15/03	3812	CHANGE DISCOUNT AMT	2846.76	341	PP670	09/12/03
09/15/03	3812	CHANGE DISCOUNT AMT	2846.76	341	PP630	09/12/03
09/15/03	5012	INCREASE ORIGINAL BA	4829.08	001	MC060	09/12/03
09/15/03	5752	DECREASE BILLING AGI	353.19-	001	MC810	09/12/03
09/15/03	6012	INCREASE EARNED ITD	1205.36	341	PP600	09/12/03
09/15/03	6012	INCREASE EARNED ITD	5574.61	100	PE600	09/12/03
09/15/03	6072	INCREASE EARNED LTD	1205.36	341	PP606	09/12/03
09/15/03	6072	INCREASE EARNED LTD	34.06	100	PE606	09/12/03
09/15/03	6122	INCREASE PAID LTD	5540.55	100	PE630	09/12/03

PF7=BACKWARD PF8=FORWARD PF3=RETURN SEARCH PF11=COMMENT

EXHIBIT C PAGE 2 OF 16

DATE 11/24/2008
PROGRAM LLNCFHIS

SUNTRUST BANK
OLD NCF ACCOUNT HISTORY

PAGE 003
TIME 10:42:42

BANK-NBR: 088 ACCOUNT-NBR: 01120000463380
NCF-BANK: 01 AFS-OBLIGOR: 0100097061 AFS-OBLIGATION-NBR: 00000463380

NAME: ARNOLD L. BRYANT
ADDR: 10 20TH ST
CITY/STATE/ZIP: GREER

SC 296510000

HOME-PHONE: [REDACTED]
BUS-PHONE: [REDACTED]
SS-NUMBER: [REDACTED]

EFF DATE	TRAN	DESCRIPTION	TRAN AMT	CHG	DBID	POST DATE
09/15/03	6432	LC BILLED NOT RECVD	121.50	918	RL105	09/12/03
09/15/03	6442	LC PAID ITD, YTD, MTD	13.50	918	RL120	09/12/03
09/15/03	6454	INC LC EARN ITD	135.00	918	RL065	09/12/03
09/15/03	6482	LC ASSED ITD, YTD, MTD	135.00	918	RL155	09/12/03
11/17/03	0918	LATE CHG ASSESSED	13.50	918	RL155	11/17/03
12/16/03	0918	LATE CHG ASSESSED	13.50	918	RL155	12/16/03
01/14/04	4022	INTEREST PMT	366.00	100	PE630	01/14/04
01/14/04	4300	COMBINED PAYMENTS	366.00			01/14/04
02/17/04	0918	LATE CHG ASSESSED	13.50	918	RL155	02/17/04
03/16/04	0918	LATE CHG ASSESSED	13.50	918	RL155	03/16/04
04/06/04	4022	INTEREST PMT	824.39	100	PE630	04/06/04

PF7=BACKWARD PF8=FORWARD PF3=RETURN SEARCH PF11=COMMENT

09:42:41 Mon Nov 24, 2008

EXHIBIT C PAGE 3 OF 16

DATE 11/24/2008
PROGRAM LLNCFHISSUNTRUST BANK
OLD NCF ACCOUNT HISTORYPAGE 004
TIME 10:42:42BANK-NBR: 088
NCF-BANK: 01ACCOUNT-NBR: 01120000463380
AFS-OBLIGOR: 0100097061

AFS-OBLIGATION-NBR: 00000463380

NAME: ARNOLD L BRYANT
ADDR: 10 20TH ST
CITY/STATE/ZIP: GREER

SC 296510000

HOME-PHONE: [REDACTED]
BUS-PHONE: [REDACTED]
SS-NUMBER: [REDACTED]

EFF DATE	TRAN	DESCRIPTION	TRAN AMT	CHG	DBID	POST DATE
04/06/04	4042	PRINCIPAL PMT	225.61-	001	MC061	04/06/04
04/06/04	4300	COMBINED PAYMENTS	1050.00			04/06/04
04/29/04	5752	DECREASE BILLING AGI	189.05-	001	MC810	04/29/04
04/29/04	5752	DECREASE BILLING AGI	177.73-	001	MC810	04/29/04
04/29/04	6082	INC EARN BTD & DECRE	160.90	100	PE606	04/29/04
04/29/04	6082	INC EARN BTD & DECRE	175.46	100	PE606	04/29/04
06/07/04	4022	INTEREST PMT	347.49	100	PE630	06/07/04
06/07/04	4042	PRINCIPAL PMT	5.70-	001	MC061	06/07/04
06/07/04	4300	COMBINED PAYMENTS	353.19			06/07/04
07/16/04	0918	LATE CHG ASSESSED	13.50	918	RL155	07/16/04
08/16/04	0918	LATE CHG ASSESSED	13.50	918	RL155	08/16/04

PF7=BACKWARD PF8=FORWARD PF3=RETURN SEARCH PF11=COMMENT

09:42:42 Mon Nov 24, 2008

EXHIBIT C PAGE 4 OF 10

DATE 11/24/2008
PROGRAM LLNCFHISSUNTRUST BANK
OLD NCF ACCOUNT HISTORYPAGE 005
TIME 10:42:42BANK-NBR: 088 ACCOUNT-NBR: 01120000463380
NCF-BANK: 01 AFS-OBLIGOR: 0100097061 AFS-OBLIGATION-NBR: 00000463380NAME: ARNOLD L BRYANT
ADDR: 10 20TH ST
CITY/STATE/ZIP: GREER

SC 296510000

HOME-PHONE: [REDACTED]
BUS-PHONE: [REDACTED]
SS-NUMBER: [REDACTED]

EFF DATE	TRAN	DESCRIPTION	TRAN AMT	CHG	DBID	POST DATE
09/07/04	4022	INTEREST PMT	353.19	100	PE630	09/07/04
09/07/04	4300	COMBINED PAYMENTS	353.19			09/07/04
09/15/04	4022	INTEREST PMT	207.13	100	PE630	09/16/04
09/15/04	4042	PRINCIPAL PMT	146.06	001	MC061	09/16/04
09/15/04	4300	COMBINED PAYMENTS	353.19			09/16/04
09/30/04	4022	INTEREST PMT	83.51	100	PE630	09/30/04
09/30/04	4042	PRINCIPAL PMT	269.68	001	MC061	09/30/04
09/30/04	4300	COMBINED PAYMENTS	353.19			09/30/04
09/30/04	5752	DECREASE BILLING AGI	179.49	001	MC810	09/30/04
09/30/04	6082	INC EARN BTD & DECRE	173.70	100	PE606	09/30/04
09/30/04	6392	LC ASSESSED NOT BILL	13.50	918	RL100	09/30/04

PF7=BACKWARD PF8=FORWARD PF3=RETURN SEARCH PF11=COMMENT

19:42:43 Mon Nov 24, 2008

EXHIBIT C PAGE 5 OF 10

DATE 11/24/2008
PROGRAM LLNCFHISSUNTRUST BANK
OLD NCF ACCOUNT HISTORYPAGE 006
TIME 10:42:42BANK-NBR: 088
NCF-BANK: 01ACCOUNT-NBR: 01120000463380
AFS-OBLIGOR: 0100097061

AFS-OBLIGATION-NBR: 00000463380

NAME: ARNOLD L BRYANT
ADDR: 10 20TH ST
CITY/STATE/ZIP: GREER

SC 296510000

HOME-PHONE: [REDACTED]
BUS-PHONE: [REDACTED]
SS-NUMBER: [REDACTED]

EFF DATE	TRAN	DESCRIPTION	TRAN AMT	CHG	DBID	POST DATE
09/30/04	6832	LC BILLED NOT RECVD	13.50-	918	RL105	09/30/04
11/16/04	0918	LATE CHG ASSESSED	13.50	918	RL155	11/16/04
12/01/04	4022	INTEREST PMT	341.06	100	PE630	12/01/04
12/01/04	4042	PRINCIPAL PMT	365.32-	001	MC061	12/01/04
12/01/04	4300	COMBINED PAYMENTS	706.38			12/01/04
01/18/05	0918	LATE CHG ASSESSED	13.50	918	RL155	01/18/05
02/16/05	0918	LATE CHG ASSESSED	13.50	918	RL155	02/16/05
02/22/05	4022	INTEREST PMT	354.00	100	PE630	02/22/05
02/22/05	4300	COMBINED PAYMENTS	354.00			02/22/05
04/06/05	4022	INTEREST PMT	329.21	100	PE630	04/06/05
04/06/05	4042	PRINCIPAL PMT	24.79-	001	MC061	04/06/05

PF7=BACKWARD PF8=FORWARD PF3=RETURN SEARCH PF11=COMMENT

09:42:44 Mon Nov 24, 2008

EXHIBIT C PAGE 12 OF 12

DATE 11/24/2008
PROGRAM LLNCFHISSUNTRUST BANK
OLD NCF ACCOUNT HISTORYPAGE 007
TIME 10:42:42BANK-NBR: 088
NCF-BANK: 01ACCOUNT-NBR: 01120000463380
AFS-OBLIGOR: 0100097061

AFS-OBLIGATION-NBR: 00000463380

NAME: ARNOLD L BRYANT
ADDR: 10 20TH ST
CITY/STATE/ZIP: GREER

SC 296510000

HOME-PHONE: [REDACTED]
BUS-PHONE: [REDACTED]
SS-NUMBER: [REDACTED]

EFF DATE	TRAN	DESCRIPTION	TRAN AMT	CHG	DBID	POST DATE
04/06/05	4300	COMBINED PAYMENTS	354.00			04/06/05
04/18/05	4022	INTEREST PMT	65.04	100	PE630	04/18/05
04/18/05	4042	PRINCIPAL PMT	288.15-	001	MC061	04/18/05
04/18/05	4300	COMBINED PAYMENTS	353.19			04/18/05

PF7=BACKWARD

PF8=FORWARD

PF3=RETURN SEARCH

PF11=COMMENT

EXHIBIT C PAGE 7 OF 16

ARNOLD L BRYANT
WILLIAM EDWARDS
10 20TH ST
GREEN, SC 29651-3124

ALS HISTORY CARD
11/23/08
HLF8
340112000043380

WINDUST BANK
100 STEWART AVENUE
EN BURNIE MD 21063

REQUEST

NOTE DATE	MATURITY DATE	TERM	RENT	INT/APP	NOTE AMOUNT/ CREDIT LIMIT	CURRENT BALANCE	SCHEDULED PAYMENT	DUE DATE	TIMES PAST DUE	PRINCIPAL PAID	PRINCIPAL REMAINING	OLD RATE	NEW RATE
12/27/01	06/01/11	124	42	9.0000	.80	13,282.01	353.19	03/01/08	18 10 4 2				
TRANSACTION HISTORY													
EFFECTIVE DATE	TRAN CODE	TRAN DESCRIPTION	TRANSACTION AMOUNT	INTEREST PAID	LT CHRG PAID	FEES PAID	PRINCIPAL PAID	PRINCIPAL REMAINING	OLD RATE	NEW RATE			
10/06/05	8081	4022 INT PNT	329.21									.80	
10/06/05	8082	4042 PRI PNT	24.79									.80	
10/06/05	8081	4022 INT PNT	65.04									.80	
11/06/05	8082	4042 PRI PNT	288.15									.80	
11/06/05	8080	PAYMENT	475.88										
11/06/05	8080	PAYMENT	353.19	80.22			394.78	394.78					
11/06/05	8080	PAYMENT	26.50	178.55			174.64	569.42					
11/06/05	8080	COLLECTION FEE	366.69					569.42					
11/06/05	8080	PAYMENT	366.69	119.79			246.90	816.32					
11/06/05	8080	PAYMENT	353.19	72.87			281.12	1,097.44					
11/06/05	8080	PAYMENT	366.69	137.11			229.50	1,327.02					
11/06/05	8080	PAYMENT	366.69	178.74			193.95	1,522.97					
11/06/05	8080	PAYMENT	1,193.88	19.89	243.00	26.50	908.49	2,427.46					
11/06/05	7011	FEE ASSESSMENT	13.50					2,427.46					
11/06/05	8080	PAYMENT	366.69	366.69				2,427.46					
11/06/05	7011	FEE ASSESSMENT	13.50					2,427.46					
11/06/05	8080	PAYMENT	366.69	298.34			68.35	2,495.81					
11/06/05	7011	FEE ASSESSMENT	13.50					2,495.81					
11/06/05	8080	PAYMENT	378.00	85.21			284.79	2,780.60					
11/06/05	7011	FEE ASSESSMENT	13.50					2,780.60					
11/06/05	8080	PAYMENT	366.69	191.19			175.50	2,956.10					
11/06/05	7011	FEE ASSESSMENT	13.50					2,956.10					
11/06/05	8080	PAYMENT	366.69	240.23			326.46	3,282.56					
11/06/05	7011	FEE ASSESSMENT	13.50					3,282.56					
11/06/05	8080	PAYMENT	366.69	128.48			238.21	3,520.77					
11/06/05	7011	FEE ASSESSMENT	13.50					3,520.77					
11/06/05	8080	PAYMENT	366.69	149.49			217.20	3,737.97					
11/06/05	7011	FEE ASSESSMENT	13.50					3,737.97					
11/06/05	8080	PAYMENT	366.69	170.11			196.58	3,934.55					
11/06/05	7011	FEE ASSESSMENT	13.50					3,934.55					
11/06/05	8080	PAYMENT	366.69	186.27			260.42	4,194.97					
11/06/05	7011	FEE ASSESSMENT	13.50					4,194.97					
11/06/05	8080	PAYMENT	366.69	189.09			257.60	4,452.57					
11/06/05	7011	FEE ASSESSMENT	13.50					4,452.57					
11/06/05	8080	PAYMENT	366.69	193.51			173.18	4,625.75					
11/06/05	7011	FEE ASSESSMENT	366.69	34.06			332.63	4,958.38					
11/06/05	8080	PAYMENT	7.96					4,958.38					
11/06/05	7011	FEE ASSESSMENT	13.50					4,958.38					
11/06/05	8080	PAYMENT	183.46		183.46			4,754.30					
11/06/05	7011	FEE ASSESSMENT	549.92					5,304.22					
11/06/05	8080	LATE CHARGE PNT						5,304.22					
11/06/05	7011	FEE ASSESSMENT						5,304.22					
11/06/05	8080	PAYMENT						5,304.22					

ARNOLD L BRYANT
WILLIAM EDWARDS
118 20TH ST
GREEN, SC 29662-5520

ALS HISTORY CARD
11/23/08
HCFB
3801120000463380

UNTRUST BANK
600 STEWART AVENUE
LEW BURENIE MD 21061

QUEST

EFFECTIVE DATE	TRAN CODE	TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	INTEREST		LT CHRG PAID	TMS PAID	FEES PAID	PRINCIPAL PAID	PRINCIPAL REMAINING	OLD RATE	NEW RATE
				PAID	PAID							
2/16/07	7011	FEE ASSESSMENT	33.50							5,874.47-		
3/16/07	7011	FEE ASSESSMENT	33.50							5,874.47-		
4/06/07	8080	PAYMENT	366.69	233.56					133.13	5,207.60-		
4/16/07	7011	FEE ASSESSMENT	33.50							5,207.60-		
4/18/07	8080	PAYMENT	366.69	56.91					309.78	5,517.38-		
5/16/07	7011	FEE ASSESSMENT	33.50							5,517.38-		
5/23/07	8080	PAYMENT	366.69	139.59					227.10	5,764.88-		
6/06/07	8080	PAYMENT	366.69	62.92					383.77	6,048.25-		
6/16/07	7011	FEE ASSESSMENT	33.50							6,048.25-		
6/18/07	8080	PAYMENT	366.69	36.57					314.62	6,362.87-		
7/11/07	8080	PAYMENT	353.19	86.94					266.23	6,629.12-		
8/16/07	7011	FEE ASSESSMENT	33.50							6,629.12-		
8/16/07	7011	FEE ASSESSMENT	33.50						32.43	6,629.12-		
8/09/07	8080	PAYMENT	366.69	334.28						6,661.53-		
9/16/07	7011	FEE ASSESSMENT	33.50							6,661.53-		
10/16/07	7011	FEE ASSESSMENT	33.50							6,661.53-		
11/10/07	8080	PAYMENT	366.69	229.79					136.90	6,798.43-		
12/16/07	7011	FEE ASSESSMENT	33.50							6,798.43-		
1/09/08	8080	PAYMENT	366.69	110.09					256.60	7,185.03-		
1/15/08	8080	PAYMENT	353.19	21.60					331.59	7,386.62-		
1/16/08	7011	FEE ASSESSMENT	33.50							7,386.62-		
1/16/08	7011	FEE ASSESSMENT	33.50							7,386.62-		
1/16/08	8080	PAYMENT	353.19	196.99					156.20	7,542.82-		
1/11/08	8080	PAYMENT	353.19						353.19	7,896.01-		
1/11/08	8080	PAYMENT	353.19						353.19	8,249.20-		
1/11/08	8080	PAYMENT	161.16						161.16	8,410.36-		
1/16/08	7011	FEE ASSESSMENT	11.86							8,410.36-		
1/26/08	7011	COLLECTION FEE	105.80							8,410.36-		
1/16/08	7011	FEE ASSESSMENT	33.50							8,410.36-		
1/16/08	7011	FEE ASSESSMENT	33.50							8,410.36-		
1/16/08	7011	FEE ASSESSMENT	33.50							8,410.36-		
1/19/08	7011	COLLECTION FEE	100.00							8,410.36-		
1/16/08	7011	FEE ASSESSMENT	33.50							8,410.36-		
1/16/08	7011	FEE ASSESSMENT	33.50							8,410.36-		
1/21/08	7011	COLLECTION FEE	125.00							8,410.36-		
1/05/08	7011	COLLECTION FEE	285.80							8,410.36-		
1/16/08	7011	FEE ASSESSMENT	33.50							8,410.36-		
1/01/08	7011	COLLECTION FEE	862.50							8,410.36-		
1/16/08	7011	FEE ASSESSMENT	33.50							8,410.36-		
1/12/08	7011	COLLECTION FEE	125.00							8,410.36-		
1/16/08	7011	FEE ASSESSMENT	33.50							8,410.36-		

*AMR155 * PAGE NO 76234
 FRIDAY PROCESS DATE 09/12/03
 *AM01155W PROCESS THRU 09/14/03
 CURRENT DATE 04/08/05

ADVANCED LOAN SYSTEM
 MASTER STATUS PRINT

PRINT REASON	REQUEST	REQUESTED BY: CARD INPUT	DISTRIBUTION:
ARNOLD L. BRYANT 18 TWENTY STREET GREER, SC 29651			
SHORT NAME	BRYANT ARNOLD		
PRODUCT	AMTR		
PROCESS TYPE	80		
LIABILITY TYPE	2		
DLR CTL1 01 CTL2 000	CTL3 000	CTL4 0000	
ACCOUNT STATE	SC		
PRIMARY BRANCH	80712		
CURR MATURE DATE	05/03/2011		
UBI/WEIT	8		
HMMA CODE			
DEBT TO INC			
ORIG FEE		0.00	
NON GROUP		0.16	
USER PCT2	8.00000000		
REPORT OFFICER	13593		
SIC CODE	259551		
CENSUS TRACT NUM			
CENSUS COUNTRY	1		
MORTGAGE TYPE			
REG CODE			
UCLASS1 CODE			
OFFICER/EMP CODE	0		
CREDIT BUR STATUS	11		
ACCT STATUS REASON			
STOP PNT REASON			
SOLD IND			
DELINQUENT IND			
STOP DLQ NTC IND			
LEGAL STATUS			
HOLD IND			
CR BUR ASSOC CHG IND			
LST CR BUR ACCT NUM	9000072772984		
SPECIAL INSTR			
EXTENDS THIS MONTH			
PAYOFF THIS MONTH			
CHGOFF THIS PERIOD			
ACTY ON CHGOFF IND			
CLOSED THIS PROCESS			
PAYMENTS MADE	29		
ACTUAL PNTS REH	91		
LOAN CLASSIFICATION			
LAST YR AVG BAL	26,218.22		
ORIG LINE AMT	0.00		
ORIG MATURE DATE	05/03/2011		
NEXT CAPZ DATE			
ST CTL1 01 CTL2 000	CTL3 000	CTL4 0000	
STOMER NUMBER	00000000355032		
ALER NUMBER	000000 0000 0000		
OUNT TYPE	03		
INARY OFFICER	13591		
TRACT DATE	04/27/2001		
IS/OAP COV			
L/JNT CRLF	J		
VZ			
PLOYEE #			
S FEE			
ER PCT1	0.00000000		
STOMER TYPE			
LLATERAL CODE			
NSUS STATE			
SA CODE			
V INSURED IND			
IC CODE			
ION CODE			
BIT BUR TYPE			
T STATUS			
OP PAYMENT IND			
OP ADV REASON			
SH BASIS IND			
OP CR BUR IND			
LL CHGOFF IND			
OC STATUS			
IRCHASE IND			
LES TAX IND			
PMT MODIFIERS			
OP SUSPECTS IND			
Y THIS PERIOD			
IGOFF THIS MONTH			
IGOFF THIS PROC			
IN THIS PROCESS			
RGENT AMT DUE			
IST PNT AMT	0.00		
ASS CODE	400.00		
IG LOAN AMT	27,346.76		
IG PROCEEDS	25,006.00		
IGDATE LMT DATE	04/27/2001		
IRR EFF DATE	04/27/2001		

