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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Hon. R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2024-001510
Circuit Court Case No.: 2021-CP-19-00050

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl, Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood, Paul Vichroski, Nydza Vichroski, James Montellese, Roxann Montellese, Individually, Derivatively, and on Behalf of all the Mount Vintage Homeowners Association Members,……...Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales Plantation, LLC, and Mount Vintage Plantation Homeowners Association, Inc. a/k/a Mount Vintage Homeowners Association, Inc...……..Defendants,

Of which LL of SC, LLC, Raiford Topsail Island Investments, LLC, and TR Sales Plantation, LLC, are the ……..…....Appellants.

RESPONDENTS' FINAL BRIEF

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COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Whether a grantee can collaterally attack a Foreclosure Judgment and Special Referee Deed in a later proceeding generally, and when it has availed itself of the benefits of the foregoing and failed to previously challenge either.

II. Whether the trial court was correct that, as a matter of law, the Special Referee Deeds conveyed all of the prior developer's property rights and interests in Mount Vintage, including developer's rights, to Raiford Topsail Island Investments, LLC; and
   a. relatedly, that the 2013 Deed in Lieu of Foreclosure executed on September 3, 2013, did not affect what was transferred in the Special Referee Deeds through merger or otherwise.

III. Whether or not RTI is a subsidiary of LL does not affect the issues on appeal.

IV. Alternatively, whether the trial court's partial summary judgment order on a question of law was not immediately appealable.

COUNTERSTATEMENT OF THE CASE

The underlying lawsuit was filed on June 5, 2020, and the complaint has been amended several times since then, most recently on September 4, 2024. (R. 15; R. 179) Plaintiffs ("Respondents") are owners of lots and houses in Mount Vintage, a community located in Edgefield County, South Carolina. Plaintiffs are proceeding individually as well as derivatively on behalf of the Mount Vintage Homeowners Association ("HOA"),[1] which is still under the control of the Defendant Developers ("Appellants"). Respondents seek to rectify the monetary and non-monetary harm suffered by the Mount Vintage Homeowners Association and its members caused by the negligent and wrongful conduct of the Appellants.

Respondents' pre-trial motion for partial summary judgment sought a ruling from the trial court as to the legal effect of a series of deeds transferred to and between the Appellants in the

[1] Defendant Mount Vintage Homeowners Association, Inc. (hereinafter "The Association" or "HOA") is a non-profit corporation formed under the laws of South Carolina, of which all Respondents are members by virtue of their ownership in Mount Vintage. Respondents do not seek a recovery against the Association. (*See* R. 183, ¶17).

2012–2014 time frame. (*See* R. 647). Respondents' motion not only sought a declaration on the priority and effect of the deeds, but it also sought additional, follow-on rulings, such as a ruling on which Appellant is the "current" Developer of Mount Vintage and whether developer status in Mount Vintage had been abdicated by that Appellant. (*See id.*).

After the pre-trial hearing on summary judgment motions, which was held on August 28, 2024, the trial court invited additional, informal briefing from the parties on whether the transfer of developer rights in Mount Vintage through a series of deeds was a question of law or fact:

> [T]his letter is to inquire what makes the issue of who is properly invested with developer rights a question of fact for the jury as opposed to a question of law.

(R. 870). Appellants, rather than offering additional evidence, briefing, argument, or case law on the subject, responded four (4) days later (and four (4) days closer to jury selection and trial),[2] and invited the trial court to rule on the very issue of law that it now brings in front of this Court:

> In response to the Judge's question, I think it might have 2 components. *The first component is the question of which chain of documents establishes the transfer of developer rights and into which entity. Candidly, I think that is a question of law.* The second component is the question of who presently has developer rights. That might involve questions of fact […]

(*See* R. 880) (emphasis added).[3] Respondents sent additional briefing on the question presented by Judge McIntosh and confirmed Respondents' position that the issue was one of law for the trial court to decide. (*See* R. 891).