PROCESS DATE 09/12/03
PROCESS THRU 09/14/03
CURRENT DATE 04/06/05

FRIDAY
#AN01 155*

MASTER STATUS PRINT

ACCOUNT NUMBER	PRINT REASON	REQUEST	REQUESTED BY: CARD INPUT	DISTRIBUTION:	PROCESS DATE	PROCESS THRU	CURRENT DATE
00000727772984	NEXT BILL DATE	04/07/2011			09/12/03	09/14/03	04/06/05
10/01/2003	NEXT TXLR DATE	10					
ST	NAT BILL TYPE	0					
	NAT AUTO DAYS						
	NO STATUS CODE						
	INS AUTO CANCEL DATE	12/31/9999					
	OLDEST DUE DATE	11/01/2003					
	FIRST DUE DATE	06/01/2001					
	DATE LAST MAINT	02/13/2003					
	LAST TRAM DATE	09/09/2003					
	LAST SEQ CODE	0					
	REPO DATE						
	NEXT INS DISB DATE	12/31/9999					
	LAST CR BUR DATE	08/31/2003					
	NEXT DUE DEFN	BDF					
	DATE PROC STAT SET						
	PARTIAL PAID AMT	127.12					
	CURR DUE RECALC IND						
	PMT SCHED REV DATE						
	UCCC GRACE PNT DATE						
	UCCC GRACE PNT AMT	0.00					
	PREV YR SALES TAX	0.00					
	YTD SALES TAX PD	0.00					
	NUMBER DUE SEGS	0					
	NUMBER INS SEGS	1					
	DATE LAST BAL CHB	09/09/2003					
	FASB91 PROR FEE IND						
	CAPTURE IND						
	LST CAPTURE DATE	09/09/2003					
	TRANSFER STATUS						
	MAX LOAN RATE	0.0000000					
	AVG ORLY BAL IND						
	ACTY ON PDUE IND						
	NUM CR CAPTURED	0					
	AMT CR CAPTURED	0.00					
	ONLINE SF LMT DATE	09/09/2003					
	LOAN RATE	9.0000000					
	CURR TERM	120					
	RATE CHG NTC TYPE						
	OLD THIS PROC IND						
	CAPZ SCHED PUBG DATE						
	SALE NUMBER	000000					
	SALE SEQ	00					
	COUNTRY	USA					
	FOREIGN ADDR IND						
	PRIMARY PHONE	877-9625					
	BUSINESS PHONE						
	EXT DUE DATE	10/01/2003					
	EXT REPMT DATE						
	AT BILL METH	ST					
	AT AUTO METH						
	TERNATE RETURN ADDR						
	OLD STMT TO						
	REPAY LIMIT CODE						
	EXT COLL DATE						
	1ST ADV DATE	04/27/2001					
	ERM INCR	120					
	4P LAST MAINT	U13004					
	1ST INTERM SEQ	000					
	FRMHL LAST MAINT	V064					
	1ST DATE	09/15/2003					
	EXT AUTO OR DATE						
	DEST DUE DEFN	BDF					
	LOC STAT REASON						
	NOTIAL PNT IND	Y					
	JTD PAYOFF IND	Y					
	JTD CLOSE IND	Y					
	JINT PAYOFF IND	Y					
	CCC IND	N					
	REBILL PNT OPT	1					
	REBILL PNT OPT	1					
	REDIT SCORE						
	REUR BILL DATE	04/11/2011					
	REV 01 09712						
	EXT OFFICER CD	0					
	891 FEE IND	N					
	1 F THIS PER IND	N					
	CAPTURE IND	N					
	IN THIS PROC IND	N					
	INES NSF	0					
	16 MTHLY BAL IND	N					
	IN THIS PROC IND	N					
	IN DR CAPTURED	0					
	IT OR CAPTURED						
	ITCH SF LMT DATE	09/09/2003					
	PLT RATE IND	N					
	110 TERM	120					
	101 BALLOON						
	DRAKER TOTAL PMTS						
	UPZ PEND TRAN DATE						
	101 CODE						
	101 COMMIT DATE						
	1X 10 NUMBER	251989263					
	101 ADDRESS CHG DATE	12/31/9999					
	101 PRIMARY AREA CODE	864					
	101 BUSINESS AREA CODE						

FRIDAY
#AM01 155#
PROCESS DATE 09/12/03
PROCESS THRU 09/14/03
CURRENT DATE 04/08/05

MASTER STATUS PRINT

COUNT NUMBER 0800727772984
V CATEGORY CODE 0
DEL INT STRT DATE
EDIT OUR OLD DATE
TERMINATE RETURN ADDR
PRINT REASON REQUEST
LTV FORCE IND M
ENDORSE EMP IND M
TIMES TO SEND TO KO
KO STATUS CODE
FINANCE CHARGE 34.06
DLR RESV REBATE 0.00
IMS FIN CHRG REB 0.00
IMS REBATE 1.641.40
LATE CHRG ACOR BAL 0.00
FEE EARNINGS/REB 0.00
ACOR COFF BAL 0.00
FINANCE CHRG REB 0.00
GOVT SUBSDZ INT 0.00
IMS FIN CHRG REB 0.00
ASSD LATE CHRG 121.50
ACCURED FEES 0.00
COMMITMENT BALANCE 0.00

DATE LAST UPDATED 09/09/2003
DATE LAST ADVANCED 04/27/2001
COMMITMENT BAL TYPE 00
COMMITMENT BAL CODE 008
WBR OUTSTD BILLS 0.00
AGGREGATE IND Y
TRANSFER IND M
FIRST CR BAL DATE
PARTIAL PAID IND Y
MONTH TO DATE 0.00
CYCLE TO DATE 0.00
QUARTER TO DATE 0.00
YEAR TO DATE 0.00
INCEPTION TO DATE 0.00
AMOUNT PAID 127.12
AMOUNT CHARGED OFF
MONTH TO DATE 0.00
CYCLE TO DATE 0.00
QUARTER TO DATE 0.00
YEAR TO DATE 0.00
INCEPTION TO DATE 0.00

AGGREGATE BALANCE DATA
MONTH TO DATE 326,110.98
CYCLE TO DATE 22,608,152.03
QUARTER TO DATE 1,815,812.88
YEAR TO DATE 6,220,817.22
INCEPTION TO DATE 22,608,152.03
DAYS MONTH TO DATE 16
DAYS CYCLE TO DATE 871
DAYS QUARTER TO DATE 76
DAYS YEAR TO DATE 257
DAYS INCEPTION TO DATE 871

ACCRUAL DATA
ACCRUAL DAY 80
G/L EARN DAILY IND M
INCLUDE IN YIELD Y
INCLUDE IN PAYOFF Y
INCLUDE IN YTD INT Y
INCL AMT FINANCED M
MIN CHRG MATURITY M
EARN PAST MATURITY Y
AUTO RECAPTURE IND N
REBATE DAILY N
ACCRUAL CODE 01
BALANCE CODE 01
ANNUAL RATE 9.0000000
ACCR CALC METHOD 06
ACCRUAL BASE 366
ORIGINAL TERM 0
ORIG UNCAINED AMT 14,536.04
000 DAYS ORIG UNERN 0.00
MINIMUM CHARGE 0.00
MINIMUM REBATE AMT 0.00

EXHIBIT C PAGE 13 OF 16

ADVANCED LOAN SYSTEM
MASTER STATUS PRINT

NAMELESS
FRIDAY
#A01 155#
REQUESTED BY: CARD INPUT

PAGE NO 76258
PROCESS DATE 09/12/13
PROCESS THRU 09/14/03
CURRENT DATE 04/08/05

QUNT NUMBER 0008072772984

PRINT REASON	REQUEST	ORIGINAL ADJ	UNUSED RATE ADJ	ORIGINAL RATE	STATED RATE	CAPZ QTR TO DATE	CAPZ YEAR TO DATE	SCHEDULED INTEREST	ACCRUED	MONTH TO DATE	CYCLE TO DATE	QUARTER TO DATE	YEAR TO DATE	INCEPTION TO DATE	MONTH TO DATE	QUARTER TO DATE	YEAR TO DATE	INCEPTION TO DATE
091	09/27/2003	0.000000	0.000000	0.000000	0.000000	0.00	0.00	0.00	0.00	0.00	1,285.36	72.54	299.57	1,205.36	0.00	0.00	0.00	2,856.76
092	09/28/2003	0.000000	0.000000	0.000000	0.000000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
093	09/28/2003	0.000000	0.000000	0.000000	0.000000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
094	09/28/2003	0.000000	0.000000	0.000000	0.000000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
095	09/28/2003	0.000000	0.000000	0.000000	0.000000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
096	09/28/2003	0.000000	0.000000	0.000000	0.000000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
097	09/28/2003	0.000000	0.000000	0.000000	0.000000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
098	09/28/2003	0.000000	0.000000	0.000000	0.000000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
099	09/28/2003	0.000000	0.000000	0.000000	0.000000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
100	09/28/2003	0.000000	0.000000	0.000000	0.000000	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

PRINT REASON REQUEST

ORIGINAL ADJ
UNUSED RATE ADJ
ORIGINAL RATE
STATED RATE
CAPZ QTR TO DATE
CAPZ YEAR TO DATE
SCHEDULED INTEREST
ACCRUED
MONTH TO DATE
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QUARTER TO DATE
YEAR TO DATE
INCEPTION TO DATE
MONTH TO DATE
QUARTER TO DATE
YEAR TO DATE
INCEPTION TO DATE

PRINT REASON REQUEST

ORIGINAL ADJ
UNUSED RATE ADJ
ORIGINAL RATE
STATED RATE
CAPZ QTR TO DATE
CAPZ YEAR TO DATE
SCHEDULED INTEREST
ACCRUED
MONTH TO DATE
CYCLE TO DATE
QUARTER TO DATE
YEAR TO DATE
INCEPTION TO DATE
MONTH TO DATE
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YEAR TO DATE
INCEPTION TO DATE

PRINT REASON REQUEST

ORIGINAL ADJ
UNUSED RATE ADJ
ORIGINAL RATE
STATED RATE
CAPZ QTR TO DATE
CAPZ YEAR TO DATE
SCHEDULED INTEREST
ACCRUED
MONTH TO DATE
CYCLE TO DATE
QUARTER TO DATE
YEAR TO DATE
INCEPTION TO DATE
MONTH TO DATE
QUARTER TO DATE
YEAR TO DATE
INCEPTION TO DATE

AMOUNT			PAST DUE DETAIL AMOUNTS			PAST DUE DETAIL AMOUNTS			PAST DUE DETAIL AMOUNTS		
TYPE	CODE	AMOUNT	INCLUDE IN -			INCLUDE IN -			INCLUDE IN -		
			LC	DLB	CAPZ	LC	DLB	CAPZ	LC	DLB	CAPZ
PRI	90	0.00	Y	Y	N						
SBI	00	0.00	Y	Y	N						
LTC	80	0.00	N	N	N						
	00	0.00	Y	Y	N						

EXHIBIT C PAGE 15 OF 16

COUNT NUMBER		0000072772984		PRINT REASON REQUEST		REQUESTED BY: CARD INPUT DISTRIBUTION		PROCESS DATE 09/12/03		PROCESS THRU 09/16/03		CURRENT DATE 04/08/05	
FRIDAY 04/08/05													
MASTER STATUS PRINT													
INSURANCE DATA													
INS TYPE		W21		INS TERM		120		POLICY NUMBER		VOYA			
INS CODE		01		CALC CODE		H		COMPANY ID		VOYA			
FIN AMOUNT		2,846.76		FIN CHARGE				AGENT					
FIN RATE		8.9990000		FIN RATE				START DATE		04/28/2001			
FIN COVER				MAX COVER				END DATE		04/28/2001			
FIN CHANGE CODE		0		WIN COVER				CANCEL DATE					
ACCLZ1				BAL PLAN				PLACE DATE		04/27/2001			
ACCLZ1				BAL ID		PRI01		EXP NOTICE CODE		0			
ACCLZ1				BILL DEFN PLAN				CANCEL NOTICE CODE		0			
ACCLZ1				BILL DEFN ID				PLACE NOTICE IND		N			
ACCLZ1				INCL IN APR IND		N		SEPARATE BAL IND		N			
ACCLZ1				PREM FIN IND		Y		SEPARATE BILL IND		N			
ACCLZ1				REPORT TYPE		30		POLICY ON FILE IND		3			
ACCLZ1				AUTO CANCEL IND		N		AUTO CANCEL DATE					
ACCLZ1				0.00									
DISBURSEMENT DATA													
METHOD CODE		F		COMT NUM		15591		COMMISSION OFFICER		15591		0.0000000	
FREQUENCY		0		INCREMNT		1		COMMISSION PERCENT					
DISB DAY		31		PAYEE CODE		VOYA		NEW THIS PER IND		N			
FIRST DISB DATE		05/18/2001		CANCEL THIS PER IND		M		RECAP TYPE		10			
NEXT DISB DATE		12/31/9999											
LAST DISB DATE		05/18/2001											
ENDORSEMENT DATA													
RELATIONSHIP TYPE		4		SEND NOTICE IND		N		SEND BILL IND		N			
LIABILITY TYPE		2		CR BUR ASSOC CHG IND		N		CR BUR REPORT IND		Y			
CR BUR ASSOC CHG IND		N											
LIABILITY PERCENT		100.0000000											
COLLATERAL DATA													
ITEM NUMBER		0000001		EDITED ITEM NUMBER		0000001		YEAR		0.00			
MODEL		10 20TH STREET		DOWN PAYMENT AMT		0.00		LOCATION HELD		0.00			
EXPIRATION DATE				UNIT PRICE		0.00		MARGIN VALUE		0.00			
RESP OFFICER				DATE LAST VALUED		0.00		ISIN		REPRICING FREQ			
NUM UNITS		1		CUSTIP NUMBER		2		INDEX CARD		INS INDEX CARD			
CURRENT VALUE		0.0000000		NEXT REPRICE DATE				INS EXP DATE		INS EXP DATE			
ORIGINAL VALUE		0.00		RECEIVED/REQUIRED		0		INS COMPANY		INS COMPANY			
CUSTIP NUMBER		0		INS TYPE		0							
NEXT REPRICE DATE				INS EXP LEAD DAYS		999							
RECEIVED/REQUIRED		2											
INS TYPE		2											
INS EXP LEAD DAYS		999											
ESC 1		10 20TH STREET											
ESC 1		10 20TH STREET											
ESC 1		10 20TH STREET											
ESC 1		10 20TH STREET											

EXHIBIT C PAGE 16 OF 16

PROCESS DATE 07/16/03
PROCESS THRU 09/14/03
CURRENT DATE 04/08/05

FRIDAY
=AM01 155=

MASTER STATUS PRINT

COUNT NUMBER	0808072772904	PRINT REASON	REQUEST	REQUESTED BY: CARD INPUT
SEQUENCE NUMBER 01	ACCOUNT NUMBER 01000000000033200362			DISTRIBUTION:
TO DEBIT	AUTO CREDIT	COMP BAL	USER 3	BANK ABA NUMBER 000000000
ER 1	Y	N	N	MAT BILLS
				M
				SYSTEM IM

SEQUENCE NUMBER 02	ACCOUNT NUMBER 010000000000332078553			BANK ABA NUMBER 000000000
TO DEBIT	AUTO CREDIT	COMP BAL	USER 3	MAT BILLS
ER 1	Y	N	N	M
				SYSTEM IM

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

SunTrust Bank,)
[X] Plaintiff,)
vs.)

CASE NO. 2008-CP-42-4539

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Brandy K. Bryant, et al.,)
[] Defendant)
check box above indicating submitting party)

name, SC Bar no. and address of plaintiff's attorney
Dean A. Hayes, SC Bar No. 66066
Post Office Box 12369
Columbia, SC 29211
telephone: (803) 252-5817 fax: (803) 779-2845
e-mail: other:

name, SC Bar no. and address of defendant's attorney
John B. Duggan, SC Bar No. 1780
Post Office Box 449
Greer, SC 29652-0449
telephone: (864) 879-0144 fax: (864) 879-0149
e-mail: other:

[X] 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 to Alter or Amend Order

Estimated Time Needed: 30 minutes

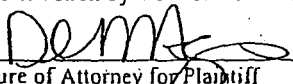
Court Reporter Needed: YES [X] NO []

SECTION II: Motion/Order Type

[] Written motion attached

[X] 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

July 1, 2009

Date Submitted

SECTION III: Motion Fee

[X] PAID - AMOUNT: \$25.00

[] EXEMPT:

[] Rule to Show Cause in Child or Spousal Support

[] Domestic Abuse or Abuse and Neglect

(check reason)

[] 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, SCRPC)

[] 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:

JUDGE'S SECTION

[] Motion Fee to be paid upon filing of the attached order.

[] Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____
(print name)

Date Filed: _____

[] MOTION FEE COLLECTED:

[] CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

SunTrust Bank s/b/m to National)
Bank of Commerce, including its)
Division, Central Carolina Bank,)

C/A NO: 2008-CP-42-4539

Plaintiff,)

vs.)

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO ALTER
OR AMEND JUDGMENT**

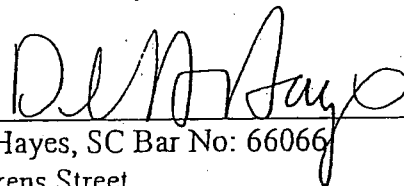
Brandy K. Bryant a/k/a Brandy K.)
McCarthy, Arnold L. Bryant,)
Phyllis W. Davis and Stephen Ford,)
as Spartanburg County Tax)
Collector,)

Defendants.)

**TO: JOHN B. DUGGAN, ESQUIRE, ATTORNEY FOR DEFENDANT
PHYLLIS W. DAVIS:**

The Plaintiff SunTrust Bank will move before the Honorable Gordon G. Cooper,
Master-In-Equity for Spartanburg County, for an Order pursuant to Rule 59(e) SCRPC. to
alter or amend the Order filed May 5, 2009. The basis for this motion is case law that
Plaintiff believes requires the full amount of the overage to be distributed to Plaintiff.

KORN LAW FIRM, P.A.



Dean A. Hayes, SC Bar No: 66066
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817
Facsimile: (803) 779-2845
ATTORNEYS FOR PLAINTIFF

July 1, 2009
Columbia, South Carolina
hfm\K28-06112

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

SunTrust Bank s/b/m to)
National Bank of Commerce,)
including its Division,)
Central Carolina Bank,)
Plaintiff,)

-v-

) MEMORANDUM IN SUPPORT OF PLAINTIFF'S
) MOTION TO ALTER OR AMEND ORDER

Brandy K. Bryant a/k/a Brandy)
K. McCarthy, Arnold L. Bryant,)
Phyllis W. Davis, and Stephen)
Ford, as Spartanburg County)
Tax Collector,)
Defendants.)

C/A NO.: 2008-CP-42-4539

FACTS

This is a motion to alter or amend an order issued by this court on May 5, 2009. Although the order was filed on May 5, 2009, plaintiff's attorney did not receive a copy of the signed order until June 23, 2009, when he received a copy of the order in an envelope mailed on June 20, 2009 from the Spartanburg County Tax Collector. Included in the envelope was a check for \$4,416.44, which plaintiff has not cashed.

This is an action to obtain the overage from a tax sale of real property generally described as 10 20th Street, Greer, South Carolina and located in Spartanburg County. The tax sale occurred on November 6, 2006, and it resulted in an overage in the amount of \$8,832.87. At the time of the tax sale, the defendants, Brandy K. Bryant a/k/a Brandy K. McCarthy and Arnold L. Bryan, owned the real

property. As shown by the affidavit of default filed in this matter, all of the defendants in this matter are in default, except for the defendant Phyllis W. Davis.

On February 2, 2009, a hearing was held on plaintiff's motion for summary judgment. At the hearing, the plaintiff's attorney and the attorney for Phyllis W. Davis stipulated that Davis had a lien on the real property by virtue of a judgment against the defendant, Arnold Bryant. This judgment, for the amount of \$4,105.46, was signed on February 9, 2001 and was filed for record on February 12, 2001. A copy of the judgment is attached as Exhibit A.

The parties also stipulated that plaintiff was the holder of a note and mortgage executed by the defendants, Arnold Bryant and Brandy Bryant. A copy of the note is attached as Exhibit B and a copy of the mortgage is attached as Exhibit C. The mortgage held by plaintiff is a purchase money mortgage, as the proceeds from the loan were used to purchase the real property sold at the tax sale on November 6, 2006. A copy of the deed to the real property is attached as Exhibit D.

The only issue in this case is the distribution of the overage of \$8,832.87. The plaintiff attached to its motion for summary judgment an affidavit that set forth the amount owed on the note as being \$14,754.48, therefore, if plaintiff is entitled to priority as to the overage, plaintiff is entitled to the entire amount of the overage.

DISCUSSION

Although the order of May 5, 2009 finds that plaintiff held a purchase money mortgage on the real property at the time it was sold for taxes, the order nevertheless finds that plaintiff and Davis are each entitled to one-half of the overage of \$8,832.87. The order "finds that Plaintiff had the opportunity to foreclose its mortgage upon the property which secured the loan but chose not to do so." According to the order, when the property was sold for taxes, plaintiff lost its security interest on the property and also "lost any basis to assert that it was entitled to a priority to the proceeds of the tax sale." Plaintiff respectfully requests that the order of May 5, 2009 be altered or amended to find that plaintiff is entitled to the entire amount of the tax sale overage.

It is uncontested that plaintiff is the holder of a purchase money mortgage on the real property that was sold for taxes. "A purchase money mortgage is recognized at common law and in equity where a purchaser of land, contemporaneous with the acquisition of legal title or afterward, but as part of the same transaction, executes a mortgage to secure the purchase money. *Hursey v. Hursey*, 284 S.C. 323, 327, 326 S.E.2d 178 (Ct. App. 1985) (citations omitted). "It is accorded priority over all other claims or liens arising through the mortgagor although they are prior in time to the execution of the purchase money mortgage." *Id.* Thus, plaintiff's mortgage lien was entitled to priority over Davis's

judgment even though the judgment was filed prior to plaintiff's mortgage.