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[2] The two-week, specially arranged term of court trial, which Appellants have now succeeded in delaying, had been set for months to begin on September 16, 2024. (*See* R. 9). The Honorable R. Lawton McIntosh, who was assigned this case in connection with the South Carolina Business Court Pilot Program on May 12, 2021, held two (2) full days of pre-trial hearings on August 28, 2024, and September 11, 2024. Judge McIntosh worked with Court Administration and the Chief Administrative Judge of the Eleventh Circuit to set aside two (2) weeks of trial time for this four-year-old case.

[3] "Ordinarily, one cannot complaint of an error which his own conduct has induced." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.,* 399 S.C. 322, 332–33, 732 S.E.2d 166, 171 (2012), *citing Shearer v. DeShon,* 240 S.C. 472, 484, 126 S.E.2d 514, 520 (1962).

On September 4, 2024, the trial court granted Respondents' motion for partial summary judgment on the narrow issue that all parties agreed was one of law for the trial court. (R. 1). Appellants filed a notice of appeal on the same day. (R. 902). Thereafter, the trial court asked the parties whether the notice of appeal operated to stay the underlying proceedings. (R. 916). Appellants answered in the affirmative. Respondents disagreed and provided the trial court with relevant precedent regarding the effect of appealing an interlocutory order. (R. 915). The trial court held a hearing on the matter via teleconference on September 6, 2024, and entertained arguments on the subject.

On September 6, 2024, the trial court issued an additional order clarifying that the September 4, 2024, order on Respondents' motion for partial summary judgment was interlocutory, and therefore the matter was not stayed. (R. 4). That day, Appellants filed a petition to stay the underlying proceedings and/or for writ of supersedeas. (R. 917). On September 10, 2024, this Court denied the petition and dismissed the appeal on the grounds that the September 4, 2024, order was not a "final order," as it asked Respondents to prepare a formal order. (R. 7).

The trial court issued a revised order on September 10, 2024, removing the language regarding preparing a more formal order. (*See* R. 9). That day, Appellants filed a second notice of appeal, (R. 1021), followed by a renewed petition to stay and/or for writ of supersedeas. (R. 1026). This Court granted a temporary stay of the underlying proceedings on September 12, 2024, and asked for Respondents to file a return to Appellants' petition within ten (10) days. (R. 11). Respondents complied (*see* R. 1129), and Appellants filed a subsequent (and improper)[4] reply on October 3, 2024.

[4] Appellants couched their reply to Respondents' Return as a "Return to Plaintiffs' Cross-Motion to Dismiss Defendants' Appeal" but used the opportunity to regurgitate the same arguments made in their Petition for a Writ of Supersedeas and otherwise *reply* to Respondents' Return. Had

On October 9, 2024, this Court granted Appellants' motion to stay the underlying proceedings pending resolution of the September 10, 2024, appeal. (R. 13).[5]

The September 10, 2024, Appealed Order reads as follows:

> Based upon the Deed in Lieu of Foreclosure (09/13/13), the Assignment of Bid (11/18/13), the Master's Report (11/18/13), the Special Referee's Deed (11/18/13), and the Corrective Special Referee's Deed (8/4/14), the Court finds that LL of SC assigned "Developer's Rights" to Raiford Topsail Island Investments during this period of time and accordingly grants Plaintiff's motion for partial summary judgment that LL of SC Assigned its Developer's Rights to Raiford Topsail Island Investments during this period. The Court makes no further findings or rulings other than as stated. No formal order requested.

(R. 9).

STATEMENT OF RELEVANT FACTS

Respondents are residents and lot owners of the neighborhood and development known as Mount Vintage, located in Edgefield County, South Carolina ("Mount Vintage") (R. 179, ¶1, hereinafter referred to as "Compl.").[6] Appellants LL of SC, LLC ("LL"), Raiford Topsail Island Investments, Inc. ("RTI"), and T R Sales Plantation, LLC ("T R Sales") are South Carolina limited liability companies owned and operated, at least in part, by J. Wayne Raiford ("Raiford"). (R. 182-183, ¶¶10-13). The underlying dispute concerns Appellants' negligent development of Mount Vintage. This appeal, however, concerns a narrower issue regarding the ownership of developer rights in Mount Vintage, which rights include being the only voting member of the Association

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Appellants wished to submit a Reply to Respondents' Return, the South Carolina Appellate Court Rules required them to do so within five (5) days—a deadline which Appellants missed. (*See* Rule 240(f), SCACR).