Since plaintiff's mortgage lien was entitled to priority over Davis's judgment on the real property, plaintiff's mortgage is also entitled to priority over the judgment as to the tax sale proceeds. Parties who have liens on real property are entitled to equitable liens on the proceeds from the sale or taking of the real property. See *Knapp v. Victory Corp.*, 279 S.C. 80, 81 302 S.E.2d 30 (1983) (mortgagee entitled to equitable lien on fire insurance proceeds); *Twin City Power Co. v. Savannah River Elect. Co.*, 163 S.C. 438, 460, 161 S.E.2d 750 (1929) (mortgagee entitled to equitable lien on condemnation proceeds). When the real property has more than one lien on it, the proceeds should be distributed in the order of priority of the liens. See *FCX, Inc. v. Long Meadow Farms, Inc.*, 269 S.C. 202, 205 237 S.E.2d 50 (1977) (stating that if the debtor held legal title to the real property, as opposed to only an equitable interest, the proceeds from the sale would have been distributed in the order of priority of the liens).

In the present case, there is no question that plaintiff had a purchase money mortgage on the real property sold at the tax sale. This purchase money mortgage was a first lien on the real property, and it should also be a first lien on the proceeds from the tax sale of the property.

For the reasons set forth above, plaintiff respectfully

requests that the court reconsider its order of May 5, 2009 and alter or amend the order to find that plaintiff is entitled to the entire amount of the overage of \$8,832.87.

Respectfully submitted,

Korn Law Firm
1300 Pickens St.
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817



Dean A. Hayes, S.C. Bar #66066
Attorney for Plaintiff

July 1, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG)

Phyllis W. Davis,)
)
 Plaintiff,)
)
 vs.)
)
 Larry Lister and Arnold Bryant,)
)
 Defendants.)

Civil Action No. 99-CP-42-2458

ORDER

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2001 FEB 12 AM 9:51
 MARK HAMMOND

On Tuesday, February 6, 2001, this matter came before the Court for a hearing to determine damages against Defendant, Arnold Bryant, who is in default. Present at the hearing were the Plaintiff and her attorney, John B. Duggan.

On January 29, 2001, counsel for the Plaintiff mailed to Defendant, Arnold Bryant, by Certified Mail, a notice of the date, time and place of this hearing, which was returned to counsel with a notation that Defendant no longer resided at that address. This notice of the hearing was introduced into evidence and marked as Plaintiff's Exhibit #1.

Plaintiff testified that as a result of the electrical fire at her residence located on Lake Lyman in Spartanburg County, South Carolina, she incurred the following expenses for the repair and remodeling of the residence:

Lowe's.....	\$ 133.84
Big Lots.....	3.25
Holly Springs Hardware.....	24.31
Home Depot.....	675.77
Tommy Jones Cleaning Service.....	97.44

Co. 2

Steve Hudson (Carpet Installation & Repairs).....	350.00
BJU Cleaners.....	470.85
Mariah Davis (housecleaning).....	250.00
Costs to replace wiring by electrician, Brad Edens.....	1,600.00
Labor for hanging wallpaper, cleaning and painting by Beverly Shelton.....	500.00

TOTAL: \$ 4,105.46

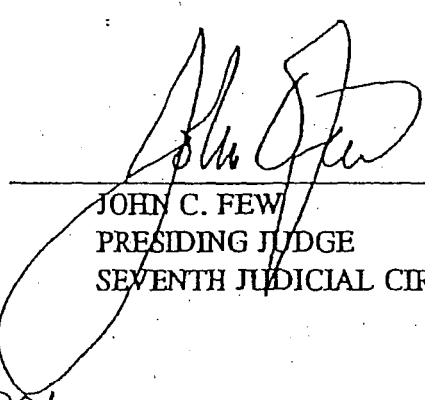
In addition, the Plaintiff testified that she lost two months of rental income at \$550.00 per month for a total of \$1,100.00 during the period of time when the residence was under repair.

The Court finds and concludes that Plaintiff incurred \$5,205.46 in damages to repair her rental property and that judgment should be granted to the Plaintiff against Defendant, Arnold Bryant, in the amount of \$5,205.46.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff be, and hereby is, granted judgment against Defendant, Arnold Bryant, in the amount of \$5,205.46.

~~IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of Court~~
enter judgment against Defendant, Arnold Bryant, in the public records of the Spartanburg County Courthouse.

IT IS SO ORDERED.



JOHN C. FEW
PRESIDING JUDGE
SEVENTH JUDICIAL CIRCUIT

Spartanburg, S. C.

Dated: February 9, 2001

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2001 FEB 12 AM 9:51
MARK HARRIS



EXHIBIT 1 FIXED RATE
CONSUMER LOAN NOTE & SECURITY AGREEMENT
☒ SIMPLE INTEREST ☐ PRECOMPUTED

11-1
KCF #
7277-7284

Borrower: ARNOLD L BRYANT & Edwards Date: 4-27-2001 Loan Amount \$ 27,846.76
Address: Greer SC 29651

We are happy to be able to make this loan to you. We want you to understand how your loan works, so read this agreement carefully and ask us if we have not made part of it clear to you. If you agree to be bound by the promises in this agreement, sign your name below. If more than one person signs, each will be responsible for repaying the loan in full. The words "you" and "your" refer to the borrower and anyone else who signs this agreement. The "Bank" means Central Carolina Bank.

Amount Financed	FINANCE CHARGE	Total of Payments	ANNUAL PERCENTAGE RATE	You have the right to receive at this time an itemization of the Amount Financed. Please initial here if you want an itemization.
The amount of credit provided to you or on your behalf <u>\$27,846.76</u>	The dollar amount the credit will cost you <u>\$14,536.04</u>	The amount you will have paid after you have made all payments as scheduled <u>\$42,382.80</u>	The cost of your credit as a yearly rate <u>8.999</u> %	

Registration and Filing Fees \$

Total Sales Price: The total cost of your purchases on credit, including your down payment of \$ is \$

Number of Payments	Amount of Payments	Monthly Beginning/for as Follows
<u>120</u>	<u>353.19</u>	<u>JUNE 01, 2001</u>

Late Charge: If any installment is fifteen (15) days late, you will be charged a late fee of 5% of the unpaid amount of the installment payment but not less than \$5.40 and not more than \$13.50. The minimum and maximum late fee may increase during the term of this loan as allowed by S.C. Law 37-1-109.

Security: You are giving the Bank a security interest in: #10 20th Street, Greer, SC 29651
Collateral securing other loans with the Bank (but not including your primary residence or household goods) may also secure this loan.

Prepayment: If you pay off early, you will not have to pay a penalty; however, you may be charged a minimum finance charge. You may be entitled to a refund of part of the finance charge if this is a precomputed loan.

Assumption: (Residential Mortgage Transaction Only) Someone buying your house cannot assume the remainder of the mortgage on the original terms.

Required Deposit: ☐ If checked here, your loan is secured by a deposit account, and the annual percentage rate does not take into account your required deposit.

Please read the rest of this Agreement, both front and back, for additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Optional Credit Insurance: CREDIT LIFE INSURANCE, ACCIDENT AND HEALTH INSURANCE, AND/OR UNEMPLOYMENT INSURANCE ARE NOT REQUIRED TO OBTAIN THIS LOAN AND WILL NOT BE PROVIDED UNLESS YOU SIGN FOR THEM AND AGREE TO PAY THE PREMIUM SHOWN BELOW. If you want this insurance, check the insurance desired below.

☒ I DESIRE TO OBTAIN CREDIT LIFE INSURANCE

☒ Borrower Signature: Arnold L Bryant Date of Birth: 9/11/56 For Term of _____ Months
☒ Co-Borrower Signature: William Edwards Date of Birth: 9/11/56 For Term of _____ Months
☒ Joint Signature: Arnold L Bryant Date of Birth: 9/11/56 For Term of 120 Months
Borrower: William Edwards

☐ I DESIRE TO OBTAIN ACCIDENT AND HEALTH INSURANCE (Borrower only)

Signature _____ For Term of _____ Months

☐ I DESIRE TO OBTAIN INVOLUNTARY UNEMPLOYMENT INSURANCE (Only Debtor)

Signature _____ For Term of _____ Months

Promise to Pay: You promise to pay the Bank the amount financed plus finance charges calculated before and after maturity at the rate of 9.0%, according to the payment schedule(s) and at the office disclosed above.

Borrower: Arnold L Bryant (SEAL) For Credit: Personal Emp # 13591
Borrower: William Edwards (SEAL) Interest Accrual Date: 4-27-01
Borrower: _____ (SEAL) Purpose: Purchase home

Security Agreement: If this section is not completed, there is no specific collateral for this loan. "You" in this section refers to anyone who signs as "owner." Each person in whose name the collateral is listed must sign this section.

☒ The collateral for this loan is described on the Mortgage dated 4-27-2001 for \$ 27,846.76

☐ As collateral for this loan, you give the Bank a security interest in the following property.

New or Used	Year	Make	Model	Type of Body	Serial Number	Ton Cap. if Truck

☒ (See Schedule A, attached)

Unless the security you pledge is in the possession of the Bank, you promise to maintain adequate insurance on the collateral, with the Bank named as lienholder on the policy. You may obtain insurance from anyone you want that is acceptable to the Bank. If you fail to purchase this insurance, the Bank may purchase the insurance and add its cost to your loan. Brandy Bryant

Owner: Arnold L Bryant Owner: William Edwards
Form 8905-B (Rev. 5/00) Repossession Sales Only NOTICE: SEE OTHER SIDE

Unpaid Payment Charge. If you do not pay the loan by the date specified, we will charge you a late fee of \$15.00 per month. This charge will be added to the amount of the loan and will be collected with the next payment.

Waiver

You agree to waive your right to sue us for any breach of this Agreement. You agree that the Bank may extend the time for any payment or release any lien or other claim against you.

Prepayment in Full

This loan may be prepaid in full at any time. If you pay the loan off early, you will only have to pay the late charge for the period you have had the loan. However, if you pay the loan off before the Bank has earned \$15.00, the Bank will charge you a \$15.00 minimum charge. This is the only penalty you may have to pay for prepayment in full.

Default

If you are more than 60 days late with any payment, you may have an opportunity to cure your payment default. If you do not cure your payment default within the time period, we may want to sue you or take your car with another payment, or if we have reason to believe the progress of payment, performance, or condition of the loan is not satisfactory, we may demand this and all other funds you owe from the time the loan is in default. We reserve the right to exercise the Bank's right under South Carolina law to take funds from your deposit accounts to pay this loan if you default.

If you do not pay the whole balance due when it is due, we may, without notice, begin to collect the full amount due on the loan, including interest.

If we do prepay a portion of the loan, we may still apply the money collected to what you owe us. This includes our costs in repossessing, storing, and preparing the car.

If there are any personal items in the car, we may want to take them for a period of 30 days, after which you agree that the bank may dispose of the personal items in any way it sees fit. We reserve the right to take any and all claims and damages from the personal items. Any items that are not ours will be returned to you with the car.

Interest and Deferrals

If the Bank reports that you have not paid the loan, we may want to charge you a deferred charge instead of a late charge. If we do, the late charge will be added to the loan, and the loan will be repaid by the amount of the deferred charge for the time period the loan is late, extended, or delinquent.

Simple Interest Loans

If this is a simple interest loan, interest will accrue daily on the outstanding balance. The disclosures on the front of this note are based on payments being made on each due date. If you are late on a due date, additional interest will accrue resulting in a larger final payment.

Interest After Maturity

A finance charge will be added to the unpaid balance of the loan at 15% of the amount of the loan. This charge will be added to the front of this Agreement for each day any balance is due and not paid.

Collateral

Except for a security interest in your personal vehicle or items of value, the security interest under this Agreement also secures payment of any other debt or future debt you owe us, whether or not it is otherwise provided by law.

Continuity of Collateral

We reserve the right to take your car or other collateral if you do not pay the loan. We reserve the right to take your car or other collateral if you do not pay the loan. We reserve the right to take your car or other collateral if you do not pay the loan. We reserve the right to take your car or other collateral if you do not pay the loan.

Use of Collateral

If you default on the loan, we may want to take your car or other collateral. We reserve the right to take your car or other collateral if you do not pay the loan. We reserve the right to take your car or other collateral if you do not pay the loan.

Insurance

You will have to maintain insurance on the car or other collateral. We reserve the right to take your car or other collateral if you do not pay the loan. We reserve the right to take your car or other collateral if you do not pay the loan.

Our Other Rights

We reserve the right to take your car or other collateral if you do not pay the loan. We reserve the right to take your car or other collateral if you do not pay the loan. We reserve the right to take your car or other collateral if you do not pay the loan.

Assignment

We reserve the right to assign this loan to another lender. We reserve the right to assign this loan to another lender. We reserve the right to assign this loan to another lender.

State Law

This Agreement is governed by the laws of the State of South Carolina.

You agree that you do not have either a personal or business relationship with the Bank or any other lender.

NOTICE

IF THIS LOAN IS A "PURCHASE MONEY LOAN" AS DEFINED BY THE FEDERAL TRADE COMMISSION RULE CONCERNING PRESERVATION OF CONSUMER'S CLAIMS AND DEFENSES, THE BELOW SHALL APPLY. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS FROM THIS ACCOUNT, REGARDLESS OF THE TIME ELAPSED AFTER MATURITY OF THE LOAN. IF THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS FROM THIS ACCOUNT, REGARDLESS OF THE TIME ELAPSED AFTER MATURITY OF THE LOAN, IF THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS FROM THIS ACCOUNT, REGARDLESS OF THE TIME ELAPSED AFTER MATURITY OF THE LOAN.

Continuity of Payment

We reserve the right to take your car or other collateral if you do not pay the loan. We reserve the right to take your car or other collateral if you do not pay the loan. We reserve the right to take your car or other collateral if you do not pay the loan.

Guarantor

Date

Guarantor

Date

THIS MORTGAGE is made this 27th day of April, 2001
between the Mortgagor, Arnold L. Bryant and Brandy R. Bryant
(herein "Borrower"), and the Mortgagee, Central Carolina
Bank, a corporation organized and
existing under the laws of The United States of America
whose address is Greer SC 29650
(herein "Lender").

WHEREAS BORROWER has entered into an agreement with Lender under which the Lender agrees to lend to the Borrower up to a total amount outstanding at any point in time Twenty five thousand
(\$25,000) Dollars which indebtedness is evidenced by Borrower's Note/Agreement of same date with all principal and interest due and payable in full on May 01, 2011

To SECURE to Lender (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 21 hereof (herein "Future Advances"), Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the County of Spartanburg
State of South Carolina.

See Schedule A attached

RECORDED
01 MAY - 1 AM 9:35
P.M.
SPARTANBURG, S.C.

which has the address of 10 20th Street Greer
(Street) (City)
South Carolina 29651 (herein "Property Address")
(Zip Code)

TO HAVE AND TO HOLD unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or at the option of the Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made.

111RMC 1024 50101H006

4.60

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, then to the principal of the Note and last, to any late charges due under the Note.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

10. **Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note at the time of execution.

15. **Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. **Transfer of the Property; Assumption.** If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this mortgage; (b) the creation of a purchase money security interest for household appliances; (c) a transfer by devise, descent, or operation of law upon the death of a joint tenant; or (d) the grant of any leasehold interest of three (3) years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this mortgage to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this mortgage shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this Paragraph (16) and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this mortgage and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with Paragraph (12) hereof. Such notice shall provide a period of not less than thirty (30) days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by Paragraph (17) hereof.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Acceleration; Remedies:** Except as provided in paragraph 16 hereof and subject to any notices required by law, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenant to pay when due any sum secured by this Mortgage, Lender may place Borrower in default and accelerate the balance owing and secured by this Mortgage. Lender shall be entitled to collect in any proceeding concerning this Mortgage all expenses of foreclosure, including reasonable attorneys fees not exceeding 15% of the outstanding balance, and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this mortgage.

18. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

19. **Release:** This mortgage shall remain an open mortgage of record to secure future advances even in the event all sums secured by this mortgage may be fully paid at any one time; however, upon request of the Borrower, Lender will cause this mortgage to be released and cancelled of record upon full payment of all sums secured by this mortgage by the Borrower, and upon such cancellation of the mortgage of record, this mortgage shall become null and void. Such release shall be without charge to the Borrower; however, Borrower shall pay all costs of recordation, if any, and all documentary stamps due on any notes or instruments evidencing future advances secured by this mortgage.

20. **Waiver of Homestead.** Borrower hereby waives all rights of homestead exemption in the Property.

21. **Future Advances.** Upon request of Borrower and prior to release of this Mortgage, Lender shall make future advances to the Borrower pursuant to the terms of the Note, or any other Note referring to this Mortgage. Such future advances, with interest thereon, shall be secured by this Mortgage when advanced pursuant to the terms and conditions of the Note/Agreement. Interest may be deferred, accrued, or capitalized. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed at any one time the total amount of \$25,000.00.

REV 2477 PAGE 882

LEGAL DESCRIPTION - BRYANT

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, WITH ALL IMPROVEMENTS THEREON, OR HEREAFTER CONSTRUCTED THEREON, SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEECH SPRINGS TOWNSHIP, BEING KNOWN AND DESIGNATED AS LOT NO. 41, SECTION 1, ON A PLAT OF PROPERTY ENTITLED "SUBDIVISION OF VICTOR MILL VILLAGE, GREER, S.C." MADE BY DALTON & NEVES, JULY, 1950, RECORDED IN THE ROD OFFICE FOR SPARTANBURG COUNTY IN PLAT BOOK NO. 26 AT PAGES 46-55 AND 58-67, INCLUSIVE. SAID LOT IS ALSO KNOWN AS NO. 10 20TH STREET AND FRONTS THEREON 124 FEET.

THIS BEING THE SAME PROPERTY AS CONVEYED UNTO ARNOLD L. BRYANT AND BRANDY K. BRYANT BY DEED OF JOE H. MARCUS AND DOROTHY W. MARCUS DATED April 27th, 2001 AND RECORDED. SIMULTANEOUSLY HERewith.

REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Signed, sealed and delivered in the presence of:

Tammy Hill (Seal)
Arnold L. Bryant (Seal)
Brandy K. Bryant (Seal)
Brandy K. Bryant (Seal)
Beverly Rurrell (Seal)

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA, Greenville County ss:

Before me personally appeared Beverly Rurrell and made oath that she saw the within named Borrower sign, seal, and as their act and deed, deliver the within written Mortgage; and that she with Tammy S. Hill witnessed the execution thereof.

Sworn before me this 15 day of August (Seal) Beverly Rurrell witness
Notary Public for South Carolina
My commission expires 8-15-2007

TAMMY HILL, ATTORNEY

Office of Register of Deeds
Spartanburg, South Carolina
Recorded in
Spartanburg, South Carolina
12-27-07

REC-11-UP-331

10 20th Street
Greer, S.C. 29651

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

TITLE TO REAL ESTATE

DOCUMENTARY STATE

92-50

RECORDED
01 MAY -1 AM 9:34
S.M.C.
SPARTANBURG, S.C.

KNOW ALL MEN BY THESE PRESENTS, that JOY H. MARCUS AND DOROTHY W. C. MARCUS in consideration of TWENTY FIVE THOUSAND AND NO/100THS DOLLARS (\$25,000.00), the receipt of which is hereby acknowledged has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto, ARNOLD L. BRYANT AND BRANDY K. BRYANT, JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP :

that certain place, parcel or lot of land, with the improvements thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, Beech Springs Township, being known and designated as Lot No. 41 in Section 1, on a plat of property entitled "Subdivision of Victor Mill Village, Greer, S.C." made by Dalton L. Neves, July, 1950, recorded in the ROD Office for Spartanburg County in Plat Book 25, at pages 58-67, inclusive. Said lot is also known as NO. 10 20th Street and fronts thereon 124 feet.

and property is conveyed subject to all restrictions, reservations, zoning ordinances or covenants that may appear of record, on the recorded plat(s) or on the premises.

This being the same property as conveyed to Grantors by deed of Evelyn W. Williams dated December 16, 1976 and recorded December 21, 1976 in the ROD Office for Spartanburg County in Deed Book 44-F at page 793.

1980 DEC 30 10:00

110:00

EXHIBIT D PAGE 2 OF 2

DEED 73 - U P 8 3 3 9

Together with all and singular the rights, members, hereditament and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs or successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantors'(s') successors or assigns to warrant and forever defend all and singular said premises unto the grantee(s) and the grantees'(s') heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's(s') hand(s) and seal(s) this 27th day of April, 2001.

SIGNED, sealed and delivered in the presence of:

Tammy S. Hill
WITNESS

Joe H. Marcus
JOE H. MARCUS

Dorothy W. Marcus
WITNESS

Dorothy W. Marcus
DOROTHY W. MARCUS

State of South Carolina)

Acknowledgement

County of Greenville)

I, Tammy S. Hill, Notary Public for the State of South Carolina, do hereby certify that Joe H. Marcus and Dorothy W. Marcus personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 27th day of April, 2001.