[5] This Court's October 9, 2024, order also provided "[t]here shall be a presumption against granting extensions in this case and it will placed on the roster as soon as practicable." (R. 13)

[6] All previous versions of Respondents' complaint have been superseded by amendment; as such, the third amended complaint is the operative complaint and will be referenced herein. *See Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) ("It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise."). Appellants misleadingly cite to earlier versions of the complaint before it matured by discovery. (*See, e.g.*, App. Br. at 5, 6).

and exemption from the payment of dues and assessments. (R. 185-186 at ¶¶ 35-37, 41). The developers have been the only voting members of the Association for twenty-nine years (29), since the inception of Mount Vintage in 1995. (R. 184-187 at ¶¶ 23, 35, 39, 42-47).

The founding developer of Mount Vintage, MV Development, Inc., was a single purpose entity created and managed by partners Bettis Rainsford and Talmadge Knight in the mid-to-late 1990's. During the recession in 2007-2009, MV Development went into default on its three (3) notes held by Carolina First Bank and was facing foreclosure. In 2009, on the eve of foreclosure, a new entity, formed by original developer Talmadge Knight, K&H Development Company, LLC, f/k/a Park Meridian Holdings SC Fund 2009-2, LLC (hereinafter "K&H"), purchased the notes from Carolina First Bank for approximately fifty percent (50%) of their value. (R. 1133-1135).

The purchase price was partially comprised of a loan from LL to K&H for $2,500,000. (R. 709). LL's loan was secured by a mortgage given by K&H to LL, in which the collateral was all of K&H's property and rights, including developer rights, in Mount Vintage (hereinafter the "Mortgage" and the "Property and Rights"[7]) (*See id.*). The Mortgage was recorded on April 22, 2010, in Edgefield County, South Carolina. (*See id.*).

K&H went into default in or around 2012, causing LL to file a lis pendens and foreclosure action on October 23, 2012 (hereinafter "Foreclosure Action."). (R. 653-660). In connection with the Foreclosure Action, the Special Referee issued an Order and Judgment of Foreclosure and Sale on July 19, 2013 (hereinafter "Foreclosure Order").[8] The Foreclosure Order held, among other things, that LL's mortgage was "a purchase money first mortgage lien on the Property," and

[7] When capitalized herein, "Property and Rights" refers to K&H's ownership interests in Mount Vintage which was the collateral for the mortgage given to LL and which was foreclosed on in the LL Foreclosure Action. "Property and Rights" includes the developer rights at issue here.
[8] (*See* R. 528).

included a "collateral assignment of all other rights appurtenant to the Property, including, *but not limited to, all developer rights* held by K&H Development Co., LLC as to Mount Vintage." (*See* R. 530 at ¶¶ 12-13) (emphasis added).

The Foreclosure Order granted LL a judgment of foreclosure in the amount of $2,500,000, plus interest, attorneys' fees, late fees, etc., ordered that K&H had until the public sale to redeem and make the payment, and if it did not, that the Property and Rights be sold at public auction after advertisement required by law. (*See id*.). The Foreclosure Order provided that the Plaintiff (LL) had expressly waived the right to personal or deficiency judgment; that it could bid at the auction and, if the high bidder, would be responsible only for paying court fees and costs. (*See id.*).