Tammy S. Hill
Notary Public for the State of South Carolina
My commission expires: 08/15/07

Office of Registrar of Deeds
Spartanburg, South Carolina
Book 73 Page 338
Recorded in DEED 73 - U P 8 3 3 9
Spartanburg, South Carolina

1 STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

2 COUNTY OF SPARTANBURG)

3

4 SUNTRUST BANK S/B/M TO NATIONAL)
5 BANK OF COMMERCE, INCLUDING ITS)
6 DIVISION, CENTRAL CAROLINA BANK,)

7 PLAINTIFF,)

8 -VS-)

(TRANSCRIPT OF TESTIMONY)

(2008CP42-4539)

9 BRANDY K. BRYANT A/K/A BRANDY K.)
10 MCGARTHY, ARNOLD L. BRYANT,)
11 PHYLLIS W. DAVIS, AND STEPHEN FORD,)
12 AS SPARTANBURG COUNTY TAX)
13 COLLECTOR,)

14 DEFENDANTS.)

Spartanburg, South Carolina

15 REFERENCE HELD: FEBRUARY 2, 2009.

16 B.E.F.O.R.E: HONORABLE GORDON G. COOPER,
17 MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

18 A P P E A R A N C E S:

19 KORN LAW FIRM
20 BY: DEAN A. HAYES, ESQUIRE
21 Attorneys for the Plaintiff.

22 LOVE, THORNTON, ARNOLD & THOMASON, PA
23 BY: JOHN B. DUGGAN, ESQUIRE
24 Attorneys for the Defendant Phyllis W. Davis.

25 Sarah Hollis, Court Reporter

1 THE COURT: All right. We will start off with SunTrust Bank versus Brandy K. Bryant, Arnold
2 L. Bryant, Phyllis W. Davis, et al. Case Number 2008-4539. The Plaintiff has filed a Motion for
3 Summary Judgment. Are you ready to proceed?

4 MR. HAYES: Yes sir.

5 THE COURT: All right.

6 MR. HAYES: Your Honor, I am not sure if there are any disputed facts in the case. We agree
7 that they have a judgment that was filed I think in February of 2001 against the Defendant Arnold
8 Bryant. We have a note and mortgage that were dated April 27, 2001 and the mortgage was filed
9 on May 1, 2001 in Book 2477 at Page 879. It was on TMS Number: 9- 04-05 072.00, which is
10 Lot 41 in the Victor Mill Village Subdivision in Greer. Our mortgage was a purchase money
11 mortgage. I have filed with my Motion for Summary Judgment an Affidavit which shows that
12 my client is owed about Fourteen thousand & no/100 (\$14,000.00) dollars on the note which is in
13 default, \$14,754.48, to be exact. That is accrued interest through November 30, 2008. The
14 property was sold at tax sale by Stephen Ford, the Tax Collector for Spartanburg County, and it
15 was sold on November 6, 2006. The tax deed had already been issued to Equifunding, the
16 successful bidder at the tax sale. There is an overage of \$8,832.87, that is being held by Mr.
17 Ford, who has appeared today. My client is claiming the overage on two theories. One is a
18 contract theory and one is the equitable lien theory. Under the contract theory, paragraph 9 of the
19 mortgage says that the proceeds of any award or claim for damages, direct or consequential, in
20 connection with any condemnation or other taking of the property, or part thereof, or for
21 conveyance in lieu of condemnation, are hereby assigned and shall be paid to lender, subject to the
22 terms of any mortgage, deed or trust or other security agreement with a lien which has priority
23 over the mortgage. As far as the equitable lien theory, I am relying on South Carolina case law
24 which under Knapp v. Victory Corp., 279 SC 80, which held that the mortgagee is entitled to an
25 equitable lien on fire insurance proceeds by Twin City Power v. Savannah River Electric

1 Company, 163 SC 438, which states in equity the damages assessed to the owner of the land, is
2 deemed the land, and the mortgagee may follow the money in the mortgagor's hand to prevent its
3 going into his hand. And I am not really sure if anyone really disputes that except for the fact that
4 I think Mr. Duggan on behalf of his client is disputing the priority but I haven't spoken to him, I
5 don't believe, about that issue. But my position would be that when you have a purchase money
6 mortgage under the Hursey v. Hursey case, it states that nothing comes before a purchase money
7 mortgage simply because the person would not have been able to get the land to which his
8 judgment attached without the purchase money mortgage. And I think the law is fairly clear that
9 a purchase money mortgage is prior to a subsequent judgment, as a matter of fact, let's see, in
10 Hursey, v. Hursey, that is 284 SC 323, the Court states we note that neither the Master nor the
11 circuit court made a finding that the mortgage was a purchase money mortgage. A purchase
12 money mortgage is recognized at common law and in equity where a purchaser of land can
13 contemporaneous with the acquisition of the legal title or afterward, but is part of the same
14 transaction to execute a mortgage to secure the purchase money. It is afforded priority over all
15 other claims or liens arising through the mortgagor although they are prior in time to the execution
16 of the purchase money mortgage. And that is exactly what we have in this case, Your Honor.
17 Their judgment was filed February 2001, I am not sure of the exact date but it was approximately
18 two (2) months prior to our mortgage that was filed against Arnold Bryant. Arnold Bryant he
19 signed a note to pay for the purchase of this property which was sold at a tax sale. Again Your
20 Honor, I think either under the contractual theory or the equitable lien theory that we are entitled
21 to the overage. That is it.

22 THE COURT: All right. Counsel.

23 MR. DUGGAN: Thank you, Your Honor. Your Honor, this is just a quick chronology. We
24 really don't agree about the facts, Your Honor, and it is a priority issue but in this case we sued
25 Mr. Arnold Bryant and obtained a judgment which was properly recorded, that is not in dispute,

1 on February 12, 2001. The transaction in question, Mr. Hayes' client became involved in
2 occurred two and a half months later. After this judgment was properly recorded putting
3 everyone on notice. Now, SunTrust Bank's predecessor was Central Carolina Bank at the time
4 that it actually issued this note and mortgage. And it is our position that had the bank done what
5 we use lawyers to do, which is to check the title, they would have been on notice of this lien. So
6 they are deemed to know of anything that is properly recorded here as a lien. And so here we
7 submit that because we obtained a prior judgment against him the sale proceeds should be applied
8 first to satisfy that judgment which everyone is deemed to have had notice of it at the time of such
9 transactions and it is sort of you know you take your risk. And all I submit here is that we have a
10 valid judgment obtained against this gentleman who didn't pay his debts and if we allow people to
11 avoid paying their proper debts and continue to do transactions like this which allowed the
12 legitimate judgment creditor not to be able to protect their rights then judgments don't mean
13 anything and here we followed all of the appropriate processes and we believe that these proceeds
14 should be applied first to satisfy Mrs. Davis's judgment. There is more than enough money
15 available to pay off her judgment. So, of course, the balance would then go to SunTrust Bank, we
16 don't quarrel with that. But Your Honor, we agree on all of the facts. There is no real dispute
17 about that. So it is a pure question for you to decide, applying the appropriate law.

18 THE COURT: All right. And why is Mr. Ford here?

19 MR. HAYES: I gave him notice but actually I wanted to meet him and tell him that his office
20 did a fine job. I have already done that.

21 THE COURT: That is why I was looking at your pleadings and your pleadings don't ask for or
22 question the sale.

23 MR. HAYES: No sir, they do not. I have looked at it and in this case either I didn't find
24 anything that I could set it aside based on or my client just decided here is \$8,000.00. We are
25 owed fourteen, lets just take what we can.

1 THE COURT: Right.

2 MR. HAYES: And so I apologize to Mr. Ford.

3 THE COURT: Mr. Ford is here just that you noticed him but not to testify and go over the terms
4 of the sale to make sure that the terms of the sale were, that his procedures were properly done?

5 MR. HAYES: That is correct. I am not disputing the procedures, Your Honor.

6 THE COURT: Okay.

7 MR. HAYES: We are glad to have him, Your Honor.

8 THE COURT: I understand.

9 MR. FORD: Would you like a copy of the file?

10 MR. HAYES: I think that I already have one, thank you.

11 THE COURT: All right. And if you don't have anything of Mr. Ford we will excuse him.

12 MR. HAYES: That is fine.

13 MR. FORD: All right. Nice to meet you.

14 MR. HAYES: Nice to meet you.

15 MR. FORD: Thank you Judge.

16 THE COURT: All right. Have a good day. Well the question I have is, if the judgment
17 attaches at all it attaches to only one-half.

18 MR. HAYES: Right.

19 THE COURT: Because it is against Arnold Bryant.

20 MR. DUGGAN: Right. And I am assuming it is a tenancy in common - - -

21 THE COURT: Well that is what I was looking at.

22 MR. HAYES: Yes.

23 MR. DUGGAN: That wasn't expressly alleged but I have been operating under the belief.

24 THE COURT: Right.

25 MR. HAYES: I am not sure that really matters though because I mean, I think the case law is

1 fairly clear that on a purchase money mortgage the purchaser as a matter of fact, here it is in the
2 Crystal Ice case. It says, this isn't a case where the seller is actually the seller but it says the
3 reason most frequently advanced for the rule given preference to purchase money mortgages over
4 an outstanding interest acquired through the mortgagor is that the execution of the deed and the
5 mortgage which are simultaneous acts so that no claim arising through the mortgagor can attach
6 before the mortgage. And I mean the theory with purchase money mortgages is they don't get
7 anything, they would not get the property but for the purchase money mortgage. So they come
8 hand in hand and so the judgment can't attach until after the purchase-money mortgage. I have
9 done - - -

10 THE COURT: That I don't have a question about. The question I have is that once the purchase
11 money mortgage security or whatever has been converted to cash.

12 MR. HAYES: Yes sir.

13 THE COURT: Does this same theory, I know you states from it, does the same theory follow or
14 track the proceeds from the sale of what was the purchase money secured by the property so to
15 speak?

16 MR. HAYES: Yes sir. Yes sir. If you think about it the same thing happens with the public
17 sale of foreclosed property as well. You have the proceeds and if you have two or three creditors
18 out there then they file a claim for the surplus and you have to decide who is entitled to it and you
19 do that based on priority. And that is the same issue here. There is not really a case that states it
20 exactly in South Carolina but it does say that there is one where the proceeds in the FCX v. Long
21 Meadow Farms, Inc., 269 SC 202 case, the Court said the question then before us is the following.
22 What is the priority, if any, in the payment of judgments herein. Specifically does, FCX, the
23 Plaintiff, have any prior position by virtue of its agreement with Long Meadow Farms? If Long
24 Meadow Farms had held legal title to the real estate, then, under established law, the judgments
25 would constitute a lien upon the real estate in the order of their filing and there would be no

1 question of priority. In the FCX case they were dealing with proceeds, but in that case they stated
2 the rule which is, if the Defendant in that case, which is the purported owner had legal title instead
3 of the equitable title they had, the Court – I am not sure if this is the Court of Appeals or the
4 Supreme Court, the Court in that case said that if this purported owner had legal title then there
5 would be no question as to the priority. They would be given the proceeds, quote, in the order of
6 their filing. If you want a copy of that case, I have it.

7 MR. DUGGAN: Your Honor, we would like to respond to that. I don't know if Dean is
8 finished.

9 THE COURT: That is fine.

10 MR. HAYES: Yes. Go ahead John.

11 MR. DUGGAN: Your Honor, I have got a copy of Crystal Ice here, but I want to say that I think
12 Mr. Hayes is correct. There is no cases that address this expressly. Do you want me to proceed
13 or wait until you take a look at that?

14 THE COURT: No, no, I can multi-task.

15 MR. DUGGAN: I can't.

16 THE COURT: Go ahead.

17 MR. DUGGAN: When you look at Crystal Ice what is the driving force in that case and it had to
18 do with the fact that one lawyer got involved in a transaction involving several different parties,
19 including Crystal Ice. Mr. Rose and his company and Colonial. And what happened is he had
20 knowledge of all of the various transactions that occurred but he had took the responsibility to
21 record all of the documents and Crystal Ice's security interest was recorded first and so the lower
22 court ruled that Crystal Ice was the first to record therefore under the recording statute they have
23 priority. And what our State Supreme Court said is no, the reason why this is an exception to the
24 normal rule is because the agent acting for everyone had knowledge of the prior transaction which
25 wasn't recorded first. So here equity goes against allowing Crystal Ice who had the subsequent

1 transaction but recorded first to have priority. And in dicta in that case they talk about how some
2 times a purchase money mortgage is given in priority but the facts of Crystal Ice have absolutely
3 nothing to do with the case before you today where you have adjacent creditor recorded in the
4 courthouse two and a half months before the bank decides to loan this guy money and they have
5 plenty of opportunity to waltz right over here and see that and factor that in to what they want to
6 do when they loan this man money. They do not come into this Court with clean hands. They are
7 charged with the knowledge of that publicly recorded judgment. And they have chosen, either
8 their lawyer missed it or they didn't have a title examination done and know who they were
9 dealing with but there are consequences of that, when they don't. And all I say is my client, who
10 is a legitimately owed money and followed the proper legal process should recover an appropriate
11 portion of the proceeds of this tax sale and the fact that the Bank comes in with a transaction two
12 and a half months later and say godly we ought to get priority doesn't mean that they should and I
13 don't agree with Mr. Hayes that there is a bright line of cases in this state that says that because
14 you have a purchase money mortgage you get priority over every other judgment creditor no
15 matter what and I don't believe that is the law of this state. And that is my position, that is I
16 don't agree that Crystal Ice has anything to do with our facts and I think the dicta in it is not
17 binding and only applies to some circumstances where there are a reason why the purchase money
18 mortgage does get priority which doesn't apply here.

19 MR. HAYES: At first I would respond by stating that Hursey v. Hursey specifically states, do
20 you have a copy of that case, Your Honor?

21 THE COURT: No. I don't have.

22 MR. HAYES: I had previously given a copy to Mr. Duggan. It specifically states that a
23 purchase money mortgage is recognized at common law and in equity where a purchaser of land
24 contemporaneous with the acquisition of legal title or afterwards that is part of the same
25 transaction that executed a mortgage to secure the purchase money. And then it cites three cases,

1 it cites C & S National Bank of South Carolina versus Smith, 277 SC 162. It cites Crystal Ice,
2 which we have already alluded to and it also cites 55 Am. Jur. 2d *Mortgage*, Section 349. And
3 then it goes on to say, it is accorded priority over all other claims or lien arising through the
4 mortgagor although they are prior in time to the execution of the purchase money mortgage.

5 MR. DUGGAN: And Your Honor, his Crystal Ice doesn't address that - - -

6 THE COURT: All right.

7 MR. HAYES: That is why I said Crystal Ice is not exactly on point because the purchase money
8 mortgage in Crystal Ice was from the seller. Hursey v. Hursey states the rule clearly.

9 THE COURT: I have always held that a purchase money mortgage takes the priority but the
10 question that I am having now is does it take priority in this situation where you have got now,
11 you don't have the property, what you have got is cash. It has been converted to cash. Does the
12 same follow through to that or not?

13 MR. HAYES: Yes sir, it does. Because again in the FCX case, I think I handed up. If you look
14 on page 4, now in this case they are talking about, if you look up at the top it says, the only matter
15 appealed from is his ruling that the proceeds obtained from the sale of the real estate should be
16 distributed in the order in which the judgments were filed in the office of the Clerk of Court.
17 And then it goes on to say, in the next paragraph, it goes on to say how the proceeds would be
18 distributed and that would be distributed. It says that if the so called owner, Long Meadow Farms
19 had held legal title to the real estate then the judgment would constitute a lien, then the judgment
20 would constitute a lien upon the real estate in the order of their filing. And again Your Honor, it
21 goes back to the same thing as with a sale of property from a foreclosure sale. And if you are
22 talking about equity, again you are allowed to with equitable subrogation, which I am sure Your
23 Honor is familiar with here, a mortgage can jump over a prior lien because it paid off the lien that
24 was even prior to the prior lien, if you miss it when you are doing a title search. Actually I think
25 if you have knowledge of the lien, the Deas case says that if you have knowledge of the lien that

1 still does not prevent you from having priority. Deas v. Strickland. I mean they would not have
2 had the property but for this mortgage. Your Honor, one more thing. They also decided this on
3 insurance proceeds, as well. The Knapp, k-n-a-p-p, Case v. Victory Corporation. They said that
4 it should be applied first to the first mortgage.

5 THE COURT: I am not going to talk about the elephant in the room. The question is why did
6 SunTrust Bank or did they respond to the notice of the redemption rights in the original tax sale?

7 MR. HAYES: They did not. They did not.

8 THE COURT: Right.

9 MR. HAYES: Your Honor, I don't know - well I don't think that it matters because they would
10 still be entitled to a lien on the proceeds. I mean that is a choice that they made as far as me not
11 contesting it and again I don't know whether I found out that we didn't want to contest it or what
12 but the proceeds that are being held by the tax collector are substitute property under the cases I
13 previously cited, the Knapp case and the Savannah River case. I am trying to find that case right
14 now. I would have, I only made one copy of that case because it was forty-six (46) pages but that
15 was Twin City Power v. Savannah River.

16 MR. DUGGAN: Your Honor.

17 THE COURT: Go ahead.

18 MR. DUGGAN: I would just like to respond. I think your observation is significant in that this
19 lending institution has had a number of opportunities along the way to protect its interest and for
20 whatever reason has not done so. My client did the best they could to protect their interest and at
21 some point I respectfully believe that should be vindicated in this process. And you know,
22 because they are out of their money just like the Bank is. And here where you had a number of
23 opportunities by the lender to act in a vigilant way and to avoid being in this dilemma and they
24 didn't do it. And I respectfully submit under all of these circumstances this case law that he is
25 citing doesn't apply to the specific facts that we have before us today and you know I have looked

1 at the same case citations that Dean shared with me and I would just respectfully submit that they
2 don't expressly deal with this kind of circumstance.

3 THE COURT: Let me look at the thing that Mr. Ford left. He probably left a copy of his file?

4 MR. HAYES: Yes. That is what he indicated it was.

5 THE COURT: Well the property was titled, it is Arnold L. Bryant and Brandy K. Bryant, joint
6 tenants with rights of survivorship.

7 MR. HAYES: I have a copy of the deed right here, Your Honor.

8 THE COURT: I have got it right here in this.

9 MR. HAYES: And Your Honor, Mr. and Mrs. Bryant did not respond to the Summons and
10 Complaint in this case.

11 THE COURT: So the next question then is will that judgment against Arnold L. Bryant attach to
12 the joint tenant with right of survivorship property.

13 MR. DUGGAN: Your Honor, I don't think it changes the circumstance there because clearly he
14 had an ownership interest along with her at the time that this transaction was initiated by the tax
15 collector.

16 THE COURT: Well, I am still not clear as far as when the property is sold and you have got the
17 proceeds in this situation if you - I know your argument is that, and I can't specifically find it. So
18 what I am going to do is, if the judgment attached at all it was to one-half (½) interest, so I am just
19 going to split the baby.

20 MR. HAYES: Your Honor, I mean - - -

21 THE COURT: I understand.

22 MR. HAYES: I mean again under Knapp it attaches to the insurance proceeds, under foreclosure
23 proceeds it attaches and it is clear that it attaches in the order of their priority. So I respectfully—

24 THE COURT: I understand.

25 MR. HAYES: --- Disagree.

1 THE COURT: With my holdings.

2 MR. HAYES: Yes sir.

3 THE COURT: I understand that.

4 MR. HAYES: Okay.

5 THE COURT: But I just think given the facts of the case and given the way this was sold at the
6 tax sale, the question of priority just seems to me that then you revert back to just a question of
7 priority of recording but now your argument is that regardless of what happens to those funds the
8 purchase money mortgage and its proceeds take priority.

9 MR. HAYES: My argument in a nutshell, Your Honor, is that the purchase money mortgage
10 holder is entitled to the same priority in the property, I mean in the proceeds from the sale of the
11 property as it is to the property, itself. And that is my argument.

12 THE COURT: And I understand your argument but given the way this case proceeded the
13 lender had the opportunity to redeem this property and chose not to redeem the property but
14 rather, and then to proceed with its foreclosure action.

15 MR. HAYES: They may not have specifically chosen to not redeem the property. If they were
16 given notice then they may have made a mistake in not redeeming the property but I specifically
17 don't know if they chose not to redeem it. And really I - - -

18 THE COURT: I understand what you are saying, without saying it, I understand what you are
19 saying.

20 MR. HAYES: Yes sir.

21 MR. DUGGAN: Your Honor, the best way to have protected their interest, they would have done
22 exactly what you are thinking. Which is to redeem this property and do their best to sell it and
23 recover their loss. And they sat on those rights just like they loaned money to a guy with a
24 judgment that they are deemed to have knowledge of because it was in the public records and that
25 puts you to begin with in a questionable transaction but then they don't follow through and protect

1 their interest and yet they are still in here asking for help and relief. And I think this Court is
2 exactly right, we are in equity. We are trying to do fairness to all of the parties and I think this is
3 an appropriate remedy given the fact that they could have maximized their opportunity to recover
4 their funds had they redeemed this property and taken responsibility for it themselves. But they
5 chose to just let it go through the tax process and I think that does impact the circumstance and
6 makes it distinguish from case precedence that Mr. Hayes has shared with the court.

7 MR. HAYES: Your Honor, again they would not have had the property but for my client loaning
8 the money.

9 THE COURT: I understand. I understand. Now when was this deed, the deed from the -
10 November 6, sale?

11 MR. HAYES: Yes sir.

12 THE COURT: And you filed this action - - -

13 MR. HAYES: It may have been in August, Your Honor. I am not positive. For some reason
14 August just sticks. I think it was September, Your Honor. I am sorry, it was August.

15 THE COURT: Of 2008?

16 MR. HAYES: Yes sir.

17 THE COURT: All right. And what was the date of the transfer, the actual transfer of the
18 property?

19 MR. HAYES: The date of the transfer was in, I think it was March of 2008, Your Honor. It was
20 in early 2008. I set forth in the - it was issued on March 28, 2008. At the time we filed this
21 action it probably had not been recorded, otherwise, I usually put in there when they are recorded.