After the entry of the Foreclosure Order, but before the sale, K&H executed a "Deed in Lieu of Foreclosure" to LL on September 3, 2013 (hereinafter "Deed in Lieu") (R. 666). The Deed in Lieu was filed on the same day. (*See id.*). The Deed in Lieu purported to transfer to LL all property and attendant rights possessed by K&H as it related to Mount Vintage which were security for the mortgage executed by K&H in favor of LL. (*See id*). There is evidence in the record on appeal that the reason for the execution of the Deed in Lieu was that a potential sale of the Property and Rights at issue to a third-party investor from China was being negotiated. (*See* R. 320-321). It stands to reason that Raiford and LL wished to establish "ownership" of the collateral more quickly[9] to protect their interests should a sale be consummated. It is undisputed, however, that the sale did not happen, and the LL Foreclosure Action continued. (*See id.*). Appellants aver that they continued with the LL Foreclosure Action solely to "clear off junior mortgages" and to

[9] As Appellants put it in their Opposition to the summary judgment motion at issue, a deed in lieu gives a mortgagee/creditor the ability to "take[] title more quickly and cheaply than waiting for a foreclosure sale." (*See* R. 701).

ensure that no "subordinate liens (or claims of liens) may exist that would impair LL's rights to transfer" any of the Property and Rights. (*See* R. 333:8-10; *see also* App. Br. at 7).

Pursuant to the Foreclosure Order, the sale of the Property and Rights was held on November 4, 2013, after due advertisement. (R. 679). LL was the high bidder at $100,000 and assigned its winning bid to RTI (*See id.*). The Master's Report on Sale states that, after the assignment of the successful bid, RTI "became the grantee." (*See id.*). The Master's Report goes on to state, "I have executed and delivered unto said grantee a good and sufficient deed of conveyance of said property," and was executed by J. Martin Harvey as Special Referee for Edgefield County, South Carolina. (*See id.*). On the same day, November 11, 2013, the Special Referee Deed was delivered and filed. (*See* R. 680, hereinafter "Special Referee Deed"). The Special Referee Deed granted to RTI *all property and rights attendant thereto* which were detailed in the Foreclosure Order. (*See id.*) (emphasis added). Specifically, the Special Referee Deed conveyed to RTI the lots listed in an attached Exhibit "A" to the Special Referee Deed as well as:

> [A]ll and singular the *rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining thereto*, and all the estate, right, title, claim and interest, whatsoever, of the *parties* of the cause aforesaid, and for each of them in and to the same; and of all other persons rightfully claiming from, under, or by these or any of them.

(R. 681) (emphasis added). The Special Referee Deed was recorded in the Edgefield County Register of Deeds on November 11, 2013, at book 1455, page 297, et. seq. (*See id.*).

Apparently to address a missing lot in the foreclosed-upon Property description, a Corrective Special Referee Deed was issued on July 12, 2014, and filed in the Edgefield County Register of Deeds Office on August 4, 2014, at Book 1486, Page 236. (*See* R. 689, hereinafter "Corrective Deed"). The Corrective Deed, issued to RTI as grantee, re-attached the list of lots conveyed with the Special Referee Deed (but added the omitted lot, O-8) and included the same

language conveying all rights, appurtenances, etc., as that cited *supra*, but also added the following to that language:

> … or by these or any of them, including, but not limited to, *all developer rights* held by K&H Development Co., LLC as to Mount Vintage Plantation.

(R. 690 (emphasis added)). It appears from the face of the document that it was drafted, prepared, and filed by Raiford, LL, and RTI's longtime counsel, Mary Guynn. (*See id.*; *see also* R. 326-328).

In September of 2014, in what appears to be an attempt to mitigate the foregoing disconnect, Raiford backdated an assignment of his ownership of RTI to LL. (*See* R. 323:19-23, discussing testimony of Raiford's certified public accountant, Charles Fliflet).[10] However, this backdated transfer is contradicted both by Raiford's original filed venue affidavit in this matter, in which Raiford discusses RTI as a separate corporate entity from LL and makes no mention of a subsidiary relationship, as well as LL's federal tax returns, all of which answer in the negative as to LL's ownership or control of any subsidiary. (*See* R. 323:24-324:5, discussing Raiford's 2021 affidavit[11] and LL's federal tax returns.[12]). Additionally, when Raiford's attorney drew up documents for a potential sale of the Property and Rights in Mount Vintage to the Chinese investor

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[10] As was raised to the trial court during the hearing on this matter, Raiford's CPA, Charles Fliflet, testified that the assignment appeared to have been executed in September of 2014:

> Q: … And so it appears as though that assignment was signed by Wayne and Linda sometime between September 11th and September 14, 2014, correct?
> A: It appears so, yes.