22 THE COURT: Yes. The problem I have with it given the facts of this case, the lender had the
23 opportunity to redeem this property and allowed it to go - - -

24 MR. HAYES: Your Honor - - -

25 THE COURT: I understand. I understand your argument.

1 MR. HAYES: I am just saying that it is not before us as to whether the tax sale was valid or
2 invalid.

3 THE COURT: Correct.

4 MR. HAYES: Whether the notice was given to my client or not. That again is not before us,
5 because my client elected to proceed for the overage.

6 THE COURT: Right.

7 MR. HAYES: So we don't know if they chose to or whether the notice was proper or whether it
8 wasn't proper. So that is an issue that is not before the Court. And I respectfully believe that it
9 does not matter but again whether they were given notice and chose to or whether they were not
10 given notice at all that is not one of the stipulated facts, Your Honor.

11 THE COURT: Well, I still am of that same opinion but what I will do and the same situation that
12 he is in, is that this is a payment in partial satisfaction of his judgment and if you want to, you
13 don't have a number in as far as what your total debt is.

14 MR. HAYES: Yes sir, I do.

15 THE COURT: But was it included in your pleadings?

16 MR. HAYES: It was included - - -

17 THE COURT: But that was not apart of the relief you sought. Where I am going with this is,
18 what I will do is say that his attaches to one-half (1/2). You get the rest. But you have a total
19 judgment of whatever minus so you have got a remaining judgment in that amount.

20 MR. HAYES: Your Honor, I did not plead—

21 THE COURT: I know you didn't.

22 MR. HAYES: Okay. I mean all I was trying to do was get to the overage, so I didn't---

23 THE COURT: I understand that. But to make it more digestible, I will entertain your motion to
24 amend to set out your total debt and then whatever of this goes against your total debt and then
25 you will have a judgment against Brandy Bryant and Arnold Bryant for what is left remaining on

1 your debt.

2 MR. DUGGAN: Your Honor, I don't oppose that.

3 MR. HAYES: My client has chosen - - -

4 THE COURT: I understand.

5 MR. HAYES: Its remedy and I think that it is entitled to the overage. I mean if we have to go
6 back and amend and then we are just going to get even less because we are going to spend more in
7 attorney's fees.

8 THE COURT: Well I am not saying that you go back in. I am just saying that to prepare the
9 Order that provides that you have a total judgment, that your total judgment is such and such and
10 that the amount that you will receive from the tax collector is such and such which remains and
11 leaves you now a total judgment of this figure.

12 MR. HAYES: I think under the Rules of Civil Procedure, I am not allowed to get without
13 amending and notice to the Bryants a remedy that I haven't requested in my pleadings. In my
14 pleadings I did not set forth the exact amount. What I did is I say it is an amount exceeding the
15 amount of the overage because that constantly changes so I just say - - -

16 THE COURT: But you do have your Affidavit of Debt in here.

17 MR. HAYES: Yes sir, but I didn't specifically - - -

18 THE COURT: And your notice, your Affidavit is in there.

19 MR. DUGGAN: And Your Honor that was served on me and I think that it was served on all of
20 the parties. That is notice.

21 MR. HAYES: But that is not the relief, I was requesting. I was not requesting - - -

22 THE COURT: I understand that you were not. But I am saying that I will grant it if that is what
23 you - because your Affidavit of Debt is clearly here and it was clearly served on them as far as
24 what they owe to you.

25 MR. HAYES: I don't think, ethically I don't think that I can do it. I don't think the Rules allow

1 me to do it. I think that I am required to amend. I mean, I wish that I could get a judgment,
2 Your Honor, but I - - -

3 MR. DUGGAN: Alternatively, if Mr. Hayes is uncomfortable with that Your Honor, I think you
4 have the appropriate evidence before you to find what the balance was due as of the date of that
5 Affidavit and then he can sue based upon that to secure his judgment.

6 THE COURT: Well whichever way - - -

7 MR. DUGGAN: And then he can join me in trying to pursue these sorry people to get our
8 money.

9 THE COURT: Well it is just whatever he feels comfortable with. In your general pray for relief
10 it was for such other and further relief as may be just and proper. That is up to you. If you don't
11 feel comfortable with it then I will not - - -

12 MR. HAYES: I don't feel comfortable with it.

13 THE COURT: All right. Then at this point my finding is going to be that the attachment is one-
14 half (1/2) to Phyllis Davis and one-half (1/2) to SunTrust Bank. And if you want to make further, I
15 am going to have you prepare because you are the - - -

16 MR. HAYES: Yes sir. This is done on summary judgment, Your Honor.

17 THE COURT: Right.

18 MR. HAYES: But I mean the stipulation of facts would not - I think we stipulated as to all
19 relevant facts. Now there was no stipulation as to the tax sale itself and I think I alluded to that.

20 THE COURT: Right.

21 MR. HAYES: I just want to make sure that we are clear here that it is being decided, that we are
22 both stipulating as to the facts so this order as to the summary judgment is a final order from
23 which I can appeal.

24 THE COURT: Right.

25 MR. HAYES: Okay. All right.

1 THE COURT: That would be my understanding and based on that if you want to put more
2 language in the order that finds that the priority did not follow based on the facts, and submit a
3 copy to him to review before you submit it to me. And then that the tax collector is directed to
4 release.

5 MR. HAYES: Okay.

6 THE COURT: And if you will work on that language and however you want to - - -

7 MR. DUGGAN: Your Honor, I will send it to Mr. Hayes before I send it to the Court.

8 THE COURT: All right.

9 MR. HAYES: Thanks, Judge.

10 THE COURT: And if you decide that you want to pursue other remedies before that order is
11 signed.

12 MR. HAYES: Okay. I will.

13 THE COURT: That is an option as well.

14 MR. HAYES: Okay. Thank you Judge.

15 THE COURT: All right. But again the only question I have is if we still had the security on the
16 property, the property was still in tact with your - in other words, we didn't have the tax sale.

17 MR. HAYES: Right.

18 THE COURT: I would not have a question as to the priority.

19 MR. HAYES: Right.

20 THE COURT: But once the tax sale took place and the lender stood silent and did not redeem
21 the property, I am just. That is my ruling and that is the way that I am thinking.

22 MR. HAYES: I understand.

23 THE COURT: And then now to come in and say well I am entitled to all of this because of the
24 purchase money mortgage and the flow of those funds from the property that was secured by a
25 purchase money mortgage which my client was entitled priority because of the purchase money

1 mortgage theory. Do you follow me?

2 MR. HAYES: I follow you, Your Honor, ---

3 THE COURT: That is where we are. And I am taking the position that under this set of facts
4 that it is more equitable to divide the proceeds one-half ($\frac{1}{2}$) which would represent the attachment
5 to the joint tenant and one-half ($\frac{1}{2}$) to---

6 MR. HAYES: I understand your ruling.

7 THE COURT: Okay.

8 MR. DUGGAN: Judge, I just want to thank you for hearing us out thoroughly and wrestling with
9 us ---

10 THE COURT: Well, it is always ----

11 MR. DUGGAN: I really appreciate it very much.

12 THE COURT: Well Mr. Hayes is always diligent in his efforts so I anticipate further review of
13 this case, which is fine. It is a good -- if it was an easy question. But I have a problem, in this
14 case the priority being attached based on these set of facts. That is all.

15 MR. HAYES: I understand.

16 THE COURT: Okay.

17 MR. HAYES: Thanks a lot.

18 THE COURT: All right. Have a good day.

19 -----END OF MOTION-----
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1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

4
5 CERTIFICATE

6
7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County of
8 Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and accurate
9 Transcript of Testimony of the proceedings had at the hearing of the captioned case, before the
10 Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South Carolina, on the
11 2nd day of February, 2009.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13
14 *Sarah Hollis*
15 Sarah Hollis
Court Reporter

16
17 SWORN to before me this
18 26th day of June, 2009.

19 Spartanburg, South Carolina.

20
21 *Jennifer M. Allen*
Notary Public for South Carolina
22 My Commission Expires: January 31, 2015.

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF SPARTANBURG)

COURT OF COMMON PLEAS
2008-CP-42-4539

3 SunTrust Bank s/b/m to National Bank of)
4 Commerce, including its Division, Central)
5 Carolina Bank,)

Plaintiff,)

TRANSCRIPT OF RECORD

6 vs.)

7 Brandy K. Bryant a/k/a Brandy K. McGarthy,)
8 Arnold L. Bryant, Phyllis W. Davis and)
9 Stephen Ford, as Spartanburg County Tax)
Collector,)

Defendants.)

July 23, 2009

Spartanburg, South Carolina

12 BEFORE:

13 HONORABLE GORDON G. COOPER, Master-in-Equity

14 APPEARANCES:

15 ~~DEAN A. HAYES, Esquire~~
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17 Attorney for Plaintiff

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Greer, South Carolina 29652-0449

21 Attorney for the Defendant, Phyllis W. Davis

23 DOROTHY HUNTSINGER
24 Court Reporter

1 THE COURT: This is case number 2008-4539, SunTrust Bank versus Brandy
2 K. Bryant, et al. This is a hearing requested by Mr. Hayes on the Motion to Alter or
3 Amend the Judgment that was entered in this case. Alright, Mr. Hayes.

4 MR. HAYES: Yes, sir. Your Honor, I had submitted a Memorandum in support
5 of my motion. I don't know if the Court, if you've had a chance to read it or not.

6 THE COURT: I have.

7 MR. HAYES: Or if you want me to go through it or ---

8 THE COURT: No, I just ---

9 MR. HAYES: --- just hit the high spots.

10 THE COURT: Just hit the high spots.

11 MR. HAYES: Okay. Yes, sir; Your Honor. Well, this is a case where the
12 original hearing was held on -- sometime in October, on October the 2nd. My client ---

13 THE COURT: I think the real, the real issue as I remember the case ---

14 MR. HAYES: Uh-huh.

15 ~~THE COURT: --- was that this matter, or this property went to tax sale.~~

16 MR. HAYES: Yes, sir.

17 THE COURT: Your client had a purchase money mortgage originally.

18 MR. HAYES: Yes, sir.

19 THE COURT: That it did not foreclose.

20 MR. HAYES: Right.

21 THE COURT: And the property was sold at the tax sale. There was a surplus
22 and your position was that your client was entitled to all of it since you had a purchase
23 money mortgage and you would be superior.

24 MR. HAYES: Yes, sir.

25 THE COURT: And as I understand the other part of it, or as I remember it, was

1 that there was a judgment entered against one of the parties, Arnold Bryant.

2 MR. HAYES: Yes, sir; that's correct.

3 THE COURT: And what I did was at that point and again correct me if I'm
4 wrong and I'm trying to get us to the bottom line, and that is that I ruled that the -- you
5 were not entitled to all of it. You no longer had a priority because the fact that you had
6 a purchase money mortgage to begin with does not -- once it was converted that there
7 was not a priority and your interest only applied to half. The priority was over here
8 with the judgment and his judgment was prior in time anyway, as I recall it.

9 MR. HAYES: Yes, sir.

10 THE COURT: Prior to your purchase money mortgage.

11 MR. HAYES: Right.

12 THE COURT: Had you foreclosed the mortgage, there would be no question that
13 a purchase money mortgage, you would have taken priority over the judgment, but that
14 wasn't the issue. The issue was once it got sold at the tax sale you no longer had, and
15 ~~you did not foreclose your mortgage, and you did not elect to go through the setting~~
16 aside the tax sale because of some kind of defect in the tax sale.

17 MR. HAYES: Right.

18 THE COURT: So as I --- Am I wrong, or is that ---

19 MR. HAYES: That is exactly it.

20 THE COURT: That is where we are.

21 MR. HAYES: Yes, sir.

22 THE COURT: And so my ruling was that you were -- your priority only existed
23 as to the half over here, and this priority over here was on the judgment and it was ---

24 MR. HAYES: And my argument is that the priority goes to the proceeds as well.

25 THE COURT: Right.

1 MR. HAYES: If it did not, when there was a foreclosure action, you would
2 distribute the proceeds from the foreclosure sale because none of the other lien holders,
3 the junior lien holders to the foreclosure, foreclosed their interest either, so my
4 argument is that it goes to the proceeds, if it went to the property, you have the same---
5 If you have a legal --- It's like the FCX case said, if you have a legal interest in the
6 property, there is no question as to the priority and FCX was not a foreclosure case.

7 THE COURT: And I remember that argument, but I -- my ruling was that once
8 it was converted, once it became money, that you no longer had a priority on it.

9 MR. HAYES: But my argument is that you had the same priority on the proceeds
10 as you had on the property.

11 THE COURT: I know, and that was your argument at that time.

12 MR. HAYES: It's still my argument.

13 THE COURT: Right. And I don't think there was any case law submitted as to
14 that exact point that your priority existed on the tax sale proceeds.

15 ~~MR. HAYES: As to a tax sale, Your Honor, as to this specific instance as to a~~
16 tax sale, no sir.

17 THE COURT: Right.

18 MR. HAYES: But there have been cases on -- other cases, without being
19 foreclosure cases. Now I have--- And the reason being if the purchase money
20 mortgage -- but for the purchase money mortgage, his client would receive nothing. If
21 my client had not bought the property, had not given him the money to buy the
22 property, Mr. Bryant would have had nothing, so priority should go to the purchase
23 money mortgage.

24 THE COURT: Okay.

25 MR. HAYES: I mean--- And if I could just put in a couple of cases for the

1 record, Your Honor.

2 THE COURT: Sure, sure. I remember the eloquence of your argument at the
3 first hearing on this and notwithstanding that, my---

4 MR. HAYES: I understand. I just ---

5 THE COURT: And my ruling was then that the priority did not exist as to the
6 tax sale funds.

7 MR. HAYES: Okay.

8 THE COURT: In other words, your purchase money status was no longer there.

9 MR. HAYES: The Order that was issued by the Court gave slightly different
10 reasons.

11 THE COURT: Well, I mean, that was my reasoning, that--- Whatever the
12 Order said, but that was my -- I think the bottom line of my finding that your priority
13 only existed as to that half.

14 MR. HAYES: Okay. I understand, but I'd still like to get ---

15 THE COURT: Okay. I understand.

16 MR. HAYES: --- something on the record.

17 THE COURT: You're ---

18 MR. HAYES: Okay.

19 THE COURT: You are welcome to.

20 MR. HAYES: Okay.

21 THE COURT: But I wanted to make sure you knew that I remembered the case.

22 MR. HAYES: That is correct.

23 THE COURT: And the function of it and how it went.

24 MR. HAYES: The Order that was issued didn't put it in those terms.

25 THE COURT: Okay.

1 MR. HAYES: At least in my mind it didn't.

2 THE COURT: Alright. Well, whatever the Order says, I mean that's what it ---

3 MR. HAYES: Okay, okay. Your Honor, I would like to just cite two specific
4 cases. The first one is a 2001 case, *Graves v American Acceptance Mortgage*
5 *Corporation*, 246 Michigan Appellate Court, page 1, a 2001 case, and this is a case
6 where the lien holder was foreclosing a judgment lien and alleged that their judgment
7 lien was entitled to priority, and the trial Court gave the judgment lien priority which
8 the judgment lien was filed prior to the purchase money mortgage. The Court -- and
9 the trial Court gave the judgment lien priority as to the proceeds from the sale, and the
10 Appellate Court said this is --- I'll give you a copy of the case.

11 THE COURT: Okay.

12 MR. DUGGAN: Which one is this, Dean?

13 MR. HAYES: *Graves versus American*. It said: we conclude that the trial Court
14 incorrectly granted Plaintiff summary disposition and denied Defendants' summary
15 disposition because the Court failed to accord Defendants' purchase money mortgage
16 interest the priority to which it is entitled by law. We further note that, to the extent
17 the trial Court indicated its belief that principles of equity and fairness mandate that
18 Plaintiff's interest in the property not be extinguished, the Court apparently failed to
19 consider the public policy behind recognizing the priority of purchase money
20 mortgages. Because third party lending is the dominant source of purchase money land
21 financing in this country, a rule which facilitates such lending is especially beneficial
22 to the national real estate economy. Applying the rule to benefit third party lenders is
23 plainly fair. While it is true that such lenders, unlike vendors, do not give up
24 ownership of specific real estate, they nevertheless part with money with the expectation
25 they will have security in that real estate. Without the advance of money, the purchase

1 money mortgagor would never have received the property and the other claimants
2 would never have had the opportunity to satisfy their claims from such a convenient
3 source. As in the vendor purchase money context, this section seeks to avoid conferring
4 a windfall on those claimants. The same thing as in this case, and that was not a
5 mortgage foreclosure case. So I mean basically that is my argument.

6 THE COURT: And I understand your argument, but the problem that -- or not
7 the problem. To my way of thinking, number one, it was -- and I went through this,
8 as I recall. The election was made either knowingly or not, by your client not to in
9 anyway challenge the tax sale.

10 MR. HAYES: That's correct.

11 THE COURT: And that was part of my reasoning that by that election and by
12 that process, and I may be stating it a different way, but I don't feel, and there is no
13 case law that says that once there is a tax sale that the purchase money mortgage retains
14 the priority that it would have had it foreclosed. Had you foreclosed, there is no
15 question that you would have priority over him, no question. I agree with that. I mean
16 that is the case law. That's it. But once there is no longer -- the property is no longer
17 there, all you've got -- your -- the priority doesn't follow to the fund. I mean, you're
18 talking about an equity situation here. You had the opportunity to take, to redeem this
19 property, and didn't -- and sat and didn't do anything during that time of redemption
20 that the lender could file to set aside the tax sale because it was not notified or whatever
21 grounds, and did nothing.

22 MR. HAYES: Your Honor ---

23 THE COURT: I mean, is that right or wrong? I mean, that is what happened.

24 MR. HAYES: They made an election, Your Honor.

25 THE COURT: Right.

1 MR. HAYES: But I mean, exactly why they made that election was not part of
2 the record and I think that I ---

3 THE COURT: Yeah.

4 MR. HAYES: --- made that clear.

5 THE COURT: And I -- and that was not the question. The bottom line is they
6 didn't do it.

7 MR. HAYES: Right. That's correct. But ---

8 THE COURT: So that was part of my reasoning, too, that once that election is
9 made and the fund is there, that the priority doesn't exist.

10 MR. HAYES: Wouldn't that be the --- But my argument is, in this case the
11 mortgage company wasn't foreclosing its mortgage.

12 THE COURT: I understand.

13 MR. HAYES: And what --- There are condemnation cases where it is
14 distributed by priority. I cited, I think the *Knapp* case.

15 THE COURT: Right.

16 MR. HAYES: There is ---

17 THE COURT: But the condemnation cases usually are governed by the terms
18 of the mortgage and what they are entitled to in the event of condemnation.

19 MR. HAYES: But as far as priority, it doesn't address it.

20 THE COURT: Yeah.

21 MR. HAYES: And as far as fire insurance proceeds, it doesn't address it, and
22 my argument is that it seems like the Court is carving out this one exception for tax sale
23 cases and without ---

24 THE COURT: Well, what I want you to give me is something that says in this
25 particular situation when there is a tax sale, the mortgagee has stood by and for one

1 reason or another, elected not to challenge a tax sale, that the -- after all of that happens
2 that the mortgagee still has the purchase money mortgage priority.

3 MR. HAYES: Your Honor, just like this case stated, but for us allowing the
4 money -- lending the money to buy the property, they would get nothing and so I'm just
5 -- I'm curious as to why equity favors giving them ---

6 THE COURT: Well, my -- the equity in this case is that the lender stood by and
7 did nothing.

8 MR. HAYES: Okay.

9 THE COURT: I mean, should I award you for your laches? I mean your sitting
10 and making the election that you're not going to do anything?

11 MR. HAYES: Your Honor, laches was not something---

12 THE COURT: I'm ---

13 MR. HAYES: Laches, waiver, there was nothing ---

14 THE COURT: I know.

15 MR. HAYES: --- was not something that was pled in the Answer.

16 THE COURT: I'm stating it.

17 MR. HAYES: Okay.

18 THE COURT: What I'm stating is, in my mind that it's not -- it doesn't follow
19 that you can sit -- when you had the opportunity to set aside this sale, maybe, but that
20 election was made to sit.

21 MR. HAYES: Okay.

22 THE COURT: So that was my position then and is now.

23 MR. HAYES: Okay. Your Honor, I would just like to ---

24 THE COURT: And this is a Michigan case.

25 MR. HAYES: That is a Michigan case, Your Honor.

1 THE COURT: Alright.

2 MR. HAYES: And there is another case that is out of Kansas, Kansas Court of
3 Appeals, and that is a case where a purchase money mortgage was foreclosing and that
4 the first lien holder, which in this case was a tax lien, which the Kansas Court said
5 should be treated like a -- just like a judgment lien. The tax lien holder was alleging
6 priority. This is *American General Financial Services, Inc. versus Carter*, a Court of
7 Appeals case out of Kansas, May 16, 2008. It does not have a cite yet. It is number
8 98,031. And in it, the Court again goes through and states the reason for the purchase
9 money mortgage holding priority and takes precedence over other claims and it said this
10 analysis is in harmony with the position taken by other states and actually cites the
11 South Carolina case of *Friarsgate, Inc. versus First Federal Savings and Loan*, 317
12 *South Carolina* 452. And that is my argument, Your Honor.