(*See* R. 646:21-25).

[11] As was raised to the trial court during the hearing on this matter, Raiford executed an affidavit, which was filed in the trial court on January 21, 2021, wherein Raiford discussed his ownership of RTI as well as the business of RTI without reference to a subsidiary relationship. (*See* R. 615-617 at ¶¶ 3, 14-21).

[12] As was explained to the trial court during the hearing on this matter, all of LL's federal tax returns, which were prepared by CPA Fliflet, answered in the negative as to whether LL owned 50% or more of another company. (*See* R. 644:19-645:3).

in 2013, Raiford's attorney prepared a warranty deed from RTI to the buyers and a quitclaim deed from LL to the buyers, evidencing their belief that the superior/proper title was in RTI. (*See* R. 321:23—322:4, discussing Pl. Ex. 2.2 (R. 544)). Most lots deeded to RTI were conveyed to LL in 2018, further underscoring the validity of the Special Referee Deed (or there would not be a need to deed the lots back to LL), but developer rights were never conveyed or assigned by RTI to anyone. (*See* R. 723).

Notwithstanding the Special Referee Deeds granting all Property and Rights in Mount Vintage to RTI, LL has acted as developer and caused its name to be inserted as developer in the Mount Vintage covenants. (*See* App. Br.at 8). By inserting itself into the covenants as "developer," LL has complete and perpetual control over the HOA. (*See* R. 749-752, ref. Mount Vintage covenants at R. 791). Raiford had his attorney, Mary Guynn, compose a memorandum documenting LL's "absolute control," which was used at the urging of Raiford's marketing team to show the homeowner board members "who was in charge." (*See* R. 1250-1275). This and other undisputed evidence show that, despite not having title to developer rights, LL has represented itself as developer of Mount Vintage since late 2013.

STANDARD OF REVIEW

On review of a trial court's grant of summary judgment, an appellate court uses the same standard as that applied by the trial court pursuant to Rule 56, SCRCP. *Wright v. PRG Real Est. Mgmt., Inc.*, 426 S.C. 202, 211, 826 S.E.2d 285, 290 (2019). If a trial court grants summary judgment on a question of law, the court of appeal's review is *de novo*. *See Floyd v. Dross*, 442 S.C. 79, 87, 897 S.E.2d 191, 195 (Ct. App. 2024), *reh'g denied* (Feb. 15, 2024), *cert. denied* (Oct. 30, 2024) ("When a circuit court grants summary judgment on a question of law, this [c]ourt will review the ruling de novo.") (internal citations and quotations omitted). Despite this broad scope of review, "the appellant is not relieved of his burden of convincing the appellate court the trial

judge committed error in his findings." *Pinckney v. Warren*, 344 S.C. 382, 387–88, 544 S.E.2d 620, 623 (2001).

The interpretation of an unambiguous deed is a question of law for the court. (*See Floyd*, 442 S.C. at 88, 897 S.E.2d at 196). "When a deed is unambiguous, any attempt to determine the grantor's intent…must be limited to the deed itself, and using extrinsic evidence to contradict the plain language of the deed is improper." (*See id.*) (internal citations and quotations omitted).

Pursuant to Rule 220(c), SCACR, "the appellate court may affirm any ruling, order, or judgment upon any grounds appearing in the record." *Sims v. Amisub of S.C., Inc.*, 408 S.C. 202, 214, 758 S.E.2d 187, 194 (Ct. App. 2014), *aff'd*, 414 S.C. 109, 777 S.E.2d 379 (2015). A Respondent may, therefore, "raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." (*See id.*) (internal citations omitted).