13 THE COURT: Alright. Counsel, anything?

14 MR. DUGGAN: Very little. Your Honor, I think the point that you made is that
15 ~~when the bank opted not to foreclose to protect its security interest in that property and~~
16 ~~it was then sold, there is no property left to secure that mortgage and it is extinguished~~
17 ~~for all practical purposes. It no longer is there. So the Court is left with the issue of~~
18 ~~you've got a pre-existing judgment and an institution who holds a promissory note at~~
19 ~~this point, and that is what you pointed out to us at the last hearing and again today, is~~
20 ~~really what this is, is a judgment holder and a promissory note holder, because in fact~~
21 ~~they never obtained a judgment, and what you said is as to the property my client had~~
22 ~~the interest in under that circumstance out of priority, but they had a priority with~~
23 ~~respect to the interest in the other person to whom they loaned and that is, you know,~~
24 ~~an equitable remedy and an equitable circumstance which I think is appropriate. I~~
25 believe that what Mr. Hayes is asserting is as if the mortgage had a life beyond the

1 moment when that property is lawfully sold while they stand back and take no action,
2 and I don't think you can have your cake and eat it, too. You either assert your rights
3 and protect them, or if you don't, you lose that part of your financial arrangement with
4 your debtor, and that is exactly what happened here. And then to turn around and say
5 that the judgment creditor who preexisted any loan at all has no interest whatsoever as
6 against the note holder who hasn't even obtained a judgment yet, I think is not a
7 persuasive argument and I agree with what you ruled before. I don't think we've really
8 heard anything new today.

9 MR. HAYES: Your Honor, I go back to the *Knapp versus Victory Corp.* case
10 and *Twin City versus Savannah River Electric* case. This is not a case where you are
11 just left with a note holder and a judgment holder. Those cases hold that when property
12 is converted into proceeds, the mortgage holder has a lien on those proceeds, has an
13 equitable lien on those proceeds.

14 THE COURT: But are we talking the same tax sale process in this one as well?

15 ~~MR. HAYES: These are fire insurance proceeds and --- let's see. Fire insurance~~
16 ~~and condemnation proceeds.~~

17 THE COURT: But not tax sale.

18 MR. HAYES: There has been no specific case on tax sales. There may be after
19 this one.

20 THE COURT: Well, (laughter) I do not --- And with all due respect to Counsel
21 and I appreciate your argument. I don't hear anything today that you didn't argue
22 before and I'm going to deny the motion to alter or amend the Order because I just
23 don't -- I have not heard anything that persuades me that I was not following what I
24 thought to be the equitable solution to it and actually there was no case law that I heard
25 that is on point that has the purchase money mortgage retain its priority to a tax sale

1 when there is opportunity for the mortgage holder to assert rights and reclaim or redeem
2 the property. So there was some intervening factors there other than just the ---

3 MR. HAYES: I understand.

4 THE COURT: So I will deny the motion and Mr. Duggan, if you will prepare
5 the Order.

6 MR. DUGGAN: I will. Thank you, Your Honor.

7 MR. HAYES: Your Honor, if I could get the Order within -- I'd like to get it
8 within ten days. I think the last time it took about three or four months. If I could get
9 it---

10 THE COURT: Well, I can --- Well, let me do this. I will have my office
11 prepare a Form 4 that just says the motion is denied.

12 MR. HAYES: That's fine.

13 THE COURT: Alright. And we will send it to both of you.

14 MR. HAYES: Thank you.

15 ~~THE COURT: That way we will take the burden off.~~

16 MR. HAYES: Okay.

17 THE COURT: Alright.

18 MR. HAYES: Thank you.

19 --- -- END OF RECORD --- --

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21

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23

24

25

STATE OF SOUTH CAROLINA)
) **C E R T I F I C A T E**
COUNTY OF SPARTANBURG)

I, the undersigned **Dorothy Huntsinger**, Court Reporter for the Office of the Master-in-Equity for the County of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of testimony of the proceedings had and evidence introduced at the hearing of the captioned case, before **Honorable Gordon G. Cooper, Master-in-Equity** for Spartanburg County, South Carolina, on the 23 day of July, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.


DOROTHY HUNTSINGER
COURT REPORTER

September 1, 2009

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all of the material proposed to be included by any of the parties, and not any other material.

February 12, 2010


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11-3-09

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

Case No. 2008-CP-42-4539

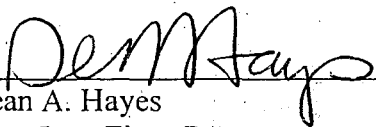
SunTrust Bank s/b/m National Bank of Commerce, including its
Division, Central Carolina Bank Appellant,

v.

Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant,
Phyllis W. Davis, and Stephen Ford, as Spartanburg County
Tax Collector Respondents.

INITIAL BRIEF OF APPELLANT

November 2, 2009


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STATEMENT OF ISSUES ON APPEAL

- I. DID THE MASTER IN EQUITY ERR BY FINDING THAT A PREVIOUSLY RECORDED JUDGMENT WAS ENTITLED TO PRIORITY OVER A PURCHASE-MONEY MORTGAGE IN THE DISTRIBUTION OF THE OVERAGE FROM A TAX SALE OF THE REAL PROPERTY SUBJECT TO THE PURCHASE-MONEY MORTGAGE?

STATEMENT OF THE CASE

On August 28, 2008, Appellant filed its summons and complaint. The complaint sought the overage from a tax sale of real property on which Appellant had a purchase-money mortgage. The defendants in the action were Brandy K. Bryant a/k/a Brandy K. McCarthy, Arnold L. Bryant, Phyllis W. Davis, and Stephen Ford, as Spartanburg County Tax Collector. Brandy Bryant and Arnold Bryant were the owners of the property at the time of the tax sale and also the individuals who executed the purchase-money mortgage held by Appellant. Phyllis Davis, the Respondent, was the holder of a judgment filed against Arnold Bryant prior to the purchase of the real property by the Bryants. Stephen Ford, as Spartanburg County Tax Collector, held the tax sale overage in the amount of \$8,832.87. All of the defendants were served with the summons and complaint, but only Respondent filed an answer. Respondent's answer admitted most of the allegations of the complaint but denied that Appellant's purchase-money mortgage was entitled to priority over Respondent's judgment.

The case was referred with finality to Gordon G. Cooper, as master-in-equity for Spartanburg County by a consent order of reference signed on December 15, 2008 and filed for record on December 17, 2008. On December 16, 2008, Appellant served a motion for summary judgment. The motion asserted that Appellant, as the holder of a purchase-money mortgage on the real property at the time the property was sold for the non-payment of taxes, was entitled to the entire amount of the overage, as the unpaid

on May 1, 2001 in the Office of the Register of Deeds for Spartanburg County in Book 2477 at Page 879 (R. p. 1.). Central Carolina Bank, the original holder of the note and mortgage, subsequently merged into the National Bank of Commerce, which thereafter merged into SunTrust Bank, making SunTrust Bank the holder of the note and mortgage. (R. p. 1.).

On November 5, 2006, Stephen Ford, as Spartanburg County Tax Collector, sold the property at public tax sale for non-payment of the 2005 taxes to EquiFunding, Inc. as the highest bidder at the sale. (R. p. 1.). On March 28, 2008, a tax deed was issued conveying the property to Equifunding, Inc. (R. p. 1.). The tax sale of the property resulted in an overage of \$8,832.87, which was being held by the Spartanburg County Tax Collector. (R. p. 1.).

SunTrust Bank brought an action seeking the full amount of the overage. In its complaint, SunTrust alleged that it was the holder of a purchase-money mortgage executed by the Bryants. (R. p. 1.). SunTrust also alleged that it held the promissory note for which the mortgaged property was given as security and that the principal balance owed to SunTrust on the note was in excess of \$13,000.00. SunTrust alleged that it was entitled to the overage under either the contractual language of the mortgage or an equitable lien theory. (R. p. 1.).

SunTrust named as defendants in the action all parties having an interest of record in the property. Arnold L. Bryant and Brandi K. Bryant were personally served with the summons and complaint but failed to respond. (R. p. 1.). Stephen Ford, as Spartanburg County Tax Collector ("the County"), was also served with the summons and complaint and failed to respond. Phyllis W. Davis, who held the judgment against Arnold L.

Bryant, responded by filing an answer that admitted almost all of the allegations of the complaint, including the fact that SunTrust held a purchase-money mortgage, but the answer denied that SunTrust was entitled to priority as to the overage. (R. p. 1.). Instead, Davis asserted that her judgment was entitled to priority over SunTrust's purchase-money mortgage lien. (R. p. 1.).

On December 16, 2008, SunTrust served a motion for summary judgment seeking the overage. (R. p. 1.). The motion was supported by an affidavit executed by Kimberly Goodlet, an employee of SunTrust. The affidavit stated that SunTrust was the holder of the promissory note and mortgage, that payments on the note were in default, and that the amount owed on the note, exclusive of attorney's fees and costs, was the amount of \$14,754.48. (R. p. 1.).

At the hearing on SunTrust's motion on February 2, 2009, SunTrust stated that it was the holder of a purchase-money mortgage that was a lien on real property sold at tax sale and that it was entitled to the entire amount of the overage being held by the County under either a contractual cause of action or an equitable lien theory. (R. p. 1.). Davis agreed there were no facts in dispute, but Davis asserted that she was entitled to priority as to the overage since her judgment was recorded at the time the property was purchased by the Bryants. (R. p. 1.). At the hearing, the master-in-equity held that Davis's judgment was entitled to priority over SunTrust's purchase-money mortgage. (R. p. 1.). The master-in-equity held, however, that since the judgment was only against Arnold Bryant and the property was owned by Arnold Bryant and Brandi Bryant as joint tenants with the right of survivorship, the overage should be divided equally between SunTrust and Davis. (R. p. 1.). The order issued by the master-in-equity on May 5, 2009 was

prepared by Davis's attorney and varied somewhat from the court's reasoning for the overage being divided equally between Davis and SunTrust. (R. p. 1.). In the order, there is no mention of Davis being entitled to priority on Arnold Bryant's one-half interest in the property. (R. p. 1.). Instead, the order finds that SunTrust lost its security interest after the property was sold at tax sale. (R. p. 1.) The master-in-equity denied SunTrust's motion to alter or amend the order. (R. p. 1.).

ARGUMENT

Because SunTrust held a purchase-money mortgage on the real property at the time the property was sold at tax sale, the master-in-equity erred by holding that the tax sale overage should be divided equally between SunTrust and Davis. There is no dispute as to the facts in this case. (R. p. 1.). Davis acknowledges that SunTrust is the holder of a purchase-money mortgage. (R. p. 1.). The master-in-equity also acknowledged that SunTrust was the holder of a purchase-money mortgage. (R. p. 1.).

"A purchase-money mortgage is recognized at common law and in equity where a purchaser of land, contemporaneous with the acquisition of legal title or afterward, but as part of the same transaction, executes a mortgage to secure the purchase money." *Hursey v. Hursey*, 284 S.C. 323, 327, 326 S.E.2d 178 (Ct. App. 1985) (citations omitted). "It is accorded priority over all other claims arising through the mortgagor although they are prior in time to the execution of the purchase-money mortgage." *Id.* Thus, SunTrust's mortgage lien was entitled to priority over Davis's judgment even though the judgment was filed prior to SunTrust's mortgage.

The master-in-equity had some question as to whether liens attach in the same order to the proceeds from a sale of the property as to the property itself, and SunTrust

cited case law in support of its argument that SunTrust was entitled to the same priority as to the proceeds as SunTrust had to the property itself. (R. p. 1.) Since SunTrust's mortgage lien was entitled to priority over Davis's judgment on the property, SunTrust's mortgage is also entitled to priority over the judgment as to the tax sale proceeds. Parties who have liens on real property are entitled to equitable liens on the proceeds from the sale or taking of the real property. See *Knapp v. Victory Corp.*, 279 S.C. 80, 81 302 S.E.2d 30 (1983) (mortgagee entitled to equitable lien on fire insurance proceeds); *Twin City Power Co. v. Savannah River Elect. Co.*, 163 S.C. 438, 460, 161 S.E.2d 750 (1929) (mortgagee entitled to equitable lien on condemnation proceeds). When the real property has more than one lien on it, the proceeds should be distributed in the order of priority of the liens. See *FCX, Inc. v. Long Meadow Farms, Inc.*, 269 S.C. 202, 205 237 S.E.2d 50 (1977) (stating that if the debtor held legal title to the real property, as opposed to only an equitable interest, the proceeds from the sale would have been distributed in the order of priority of the liens).

In making his decision as to priority, the master-in-equity mentioned the fact that SunTrust failed to redeem the property from the tax sale. (R. p. 1.). SunTrust objected to the master-in-equity considering matters not before the court. (R. p. 1.). There was not any evidence presented as to why the property was not redeemed from the tax sale. (R. p. 1.).

SunTrust also asserted that equity favored granting priority to SunTrust's purchase-money mortgage as to the proceeds from the tax sale. (R. p. 1.) As stated in *Graves v. American Acceptance Mortgage Corp.*, 246 Mich. App. 1 (Ct. App. 2001):

Because third party lending is the dominant source of purchase money land financing in this country, a rule which facilitates such lending is

especially beneficial to the national real estate economy. Applying the rule to benefit third party lenders is plainly fair. While it is true that such lenders, unlike vendors, do not give up ownership of specific real estate, they nevertheless part with money with the expectation that they will have security in that real estate. Without this advance of money, the purchase-mortgagor would never have received the property and the other claimants would never have had the opportunity to satisfy their claims from such a convenient source. As in the vendor purchase money context, this section seeds to avoid conferring a windfall on those claimants.

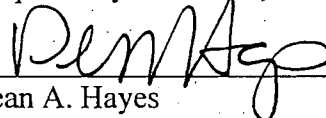
(citing Restatement Property, Mortgages, 3d, §7.2, comment b, p. 40). If SunTrust's predecessor-in-interest had not loaned the money for the purchase of the property, there would have been no property to be sold at tax sale and therefore no proceeds. Davis would have received nothing. To hold that Davis has priority as to the portion of the property owned by Arnold Bryant is inequitable. The master-in-equity erred by awarding Davis one-half of the tax sale overage.

CONCLUSION

For the reasons set forth above, SunTrust respectfully requests that the Court reverse the judgment of the master-in-equity as to Davis's priority as to one-half of the tax sale overage and that SunTrust be granted the entire amount of the overage.

November 2, 2009

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

Case No. 2008-CP-42-4539

SunTrust Bank s/b/m National Bank of Commerce, including its
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v.

Brandy K. Bryant a/k/a Brandy K. McCarthy, Arnold L. Bryant,
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Tax Collector Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant by depositing a copy of the same
in the United States Mail, postage prepaid, on November 2, 2009, addressed to the following:

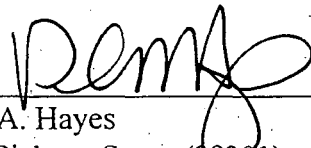
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THE STATE OF SOUTH CAROLINA
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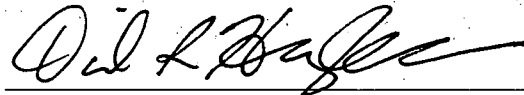
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Tax Collector, Defendants, of Whom Phyllis W. Davis is the
Respondent.....Respondent.

BRIEF OF RESPONDENT

January 4, 2010



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STATEMENT OF ISSUES ON APPEAL

- I. DID THE MASTER-IN-EQUITY ERR BY FINDING THAT A PREVIOUSLY RECORDED JUDGMENT WAS ENTITLED TO PRIORITY OVER A PURCHASE-MONEY MORTGAGE IN THE DISTRIBUTION OF THE OVERAGE FROM A TAX SALE OF THE REAL PROPERTY SUBJECT TO THE PURCHASE-MONEY MORTGAGE?

STATEMENT OF THE CASE

On August 28, 2008, Appellant filed a Complaint against Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant, Phyllis W. Davis, and Stephen Ford, as Spartanburg County Tax Collector seeking a judgment for the entire overage from a tax sale of certain real property in the amount of \$8,832.87. Respondent Davis was the only Defendant to Answer the Complaint. She denied Appellant's purchase money mortgage on the property was entitled to priority.

On December 16, 2008, Appellant made a motion for Summary Judgment, and by Consent Order of Reference filed December 17, 2008, the case was referred with finality to Gordon G. Cooper, Master-in-Equity. On February 2, 2009, the parties argued Appellant's motion for Summary Judgment, and by Order filed May 5, 2009, the Court awarded both Appellant and Respondent one-half (\$4,416.43) of the tax sale overage.

On July 1, 2009, Appellant made a Motion to Alter or Amend the May 5, 2009 Order. On July 23, 2009, the Court heard arguments on Appellant's motion to alter or amend, and by Form 4 Order filed July 24, 2009, the Court denied said motion. This appeal followed. On August 21, 2009, Appellant served its Notice of Appeal. By order dated October 7, 2009, Appellant received an extension of time to November 2, 2009 to file the Initial Brief. By order

dated November 20, 2009, Respondent received an extension of time to January 4, 2010 to file the Initial Brief.

FACTS

On February 9, 2001, Respondent received a default judgment in the amount of \$5,205.46 against Arnold Bryant pursuant to Civil Action No. 1999-CP-42-2458. On February 12, 2001, this judgment was filed and made a part of the public record.

By deed dated April 27, 2001, and filed May 1, 2001 in Book 73-U at page 338, Arnold L. Bryant and Brandy K. Bryant purchased real property as "joint tenants with rights of survivorship" in Spartanburg County and known generally No. 10 20th Street in a "Subdivision of Victor Mill Village, Greer, S.C.." Arnold L. Bryant and Brandy K. Bryant executed simultaneously a Consumer Loan Note and Security Agreement in the amount of \$27,846.76 and a Mortgage to secure the loan filed May 1, 2001 in Book 2477 at Page 879 in favor of Central Carolina Bank. SunTrust Bank is now the successor in interest to Central Carolina Bank (May 5, 2009 Order, pp. 1-2).

On November 5, 2006, Stephen Ford, as Spartanburg County Tax Collector, sold the property at public tax sale to EquiFunding, Inc. for non-payment of the 2005. On March 28, 2008, a tax deed was issued conveying the property to EquiFunding, Inc.. The tax sale of the property resulted in an overage of \$8,832.87, which was held by the Spartanburg County Tax Collector (May 5, 2009 Order, p. 2). Appellant did not assert its rights pursuant to its purchase money mortgage to redeem the property from tax sale.

The lower court found that Respondent's judgment was entitled to priority over Appellant's purchase money mortgage. The lower court also found that since Respondent's judgment was only against Arnold Bryant, and the property was owned by Arnold Bryant and

Brandy Bryant as joint tenants with the right of survivorship, that the overage should be divided equally between Appellant and Respondent (May 5, 2009 Order, p. 3; Transcript, Feb. 2, p. 11, lines 16-19).

ARGUMENT

I. **RESPONDENT'S PREVIOUSLY RECORDED JUDGMENT IS ENTITLED TO PRIORITY OVER A PURCHASE MONEY MORTGAGE IN THE DISTRIBUTION OF THE TAX SALE OVERAGE FROM A TAX SALE OF REAL PROPERTY SUBJECT TO THE PURCHASE MONEY MORTGAGE.**

The lower court's ruling that Respondent is entitled to priority as to the tax sale overage does not fail to acknowledge that SunTrust Bank is the holder of a purchase-money mortgage, and that generally speaking, purchase money mortgages enjoy priority. However, as the court correctly reasoned, the result is different when the purchase money mortgagee's security interest in the property itself is extinguished from a tax sale and the mortgagee fails to assert its rights to redeem (Transcript, Feb. 2, p. 6, lines 10-11; May 5, 2009 Order, p. 3).

Appellant lost the right to protect its purchase money security interest by not redeeming the property from tax sale. Appellant admitted (Transcript, Feb. 2, p. 4, lines 23-25; Transcript, Feb. 2, p. 10, lines 5-8) and the lower court found (Transcript, July 23, p. 7, lines 6-25) that Appellant made an election not to redeem the property from tax sale. If Appellant had redeemed the property, it would have provided them the opportunity to protect its rights to foreclose its security interest and enjoy the benefits of its purchase money priority. In the alternative, if there had been some question as to whether there was a defect in the tax sale procedure, Appellant could have brought an action to set aside the tax sale (Transcript, July 23, p. 3, lines 15-17). Appellant failed on both accounts – to redeem the property or filing an action to overturn the tax sale. Rather, Appellant made an election to file an action seeking the tax sale overage, and

therefore, Appellant lost its right to assert its priority over Respondent's previously recorded judgment (May 5, 2009 Order, p.3; Transcript, July 23, p. 7, lines 11-25; Transcript, July 23, p. 3, lines 12-16).

The result is that Appellant's lien is now afforded the same rights as the Respondent's, and the question of priority resorts to a determination of which party recorded its lien first (Transcript, Feb 2nd, p. 12, lines 5-7). It is undisputed that Respondent's judgment was filed prior to Appellant's purchase money mortgage.

Appellant fails to cite any case law in support of its theory that a purchase money mortgage's priority in the real property follows the proceeds from the tax sale. (July 23rd, p. 4, lines 13-17, p. 7, lines 12-14; July 23rd, p. 8, lines 13 – p.9, line 5). In its brief, Appellant cites several cases -- *Knapp v. Victory Corp.*, 279 S.C. 80, 81, 302 S.E. 2d 30 (1983); *Twin City Power Co. v. Savannah River Elect. Co.*, 163 S.C. 438, 460, 161 S.E.2d 750 (1929), and *FCX, Inc. v. Long Meadow Farms, Inc.*, 269 S.C. 202, 237 S.E.2d 50 (1977). However, none of these cases provide persuasive authority for Appellant's theory because they fail to address the situation where the mortgagee's interest in the real property is gone.

The result in this case is governed by equity. The lower court, sitting in equity, used its equitable powers to justly and correctly determine priority. (Feb. 2nd, p. 18, lines 17-18) (July 23rd, p. 7, lines 17-21; July 23, p. 9, lines 9-10). It has long been established that "courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983).

Respondent did everything it could to protect its interest by filing its judgment and answering the Complaint asserting its priority. In contrast, Appellant sat on its rights to protect

its security interest by failing to redeem the property from tax sale, and consequently, Appellant's purchase money security interest was extinguished upon the issuance of the tax deed. The equitable solution was to award priority to the lienholder who was first in time. The court also equitably ruled that Respondent and Appellant were each entitled to one-half the tax sale overage because Respondent's judgment was against Arnold Bryant, only. Again, the court correctly and appropriately exercised its equitable powers to achieve a just result.

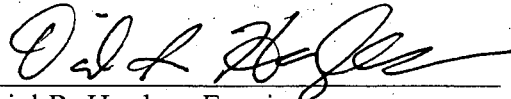
Appellant cites a Michigan case, *Graves v. American Acceptance Mortgage Corp.*, 246 Mich. App. 1 (Ct. App. 2001), which states, *in dicta*, that for policy reasons purchase money mortgages enjoy priority because it encourages lending. Appellant's brief also restates a commonly made argument in favor of purchase money priority that, if not for the lender loaning the money, Respondent would have no proceeds to pursue.

These arguments are part of the jurisprudence commonly used to justify purchase money priority. However, there are no cases that assert these equitable arguments that are factually similar to the case before this Court. Based upon the facts before this Court, the equitable analysis and the result is different. In sum, the purchase money mortgagee is not entitled to the benefit of priority to all the money resulting from a tax sale of the real property subject to the purchase money mortgage. The equitable result is that Respondent's previously recorded judgment is given first priority to the proceeds.

CONCLUSION

For the reasons stated above, the Court should affirm the decision of the lower court.

Respectfully submitted,



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Dated: January 4, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

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SunTrust Bank s/b/m National Bank of Commerce, including its
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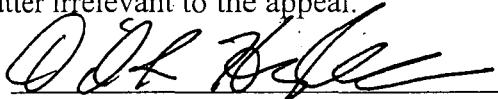
**DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON
APPEAL**

Respondent proposes the following documents to be included in the Record on Appeal:

- 1) May 5, 2009 Order;
- 2) July 24, 2009 Order;
- 3) Complaint;
- 4) Answer of Phyllis W. Davis;
- 5) Motion for Summary Judgment;
- 6) Transcript of February 2, 2009 hearing on Motion for Summary Judgment;
- 7) Transcript of July 23, 2009 hearing on Motion to Alter or Amend

I certify that this designation contains no matter irrelevant to the appeal.

January 4, 2010


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Phyllis W. Davis and Stephen Ford, as Spartanburg County
Tax Collector, Defendants, of Whom Phyllis W. Davis is the
Respondent.....Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent Phyllis W. Davis and
Designation of Matter by depositing a copy of the same in the United States mail, postage
prepaid, on January 4, 2010, addressed to the following:

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January 4, 2010



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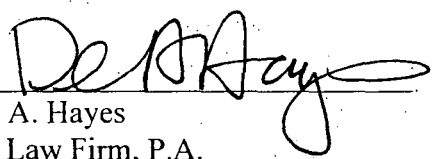
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Phyllis W. Davis, and Stephen Ford, as Spartanburg County
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REPLY BRIEF OF APPELLANT

January 14, 2010


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ARGUMENT

SunTrust files this reply brief to address two issues raised by the brief of the respondent, Phyllis Davis. First, Davis's brief alleges SunTrust lost any right it had to the priority of its purchase-money mortgage when SunTrust failed to redeem the property from the tax sale or otherwise failed to try to set the tax sale aside. (Brief of Respondent, p. 3). As stated in SunTrust's initial brief, SunTrust informed the trial court that the circumstances surrounding the redemption of the property or the validity of the tax sale were not issues before the court. (Initial Brief of Appellant, p. 6, Transcript, Feb. 2, p. 10, lines 5-15, p. 14, lines 1-10). There was absolutely no evidence presented to the trial court as to whether the tax sale notices were properly given. SunTrust simply made the choice to seek the tax sale overage. (Transcript, Feb. 2, line 4-5). A mortgagee may have valid reasons for not redeeming the property or trying to set aside a tax sale. For example, if the mortgage payments are in default, as the payments were in this case, the mortgagee may decide that it would be financially better off to seek the tax sale overage than to pay the costs of redeeming the property and then paying the additional costs of a foreclosure action.

Even if the circumstances surrounding the redemption were issues properly before the trial court, Davis's judgment lien should not have priority over SunTrust's purchase-money mortgage lien. Davis asserts she did everything she could to protect her interest. (Brief of Respondent, p. 4). However, as a judgment creditor, Davis also had the right to redeem the property from the tax sale. *See* S.C. Code § 12-51-90 ("The defaulting taxpayer, any grantee from the owner, or any mortgage or any judgment creditor may within twelve months from the date of the delinquent tax sale redeem each item of real

estate”) (emphasis added). Thus, Davis’s argument that SunTrust lost its priority because SunTrust “sat on its rights” by failing to redeem the property fails. (Brief of Respondent, p. 4-5). If SunTrust sat on its rights, so did Davis.

The second issue SunTrust would like to address is Davis’s argument that SunTrust has failed to provide authority for SunTrust’s purchase-money mortgage being entitled to priority over Davis’s judgment lien. SunTrust’s initial brief cites case law for the proposition that a purchase –money mortgage is entitled to priority over a previously-filed judgment lien. (Initial Brief of Appellant, p. 5). SunTrust has also cited case law for the proposition that the priority of the purchase-money mortgage transfers to proceeds from the sale or taking of the property. (Initial Brief of Appellant, p. 5-7).

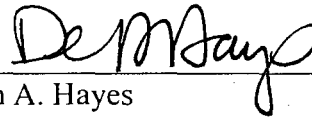
In her brief, Davis states that the language SunTrust quotes from *Graves v. American Acceptance Mortgage Corp.*, 246 Mich. App. 1 (Ct. App. 2001) is “dicta.” (Brief of Respondent, p. 5). In *Graves*, a judgment creditor was foreclosing on her divorce judgment lien, which was filed prior to a defendant’s purchase money mortgage. *Graves v. American Acceptance Mortgage Corp.* 246 Mich. App. 1, 2 (Ct. App. 2001). The issue was the priority between the previously -filed judgment lien and the purchase-money mortgage. *Graves*, 246 Mich. App. at 1. Since priority was the issue, the language quoted by SunTrust in its initial brief from *Graves* is not dicta.

Davis’s assertion that SunTrust has failed to provide authority for its position is ironic. A review of both transcripts from the trial court and of Davis’s brief reveals that Davis has failed to cite any case law or statutes in support of her position that her judgment is entitled to priority.

CONCLUSION

For the reasons set forth above, SunTrust respectfully requests that the Court reverse the judgment of the master-in-equity as to Davis's priority as to one-half of the tax sale overage and that SunTrust be granted the entire amount of the overage.

January 14, 2010



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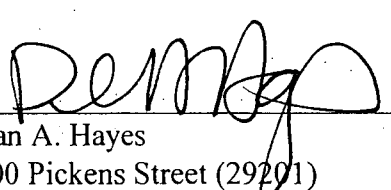
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I certify that I have served the Reply Brief of Appellant by depositing a copy of the same
in the United States Mail, postage prepaid, on January 14, 2010, addressed to the following:

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January 14, 2010


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FINAL BRIEF OF RESPONDENT

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On February 9, 2001, Respondent received a default judgment in the amount of \$5,205.46 against Arnold Bryant pursuant to Civil Action No. 1999-CP-42-2458. On February 12, 2001, this judgment was filed and made a part of the public record (R. p. 46).

By deed dated April 27, 2001, and filed May 1, 2001 in Book 73-U at page 338, Arnold L. Bryant and Brandy K. Bryant purchased real property as "joint tenants with rights of survivorship" in Spartanburg County and known generally as No. 10 20th Street in a "Subdivision of Victor Mill Village, Greer, S.C." (R. p. 55). Arnold L. Bryant and Brandy K. Bryant executed simultaneously a Consumer Loan Note and Security Agreement in the amount of \$27,846.76 and a Mortgage to secure the loan filed May 1, 2001 in Book 2477 at Page 879 in favor of Central Carolina Bank (R. pp. 48-54). SunTrust Bank is now the successor in interest to Central Carolina Bank (R. p. 3, lines 4-5).

On November 5, 2006, Stephen Ford, as Spartanburg County Tax Collector, sold the property at public tax sale to EquiFunding, Inc. for non-payment of the 2005 taxes. On March 28, 2008, a tax deed was issued conveying the property to EquiFunding, Inc.. The tax sale of the property resulted in an overage of \$8,832.87, which was held by the Spartanburg County Tax Collector (R. p. 3, lines 6-11). Appellant did not assert its rights pursuant to its purchase money mortgage to redeem the property from tax sale.

The lower court found that Respondent's judgment was entitled to priority over Appellant's purchase money mortgage. The lower court also found that since Respondent's judgment was only against Arnold Bryant, and the property was owned by Arnold Bryant and

Brandy Bryant as joint tenants with the right of survivorship, that the overage should be divided equally between Appellant and Respondent (R. p. 4 and R. p. 67, lines 16-19).

ARGUMENT

I. RESPONDENT'S PREVIOUSLY RECORDED JUDGMENT IS ENTITLED TO PRIORITY OVER A PURCHASE MONEY MORTGAGE IN THE DISTRIBUTION OF THE TAX SALE OVERAGE FROM A TAX SALE OF REAL PROPERTY SUBJECT TO THE PURCHASE MONEY MORTGAGE.

The lower court's ruling that Respondent is entitled to priority as to the tax sale overage does not fail to acknowledge that SunTrust Bank is the holder of a purchase-money mortgage, and that generally speaking, purchase money mortgages enjoy priority. However, as the court correctly reasoned, the result is different when the purchase money mortgagee's security interest in the property itself is extinguished from a tax sale and the mortgagee fails to assert its rights to redeem (R. p. 62, lines 10-11; R. p. 4, lines 6-9).

Appellant lost the right to protect its purchase money security interest by not redeeming the property from tax sale. Appellant admitted (R. p. 60, lines 23-25; R. p. 66, lines 5-8) and the lower court found (R. p. 83, lines 6-25) that Appellant made an election not to redeem the property from tax sale. If Appellant had redeemed the property, it would have provided them the opportunity to protect its rights to foreclose its security interest and enjoy the benefits of its purchase money priority. In the alternative, if there had been some question as to whether there was a defect in the tax sale procedure, Appellant could have brought an action to set aside the tax sale (R. p. 79, lines 15-17). Appellant failed on both accounts – to redeem the property or filing an action to overturn the tax sale. Rather, Appellant made an election to file an action seeking the tax sale overage, and therefore, Appellant lost its right to assert its priority over Respondent's previously recorded judgment (R. p. 4, lines 4-6; R. p. 83, lines 11-25; R. p. 79, lines 12-16).

The result is that Appellant's lien is now afforded the same rights as the Respondent's, and the question of priority resorts to a determination of which party recorded its lien first (R. p. 68. Lines 5-7). It is undisputed that Respondent's judgment was filed prior to Appellant's purchase money mortgage.

Appellant fails to cite any case law in support of its theory that a purchase money mortgage's priority in the real property follows the proceeds from the tax sale. (R. p. 80, lines 13-17; R. p. 83, lines 12-14; R. p. 84, line 13; R. p. 85, line 5). In its brief, Appellant cites several cases -- *Knapp v. Victory Corp.*, 279 S.C. 80, 81, 302 S.E. 2d 30 (1983); *Twin City Power Co. v. Savannah River Elect. Co.*, 163 S.C. 438, 460, 161 S.E.2d 750 (1929), and *FCX, Inc. v. Long Meadow Farms, Inc.*, 269 S.C. 202, 237 S.E.2d 50 (1977). However, none of these cases provide persuasive authority for Appellant's theory because they fail to address the situation where the mortgagee's interest in the real property is gone.

The result in this case is governed by equity. The lower court, sitting in equity, used its equitable powers to justly and correctly determine priority. (R. p. 83, lines 17-21; R. p. 85, lines 9-10). It has long been established that "courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983).

Respondent did everything it could to protect its interest by filing its judgment and answering the Complaint asserting its priority. In contrast, Appellant sat on its rights to protect its security interest by failing to redeem the property from tax sale, and consequently, Appellant's purchase money security interest was extinguished upon the issuance of the tax deed. The equitable solution was to award priority to the lienholder who was first in time. The court also equitably ruled that Respondent and Appellant were each entitled to one-half the tax sale

overage because Respondent's judgment was against Arnold Bryant, only. Again, the court correctly and appropriately exercised its equitable powers to achieve a just result.

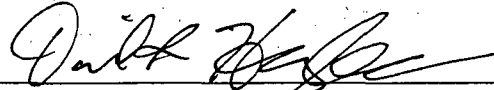
Appellant cites a Michigan case, *Graves v. American Acceptance Mortgage Corp.*, 246 Mich. App. 1 (Ct. App. 2001), which states, *in dicta*, that for policy reasons purchase money mortgages enjoy priority because it encourages lending. Appellant's brief also restates a commonly made argument in favor of purchase money priority that, if not for the lender loaning the money, Respondent would have no proceeds to pursue.

These arguments are part of the jurisprudence commonly used to justify purchase money priority. However, there are no cases that assert these equitable arguments that are factually similar to the case before this Court. Based upon the facts before this Court, the equitable analysis and the result is different. In sum, the purchase money mortgagee is not entitled to the benefit of priority to all the money resulting from a tax sale of the real property subject to the purchase money mortgage. The equitable result is that Respondent's previously recorded judgment is given first priority to the proceeds.

CONCLUSION

For the reasons stated above, the Court should affirm the decision of the lower court.

Respectfully submitted,



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Dated: 3/2, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

Case No. 2008-CP-42-4539

SunTrust Bank s/b/m National Bank of Commerce, including its
Division, Central Carolina Bank Appellant,
v.

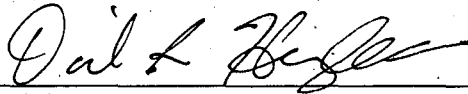
Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant,
Phyllis W. Davis and Stephen Ford, as Spartanburg County
Tax Collector, Defendants, of Whom Phyllis W. Davis is the
Respondent.....Respondent.

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent Phyllis W. Davis and
Designation of Matter by depositing a copy of the same in the United States mail, postage
prepaid, on March 2, 2010, addressed to the following:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

Case No. 2008-CP-42-4539

SunTrust Bank s/b/m National Bank of Commerce, including its
Division, Central Carolina Bank Appellant,

v.

Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant,
Phyllis W. Davis, and Stephen Ford, as Spartanburg County
Tax Collector Respondents.

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STATEMENT OF ISSUE ON APPEAL

- I. DID THE MASTER IN EQUITY ERR BY FINDING THAT A PREVIOUSLY RECORDED JUDGMENT WAS ENTITLED TO PRIORITY OVER A PURCHASE-MONEY MORTGAGE IN THE DISTRIBUTION OF THE OVERAGE FROM A TAX SALE OF THE REAL PROPERTY SUBJECT TO THE PURCHASE-MONEY MORTGAGE?

STATEMENT OF THE CASE

On August 28, 2008, Appellant filed its summons and complaint. The complaint sought the overage from a tax sale of real property on which Appellant had a purchase-money mortgage. The defendants in the action were Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant, Phyllis W. Davis, and Stephen Ford, as Spartanburg County Tax Collector. Brandy Bryant and Arnold Bryant were the owners of the property at the time of the tax sale and also the individuals who executed the purchase-money mortgage held by Appellant. Phyllis Davis, the Respondent, was the holder of a judgment filed against Arnold Bryant prior to the purchase of the real property by the Bryants. Stephen Ford, as Spartanburg County Tax Collector, held the tax sale overage in the amount of \$8,832.87. All of the defendants were served with the summons and complaint, but only Respondent filed an answer. Respondent's answer admitted most of the allegations of the complaint but denied that Appellant's purchase-money mortgage was entitled to priority over Respondent's judgment.

The case was referred with finality to Gordon G. Cooper, as master-in-equity for Spartanburg County by a consent order of reference signed on December 15, 2008 and filed for record on December 17, 2008. On December 16, 2008, Appellant served a motion for summary judgment. The motion asserted that Appellant, as the holder of a purchase-money mortgage on the real property at the time the property was sold for the non-payment of taxes, was entitled to the entire amount of the overage, as the unpaid mortgage debt exceeded the amount of the overage. A hearing on the summary judgment motion was held before the master-in-equity on February 2, 2009. By an order signed on May 5, 2009, and received by Appellant on June 23,

2009, the master-in-equity determined the overage should be split equally between Appellant and Respondent. On July 1, 2009 Appellant served a motion to alter or amend the March 5, 2009 order. A hearing was held on the motion to alter or amend on July 23, 2009. By a Form 4 order signed on July 24, 2009, the master-in-equity denied Appellant's motion to alter or amend. Appellant received a written copy of the Form 4 order on July 29, 2009, and on August 21, 2009, Appellant served its notice of appeal. By letter dated October 5, 2009, Appellant requested an extension of time to respond to file its initial brief. On October 7, 2009, an order was issued granting Appellant until November 2, 2009 to file its initial brief.

FACTS

By virtue of an order dated February 9, 2001, recorded February 12, 2001, Phyllis W. Davis obtained a judgment against Arnold Bryant in the amount of \$5,205.46. (R. pp. 46-47).

On April 27, 2001, Arnold L. Bryant and Brandi K. Bryant purchased real property generally described as 10 20th Street, Greer, South Carolina 29651 ("property"). (R. pp. 55-56). The property was purchased using the proceeds of a loan given by Central Carolina Bank. (R. p. 7). As part of the loan closing on April 27, 2001, Arnold L. Bryant and William Edwards executed and delivered to Central Carolina Bank, its successors and assigns, a promissory note for the principal amount of \$27,846.76, plus interest at the rate of 8.997% per annum. (R. pp. 16-17). The promissory note was secured by a mortgage that was executed on April 27, 2001 by Arnold L. Bryant and Brandi K. Bryant. (R. pp. 18-22). The mortgage, which covered the property being purchased by the Bryants, was recorded on May 1, 2001 in the Office of the Register of Deeds for Spartanburg County in Book 2477 at Page 879. (R. p. 18). Central Carolina Bank, the original holder of the note and mortgage, subsequently merged into the National Bank of Commerce, which thereafter merged into SunTrust Bank, making SunTrust

Bank the holder of the note and mortgage. (R. p. 7).

On November 5, 2006, Stephen Ford, as Spartanburg County Tax Collector, sold the property at public tax sale for non-payment of the 2005 taxes to Equifunding, Inc. as the highest bidder at the sale. (R. p. 7). On March 28, 2008, a tax deed was issued conveying the property to Equifunding, Inc. (R. p. 7). The tax sale of the property resulted in an overage of \$8,832.87, which was being held by the Spartanburg County Tax Collector. (R. p. 7).

SunTrust Bank brought an action seeking the full amount of the overage. In its complaint, SunTrust alleged that it was the holder of a purchase-money mortgage executed by the Bryants. (R. pp. 6-7). SunTrust also alleged that it held the promissory note for which the mortgaged property was given as security and that the principal balance owed to SunTrust on the note was in excess of \$13,000.00. (R. p. 7). SunTrust alleged that it was entitled to the overage under either the contractual language of the mortgage or an equitable lien theory. (R. pp. 6-8).

SunTrust named as defendants in the action all parties having an interest of record in the property. Arnold L. Bryant and Brandi K. Bryant were personally served with the summons and complaint but failed to respond. (R. p. 42). Stephen Ford, as Spartanburg County Tax Collector ("the County"), was also served with the summons and complaint and failed to respond. (R. p. 42) Phyllis W. Davis, who held the judgment against Arnold L. Bryant, responded by filing an answer that admitted almost all of the allegations of the complaint, including the fact that SunTrust held a purchase-money mortgage, but the answer denied that SunTrust was entitled to priority as to the overage. (R. p. 9-10). Instead, Davis asserted that her judgment was entitled to priority over SunTrust's purchase-money mortgage lien. (R. p. 9-10).

On December 16, 2008, SunTrust served a motion for summary judgment seeking the overage. (R. pp. 12-13). The motion was supported by an affidavit executed by Kimberly

Goodlet, an employee of SunTrust. (R. p.p. 14-38) The affidavit stated that SunTrust was the holder of the promissory note and mortgage, that payments on the note were in default, and that the amount owed on the note, exclusive of attorney's fees and costs, was the amount of \$14,754.48. (R. pp. 14-15).

At the hearing on SunTrust's motion on February 2, 2009, SunTrust stated that it was the holder of a purchase-money mortgage that was a lien on real property sold at tax sale and that it was entitled to the entire amount of the overage being held by the County under either a contractual cause of action or an equitable lien theory. (R. p. 58, line 6-p. p. 59, line 21). Davis agreed there were no facts in dispute, but Davis asserted that she was entitled to priority as to the overage since her judgment was recorded at the time the property was purchased by the Bryants. (R. p. 60, line 1-17). At the hearing, the master-in-equity held that Davis's judgment was entitled to priority over SunTrust's purchase-money mortgage. (R. p. 67, line 11-p. 72, line 15, p. 78, line 11-p. 81, line 13). The master-in-equity held, however, that since the judgment was only against Arnold Bryant and the property was owned by Arnold Bryant and Brandi Bryant as joint tenants with the right of survivorship, the overage should be divided equally between SunTrust and Davis. (R. p. 67, lines 11-19, p. 74, lines 3-5). The order issued by the master-in-equity on May 5, 2009 was prepared by Davis's attorney and varied somewhat from the court's reasoning for the overage being divided equally between Davis and SunTrust. (R. pp. 2-4). In the order, there is no mention of Davis being entitled to priority on Arnold Bryant's one-half interest in the property. (R. pp. 2-4). Instead, the order finds that SunTrust lost its security interest after the property was sold at tax sale. (R. p. 4). The master-in-equity denied SunTrust's motion to alter or amend the order. (R. p. 5).