ARGUMENT

This Court should affirm the trial court's September 10, 2024, order because (1) the trial court correctly declined to ignore or limit the effect of the unambiguous 2012 Lis Pendens, 2013 Foreclosure Order, and 2013-2014 Special Referee Deeds; (2) the trial court correctly ruled that the Special Referee Deeds granted all Property and Rights in Mount Vintage (including developer's rights) to RTI, and that the Deeds related back in time to the initiation of the foreclosure proceedings begun on October 23, 2012 with the filing of a lis pendens; and (3) the trial court correctly ruled that the 2013 Deed in Lieu of Foreclosure executed on September 3, 2013, did not alter or affect what was transferred in the Special Referee Deeds, through merger or otherwise.

I. Neither the Trial Court nor This Court Can Disregard or Limit the Effect of the Circuit Court's Multiple Foreclosure Orders and Deeds

Appellants ask this Court to disregard as meaningless - or, at minimum, significantly gut the effect of - the South Carolina circuit court's (1) Judgement of Foreclosure and Sale; (2) Master's Report on the Sale; (3) Special Referee Deed; and (4) Corrective Special Referee Deed. There is no basis to do so in law or in equity, and this Court must decline to do so.

a. The Trial Court's Foreclosure Order, Sale, and Deed Were Never Appealed or Challenged and Therefore Appellants Are Estopped From Doing So Here.

No party moved to reconsider, moved to vacate, or otherwise appealed the July 19, 2013, Foreclosure Order (and resulting sale); therefore, Appellants were bound by all subsequent proceedings in that case, including the Special Referee Deeds. *See, e.g., Bartles v. Livingston*, 282 S.C. 448, 461-62, 319 S.E.2d 707, 715 (Ct. App. 1984) (determining a party was bound in all subsequent proceedings by a foreclosure decree it did not appeal).[13] Importantly, the Foreclosure Order, along with applicable law, dictated *how* the at issue Property and Rights were to be disposed of, and no party challenged that procedure.[14]

[13] *See also Buffalo Creek Invs., Inc. v. Pettus*, 440 S.C. 111, 119, 889 S.E.2d 608, 612 (Ct. App. 2023) ("[T]he special referee's determination in the decree of foreclosure that the 2011 Administrative Order did not apply bound the parties to this holding because no party appealed the decree."); *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (holding that an unappealed order "become[s] the law of the case"); *In re Morrison*, 321 S.C. 370, 372 n.2, 468 S.E.2d 651, 652 n.2 (1996) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal); *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (stating "an unappealed ruling, right or wrong, is the law of the case").

[14] The terms and conditions of a judicial sale are controlled by court order, Rule 71, SCRCP, and statute. *Ex parte Moore,* 352 S.C. 508, 510, 575 S.E.2d 561, 562 (2003), *citing* S.C. Code Ann. 15–39–660 (1977) (requirements of the notice of sale); Rule 71(b), SCRCP (requirements for the court order); *Ex parte Keller*, 185 S.C. 283, 194 S.E. 15 (1937) (the court order sets the terms of the sale).

Further, no party, including Appellants, moved for relief under Rule 60, SCRCP, after the sale[15] or recording of the Special Referee Deed, nor did any party file an appeal challenging its validity. **To the contrary**, Appellants' long-time attorney filed a corrective Special Referee Deed on August 4, 2014, confirming what was transferred in the 2013 Special Referee Deed.

In fact, despite LL representing itself to the community as the developer, RTI applied for and received the multi-lot tax discount afforded to developers by Edgefield County.[16] Appellants received distinct benefits from the Foreclosure Action which they now seek to invalidate.

b. Appellants Are Estopped From Limiting the Effect of the Unappealed and Unchallenged Foreclosure Orders.

The ownership of the Property and Rights in Mount Vintage was decided in the LL Foreclosure Action and, as shown above, was not contemporaneously challenged or appealed. Now, in the underlying action, and in this appeal, Appellants are collaterally attacking the transfer of Property and Rights in the Foreclosure Action. Whether res judicata or collateral estoppel (or law of the case) applies, or a hybrid of these concepts, the result is the same: Appellants cannot contest that all Property and Rights in Mount Vintage were deeded to RTI because that issue was finally decided in the Foreclosure Action. "Res judicata bars relitigation of the same cause of action while collateral estoppel bars relitigation of the same facts or issues necessarily determined in the

[15] "A judicial sale should not be set aside except for cogent reasons." *Buffalo Creek Invs., Inc. v. Pettus*, 440 S.C. 111, 120, 889 S.E.2d 608, 612 (Ct. App. 2023). The aforementioned "cogent reasons" are twofold: "a judicial sale will be set aside when either: (1) the sale price is so gross as to shock the conscience; or (2) the sale is accompanied by other circumstances warranting the interference of the court." *Buffalo Creek Invs., Inc. v. Pettus*, 440 S.C. 111, 122, 889 S.E.2d 608, 613 (Ct. App. 2023) (internal quotations omitted). The circumstances which courts in South Carolina have found to warrant interference of the court include mistake, fraud, or misrepresentation. *See Wachesaw Plantation E. Cmty. Servs. Ass'n, Inc. v. Alexander*, 420 S.C. 251, 263, 802 S.E.2d 635, 642 (Ct. App. 2017) (circumstances warranting interference of the court include fraud, misrepresentation, mistake, and other unfairness).

[16] (*See* R. 338:6-11, referencing Pl. Ex. 13.02 (R. 578), (RTI's Multi-Lot Discount Application)).

former proceeding." *S.C. Pub. Int. Found. v. Greenville Cnty*., 401 S.C. 377, 385–86, 737 S.E.2d 502, 506 (Ct. App. 2013) (internal citations omitted).

c. Appellants Cannot Argue that the Special Referee's Deed Transferred "Nothing" Except for Clean Title

Appellants did not challenge the validity of the circuit court's various orders pertaining to the Foreclosure Action and will argue to this Court that they are not trying to do so now. Rather, Appellants position is that the Special Referee Deed, and the sale preceding it, was valid and effective in "extinguish[ing] junior liens, whether known or unknown" on the Property and Rights, (s*ee* R. 702), but the Special Referee Deed itself did not transfer any Property or Rights, because the Deed in Lieu already vested LL with those Property and Rights. (*See* R. 702-704). Appellants have not clearly enunciated what they believe was transferred via the Special Referee Deed, beyond "clean title" (*See* R. 335:12).[17] At various times, they have asserted the following:

- The Special Referee Deed transferred nothing. (R. 328:15-16) ("Well, so Mary Guynn's testimony about this is that there was nothing conveyed; […].");
- The Special Referee Deed transferred whatever was left in the residuary, "even if it was nothing" (R. 328:22-329:1);
- The Special Referee Deed transferred "whatever interest remained to be foreclosed upon." (*See* App. Br. at 22); and
- The Special Referee Deed transferred LL's "rights of ownership (if any), to RTI." (*See* R. 701).

According to Appellants, therefore, the duly noticed and advertised sale conducted pursuant to a circuit court order was selling "nothing," "maybe nothing," "whatever was left in the residuary," "whatever interest remained," and/or "rights of ownership, if any," but definitively operated to

[17] It goes without saying that to transfer "clean title," a document must be transferring some nature of title rights. Here, that would be legal ownership of the Property and Rights in Mount Vintage.

transfer clean title to Appellants. This is an attempt to retroactively convert the Special Referee Deed (and related proceedings) into nullity. The law does not allow such an exercise, and this Court must affirm the trial court's decision.