ARGUMENT

Because SunTrust held a purchase-money mortgage on the real property at the time the property was sold at tax sale, the master-in-equity erred by holding that the tax sale overage should be divided equally between SunTrust and Davis. There is no dispute as to the facts in this case. Davis acknowledges that SunTrust is the holder of a purchase-money mortgage. (R. p. 7, p. 9). The master-in-equity also acknowledged that SunTrust was the holder of a purchase-money mortgage. (R. p. 61, line 25-p. 62, line 11, p. 78, line 17-p. 79, line 16).

“A purchase-money mortgage is recognized at common law and in equity where a purchaser of land, contemporaneous with the acquisition of legal title or afterward, but as part of the same transaction, executes a mortgage to secure the purchase money.” *Hursey v. Hursey*, 284 S.C. 323, 327, 326 S.E.2d 178, 180 (Ct. App. 1985) (citations omitted). “It is accorded priority over all other claims arising through the mortgagor although they are prior in time to the execution of the purchase-money mortgage.” *Id.* Thus, SunTrust’s mortgage lien was entitled to priority over Davis’s judgment even though the judgment was filed prior to SunTrust’s mortgage.

The master-in-equity had some question as to whether liens attach in the same order to the proceeds from a sale of the property as to the property itself, and SunTrust cited case law in support of its argument that SunTrust was entitled to the same priority as to the proceeds as SunTrust had to the property itself. (R. p. 44, p. 61, line 25-p. 68 line 11, p. 79, line 3-p. 80, line 23). Since SunTrust’s mortgage lien was entitled to priority over Davis’s judgment on the property, SunTrust’s mortgage is also entitled to priority over the judgment as to the tax sale proceeds. Parties who have liens on real property are entitled to equitable liens on the proceeds from the sale or taking of the real property. See *Knapp v. Victory Corp.*, 279 S.C. 80, 81, 302

S.E.2d 330, 331 (1983) (mortgagee entitled to equitable lien on fire insurance proceeds); *Twin City Power Co. v. Savannah River Elect. Co.*, 163 S.C. 438, 460, 161 S.E. 750, 756 (1929) (mortgagee entitled to equitable lien on condemnation proceeds). When the real property has more than one lien on it, the proceeds should be distributed in the order of priority of the liens. See *FCX, Inc. v. Long Meadow Farms, Inc.*, 269 S.C. 202, 205, 237 S.E.2d 50, 52 (1977) (stating that if the debtor held legal title to the real property, as opposed to only an equitable interest, the proceeds from the sale would have been distributed in the order of priority of the liens).

In making his decision as to priority, the master-in-equity mentioned the fact that SunTrust failed to redeem the property from the tax sale. (R. p. 66, lines 5-15, p. 68, lines 5-19, p. 69, lines 22-23, p. 83, line 6-p. 88, line 5). SunTrust objected to the master-in-equity considering matters not before the court. (R. p. 69, line 24-p. 70, line 10, p. 84, lines 1-6). There was not any evidence presented as to why the property was not redeemed from the tax sale. (R. p. 69, line 24-p. 70, line 10, p. 83, line 11-p. 84, line 6).

SunTrust also asserted that equity favored granting priority to SunTrust's purchase-money mortgage as to the proceeds from the tax sale. (R. p. 65, line 13-p. 66, line 4, p. 69, lines 7-8, p. 80, line 18-p. 86, line 12). As stated in *Graves v. American Acceptance Mortgage Corp.*, 246 Mich. App. 1, 630 N.W.2d 383, 390 (Ct. App. 2001):

Because third party lending is the dominant source of purchase money land financing in this country, a rule which facilitates such lending is especially beneficial to the national real estate economy. Applying the rule to benefit third party lenders is plainly fair. While it is true that such lenders, unlike vendors, do not give up ownership of specific real estate, they nevertheless part with money with the expectation that they will have security in that real estate. Without this advance of money, the purchase-mortgagor would never have received the property and the other claimants would never have had the opportunity to satisfy their claims from such a convenient source. As in the vendor purchase money context, this section seeks to avoid conferring a windfall on those claimants.

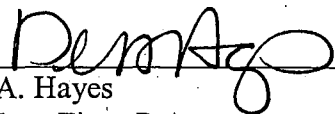
(citing Restatement Property, Mortgages, 3d, §7.2, comment b, p. 40). If SunTrust's

predecessor-in-interest had not loaned the money for the purchase of the property, there would have been no property to be sold at tax sale and therefore no proceeds. Davis would have received nothing. To hold that Davis has priority as to the portion of the property owned by Arnold Bryant is inequitable. The master-in-equity erred by awarding Davis one-half of the tax sale overage.

CONCLUSION

For the reasons set forth above, SunTrust respectfully requests that the Court reverse the judgment of the master-in-equity as to Davis's priority as to one-half of the tax sale overage and that SunTrust be granted the entire amount of the overage.

March 3, 2010



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

Case No. 2008-CP-42-4539

SunTrust Bank s/b/m National Bank of Commerce, including its
Division, Central Carolina Bank Appellant,

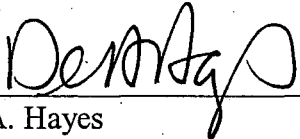
v.

Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant,
Phyllis W. Davis, and Stephen Ford, as Spartanburg County
Tax Collector Respondents.

CERTIFICATION

I certify that the Final Brief complies with Rule 211(b) of the SCACR.

March 4, 2009



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

Case No. 2008-CP-42-4539

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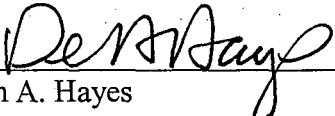
Brandy K. Bryant a/k/a Brandy K. McCarthy, Arnold L. Bryant,
Phyllis W. Davis, and Stephen Ford, as Spartanburg County
Tax Collector Respondents.

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant by depositing a copy of the same
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March 4, 2009


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SunTrust Bank s/b/m
National Bank of
Commerce, including its
Division, Central Carolina
Bank,

Appellant,

v.

Brandy K. Bryant a/k/a
Brandy K. McGarthy,
Arnold L. Bryant, Phyllis W.
Davis and Stephen Ford, as
Spartanburg County Tax
Collector,

Defendants,

Of whom Phyllis W. Davis
is the

Respondent.

Appeal From Spartanburg County
Gordon G. Cooper, Master-in-Equity

Opinion No. 4815
Submitted March 1, 2011 – Filed April 6, 2011

REVERSED

Dean A. Hayes, of Columbia, for Appellant.

Daniel R. Hughes and John B. Duggan, both of
Greenville, for Respondent.

LOCKEMY, J.: In this appeal, SunTrust Bank s/b/m National Bank of Commerce, including its division, Central Carolina Bank (SunTrust) argues the master-in-equity erred in finding Phyllis Davis's judgment lien was entitled to priority over its purchase money mortgage in the distribution of the overage from a tax sale of the real property subject to the purchase money mortgage. We reverse.

FACTS

On February 12, 2001, Davis obtained a judgment against Arnold Bryant in the amount of \$5,205.46. On April 27, 2001, Arnold Bryant and Brandy Bryant purchased real property located at 10 20th Street in Greer, South Carolina (the Property) using the proceeds of a loan given by Central Carolina Bank (Central Carolina). During the loan closing, Arnold Bryant and William Edwards executed and delivered to Central Carolina a promissory note in the amount of \$27,846.76. The note was secured by a mortgage executed by the Bryants on April 27, 2001, and recorded on May 1, 2001. SunTrust is the successor in interest to Central Carolina.

On November 5, 2006, Stephen Ford, as Spartanburg County Tax Collector, sold the Property at a public tax sale to Equifunding, Inc. (Equifunding) for non-payment of the 2005 taxes. On March 8, 2008, a tax deed was issued conveying the Property to Equifunding. The tax sale of the Property resulted in an overage of \$8,832.87.

On August 26, 2008, SunTrust filed a complaint against the Bryants, Davis, and Ford seeking the entire overage amount from the tax sale. SunTrust alleged it held a purchase money mortgage executed by the Bryants, and the principal balance owed on the note to SunTrust was in excess of \$13,000. SunTrust maintained it was entitled to the overage under either the contractual language of the mortgage or an equitable lien theory.

Neither the Bryants nor Ford answered the complaint. Davis answered SunTrust's complaint and denied SunTrust's purchase money mortgage was entitled to priority over her judgment.

On December 16, 2008, SunTrust filed a motion for summary judgment. On December 17, 2008, the case was referred to the master-in-equity by consent order of reference. At the hearing on SunTrust's summary judgment motion, the master determined SunTrust's purchase money mortgage was not entitled to priority over Davis's judgment. The master found, however, that because Davis's judgment was only against Arnold Bryant and the Property was owned by Arnold Bryant and Brandy Bryant as joint tenants with the right of survivorship, the \$8,832.87 overage should be divided equally between SunTrust and Davis. In the final order filed on May 5, 2009, the master ordered the overage be divided between SunTrust and Davis and found SunTrust "had the opportunity to foreclose its mortgage on the [P]roperty but chose not do so" and "thus, after the [P]roperty was sold . . . SunTrust lost any security interest therein."¹ In July 2009, the master denied SunTrust's motion to alter or amend. This appeal followed.

STANDARD OF REVIEW

An action to establish lien priorities is an action in equity. Fibkins v. Fibkins, 303 S.C. 112, 115, 399 S.E.2d 158, 160 (Ct. App. 1990). The appellate court's standard of review in equitable matters is our own view of the preponderance of the evidence. Williams v. Wilson, 349 S.C. 336, 339-40, 563 S.E.2d 320, 322 (2002).

LAW/ANALYSIS

SunTrust argues the master erred in finding Davis's judgment was entitled to priority over its purchase money mortgage. We agree.

¹ The final order does not mention the master's reasoning from the hearing that Davis was only entitled to priority on Arnold Bryant's one-half interest in the Property.

"A purchase money mortgage is recognized at common law and in equity where a purchaser of land, contemporaneous with the acquisition of the legal title or afterward, but as a part of the same transaction, executes a mortgage to secure the purchase money." Hursey v. Hursey, 284 S.C. 323, 327, 326 S.E.2d 178, 180 (Ct. App. 1985). "It is accorded priority over all other claims or liens arising through the mortgagor although they are prior in time to the execution of the purchase money mortgage." Id. "The rationale for this special priority is that the mortgagor's interest in the property is made possible by the purchase money loan, so that the mortgage should come ahead of other interests that attach merely because the mortgagor acquires the property." South Carolina Federal Sav. Bank v. San-A-Bel Corp., 307 S.C. 76, 80, 413 S.E.2d 852, 855 (Ct. App. 1992).

SunTrust contends that although Davis's judgment was filed first, its mortgage is entitled to priority by virtue of its purchase money status. Davis argues SunTrust was not entitled to the same priority as to the proceeds from the sale of the Property as to the Property itself. Davis maintains SunTrust failed to assert its right to redeem and therefore lost its right to assert priority over Davis's previously recorded judgment.²

First, we note neither party cites case law in their briefs addressing the issue before this court. While SunTrust cites Knapp v. Victory Corp., 279 S.C. 80, 302 S.E.2d 330 (1983), Twin City Power Co. v. Savannah River Elec. Co., 163 S.C. 438, 161 S.E. 750 (1930), and FCX, Inc. v. Long Meadow Farms, Inc., 269 S.C. 202, 237 S.E.2d 50 (1977), in support of its argument that purchase money mortgages are entitled to priority over previously filed judgment liens with regard to proceeds from a tax sale, we find these cases do not support SunTrust's contention. None of the cases relied upon by SunTrust involve tax sales or purchase money mortgages.

² Davis failed to cite any authority to support this argument. Therefore, Davis abandoned this issue on appeal, and we decline to consider the argument. See Bennett v. Investors Title Ins. Co., 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006) (holding that issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal).

We find SunTrust's mortgage is entitled to priority over Davis's judgment. Although Davis's judgment was filed prior to the execution of SunTrust's mortgage, purchase money mortgages are accorded priority over all other liens arising through the mortgagor. See Hursey, 284 S.C. at 327, 326 S.E.2d at 180. Furthermore, SunTrust's purchase money mortgage made the Bryants' interest in the Property possible. See San-A-Bel, 307 S.C. at 80, 413 S.E.2d at 855 (holding the rationale for granting purchase money mortgages priority over all other liens is that the mortgagor's interest in the property is made possible by the purchase money loan). If SunTrust had not given the purchase money loan to the Bryants, there would have been no property to be sold at the tax sale, and therefore, no overage. Accordingly, we find SunTrust is entitled to the entire tax sale overage.

CONCLUSION

We reverse the master's determination that SunTrust and Davis are each entitled to one-half of the tax sale overage. We find SunTrust's purchase money mortgage has priority over Davis's judgment, and thus, SunTrust is entitled to the entire overage.

REVERSED.

WILLIAMS and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

C.A. NO. 2008-CP-42-4539

SunTrust Bank s/b/m National Bank of Commerce, including its
Division, Central Carolina Bank Appellant,

vs.

Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant,
Phyllis W. Davis and Stephen Ford, as Spartanburg County
Tax Collector, Defendants, of Whom Phyllis W. Davis is the
Respondent.....Respondent.

PETITION FOR REHEARING

This case presents a novel issue of law which the Court of Appeals did not address.

Respondent Phyllis W. Davis ("Petitioner") agrees with the summary of facts included in the opinion of the Court of Appeals. The salient facts germane to the issue presented are the following: The tax collector notified SunTrust Bank ("Appellant") of his intention to sell the property in which the bank had a purchase money mortgage security interest in order to recover delinquent taxes. Upon receipt of the notice of the tax sale, the Appellant had the opportunity to exercise its rights pursuant to its purchase money mortgage but chose not to do so. The Appellant thereby waived its rights

pursuant to its purchase money mortgage. Therefore, when the tax sale occurred, the Appellant held only a promissory note signed by the property owners.

The novel issue presented concerns the priority of the Appellant and Petitioner to the excess proceeds of the tax sale after the purchase money mortgage security interest of the bank was extinguished. The cases cited by the Court of Appeals (see *Hursey v. Hursey*, 284 S.C. 223, 327, 326 S.E. 2d 178, 180 (Ct. App. 1985) and *South Carolina Federal Sav. Bank v. San-A-Bel Corp.*, 307 S.C. 76, 80, 413 S.E. 2d 852, 855 (Ct. App. 1992) are factually dissimilar to this case and do not address the issue before this Court.

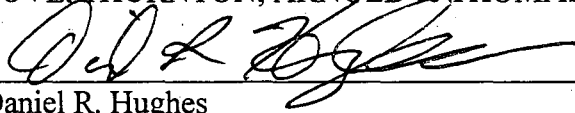
Petitioner asserts that the Appellant waived its rights and no longer had a purchase money mortgage security interest in the property at the time of the tax sale because it failed to protect its security interest and thereby lost its position as a priority creditor entitled to all of the proceeds of the tax sale.

The trial court acted properly when it concluded that the Appellant no longer held a purchase money mortgage security interest in the subject property and thereby lost its priority as to the judgment held by Mrs. Davis. The trial court then applied principles of equity to divide the excess tax sale proceeds between the parties. The decision of the Court of Appeals does not address the issue of whether or not the Appellant waived its rights pursuant to its purchase money mortgage security interest and thereby lost its position as a priority creditor with respect to the excess proceeds of the tax sale.

CONCLUSION

For the foregoing reason, the Court of Appeals should reconsider its decision and affirm the decision of the trial court.

LOVE, THORNTON, ARNOLD & THOMASON, P.A.



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Attorneys for the Respondent Phyllis W. Davis

April 20, 2011

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

Case No. 2008-CP-42-4539

SunTrust Bank s/b/m National Bank of Commerce, including its
Division, Central Carolina Bank Appellant,
v.

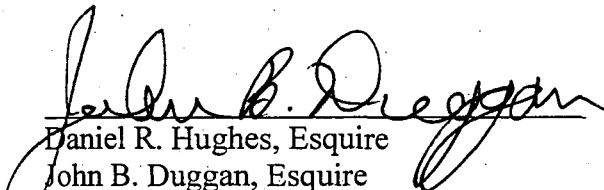
Brandy K. Bryant a/k/a Brandy K. McCarthy, Arnold L. Bryant,
Phyllis W. Davis and Stephen Ford, as Spartanburg County
Tax Collector, Defendants, of Whom Phyllis W. Davis is the
Respondent.....Respondent.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing of Respondent Phyllis W. Davis by depositing a copy of the same in the United States mail, postage prepaid, on April 20, 2011, addressed to the following:

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April 20, 2011


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

Case No. 2008-CP-42-4539

SunTrust Bank s/b/m National Bank of Commerce, including its
Division, Central Carolina Bank Appellant,

v.

Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant,
Phyllis W. Davis, and Stephen Ford, as Spartanburg County
Tax Collector, Defendants, of Whom Phyllis W. Davis is the Respondent . . Respondent.

RETURN TO PETITION FOR REHEARING

Respondent Phyllis Davis has filed a Petition for Rehearing. In her Petition for Rehearing, Davis asserts: "The decision of the Court of Appeals does not address the issue of whether or not the Appellant waived its rights pursuant to its purchase money mortgage security interest and thereby lost its position as a priority creditor with respect to the excess proceeds from the tax sale." Respondent's Petition for Rehearing, p. 2.

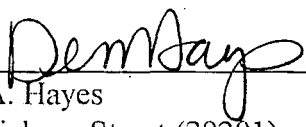
In order to prevail on a petition for rehearing, Davis must demonstrate the Court overlooked or misapprehended her argument. *Kennedy v. South Carolina Retirement Sys.*, 349 S.C. 531, 564 S.E.2d. 322 (2001).

In its decision of the present case, the Court of Appeals states: "Davis argues SunTrust was not entitled to the same priority as to the proceeds from the sale of the Property as to the

Property itself. Davis maintains SunTrust failed to assert its right to redeem and therefore lost its right to assert priority over Davis's previously recorded mortgage." *SunTrust v. Bryant*, No.: 4815 at 3 (S.C. Ct. App. Apr. 6, 2011). Immediately after this language in the decision is footnote 2, in which the Court of Appeals states: "Davis failed to cite any authority to support this argument. Therefore, Davis abandoned this issue on appeal, and we decline to consider the argument." *SunTrust v. Bryant*, No.: 4815 at 3 n.2. Thus, the basis for Davis's argument for rehearing is the same argument the Court of Appeals, in its opinion, stated Davis had abandoned by not citing any authority to support her argument. Clearly, Davis cannot demonstrate the Court of Appeals overlooked or misapprehended her argument when the Court, in the opinion, states this argument is abandoned because Davis failed to assert any authority to support her position. Even in her Petition for Rehearing, Davis, as she has done throughout this entire case, failed to cite any authority to support her position.

CONCLUSION

Because Davis cannot demonstrate the Court of Appeals overlooked or misapprehended her argument, the Court of Appeals should deny Davis's Petition for Rehearing.



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April 29, 2010
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity for Spartanburg County

Case No. 2008-CP-42-4539

SunTrust Bank s/b/m National Bank of Commerce, including its
Division, Central Carolina Bank Appellant,

v.

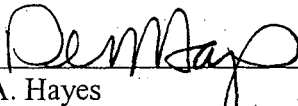
Brandy K. Bryant a/k/a Brandy K. McGarthy, Arnold L. Bryant,
Phyllis W. Davis, and Stephen Ford, as Spartanburg County
Tax Collector, Defendants, of Whom Phyllis W. Davis is the Respondent ... Respondent.

PROOF OF SERVICE

I certify that I have served the Return to Petition for Rehearing of Appellant by depositing
a copy of the same in the United States Mail, postage prepaid, on May 2, 2011, addressed to the
following:

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May 2, 2011



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The South Carolina Court of Appeals

SunTrust Bank s/b/m National Bank of
Commerce, including its Division,
Central Carolina Bank, Appellant,

v.

Brandy K. Bryant a/k/a Brandy K.
McGarthy, Arnold L. Bryant, Phyllis
W. Davis and Stephen Ford, as
Spartanburg County Tax
Collector, Defendants,

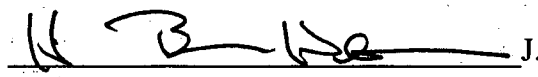
Of whom Phyllis W. Davis is the Respondent.

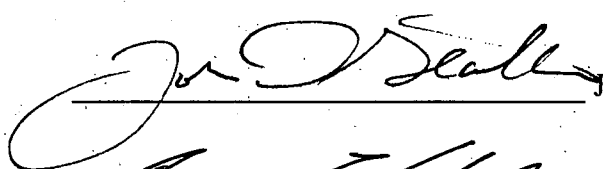
The Honorable Gordon G. Cooper
Spartanburg County
Trial Court Case No. 2008-CP-42-04539

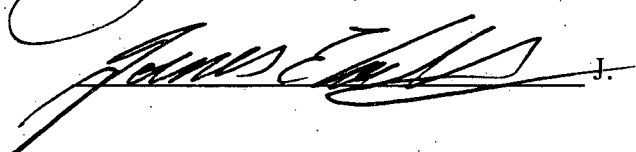
ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a 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.

It is, therefore, ordered that the Petition for Rehearing be denied.






_____ J.

Columbia, South Carolina

cc: Dean A. Hayes, Esquire
Daniel R. Hughes, Esquire
John B. Duggan, Esquire

FILED

May 26, 2011