II. The Chain of Title of the Property and Rights in Mount Vintage

a. The Effect of a Lis Pendens

The purpose of a notice of pendency of an action is to inform a purchaser or encumbrancer that a particular piece of real property is subject to litigation. *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (Ct.App.1985); *Wooten v. Seanch*, 187 S.C. 219, 196 S.E. 877 (1938). "The filing of a lis pendens places a cloud on title which prevents the owner from freely disposing of the property before the litigation is resolved." *Shelley Const. Co. v. Sea Garden Homes, Inc.*, 287 S.C. at 30, 336 S.E.2d at 491–92 (Ct. App. 1985).

"A properly filed lis pendens binds subsequent purchasers or encumbrancers to all proceedings evolving from the litigation." *South Carolina Nat'l Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562, 562 (1987) (emphasis added). Additionally, the South Carolina Code provides that subsequent purchasers shall be bound by all proceedings taken after the filing of the lis pendens:

> From the time of filing only, the pendency of the action shall be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer and **shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action.** For the purposes of this section, an action shall be deemed to be pending from the time of filing such notice.

S.C. Code Ann. § 15-11-20 (emphasis added).[18] Moreover, it is hornbook law that a later obtained judgment relates back to the filing of the lis pendens.

> A "lis pendens" is a notice of litigation, placed in the real property records, asserting an interest in the property and notifying third parties that ownership of the property is disputed. "Lis pendens" is a common-law and statutory doctrine which has the effect of providing constructive notice to the world of an alleged claim of a lien or an interest in property. As lis pendens provides constructive notice of litigation, **any judgment later obtained in that litigation relates back to filing of the lis pendens.**

51 Am.Jur.2d *Lis Pendens* § 1 (2000) (emphasis added).

> Although lis pendens has been defined as an "encumbrance" as that term has been traditionally defined, and may be applied to enforce an existing lien, some courts have stated that the doctrine of lis pendens does not impress affected property with a lien, or extend or prolong any existing lien, but rather, **binds third parties with notice that any interest they may acquire in property pending litigation will be subject to the outcome of the action.**

Id. § 3 (emphasis added).

Furthermore, the lis pendens "notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights." *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) (citing 51 Am.Jur.2d *Lis Pendens* § 2 (2000) (emphasis added). After the filing of the lis pendens, any conveyance of the property is now subject to the outcome of the litigation. *In*

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[18] Appellants cite to this provision as well but omit the following clause which immediately precedes the portion cited in Appellants' brief:

> …every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed …

(*Compare* S.C. Code Ann. § 15-11-20 *with* (App. Br. at 21) ("a 'subsequent purchaser or encumbrancer [] shall be bound by all proceedings taken after the filing of [a lis pendens] to the same extent as if he were made a party to the action.'")) (quotations and omissions in original).

Appellants make use of its paraphrased version to argue that because LL was not a subsequent purchaser, it was not affected by the statute. (*See* App. Br. at 21). To the contrary, the plain language of the statute contemplates that *every* person who records an interest in the property *after* the recording of a lis pendens is bound by all proceedings stemming from the lis pendens—it makes no exception for the filer of the original lis pendens. (*See* S.C. Code Ann. § 15-11-20).

re Shiver, 598 B.R. 221, 230 (Bankr. D. S.C. 2019); *see also Meliani v. Jade Dunn Loring Metro, LLC*, 286 F. Supp. 2d 741 (E.D. Va. 2003) ("[O]nce recorded, lis pendens binds subsequent bona fide purchasers of disputed property such that subsequent purchaser, with or without actual notice of lis pendens, takes subject to outcome of pending litigation.") (emphasis added).

b. Multiple Lis Pendens Were Filed Concerning the Property

On October 23, 2012, LL filed a lis pendens and initiated a foreclosure proceeding against K&H. (R. 653-665).[19] On April 29, 2013, LL filed an amended lis pendens and amended complaint in LL's Foreclosure Action which added a parcel (Lot O-8) to the "Property Description." (*See* R. 338:16-22, referencing R. 522).

On January 10, 2013, the other owner of original developer MV Development, Bettis Rainsford, filed a lis pendens and initiated a foreclosure proceeding against his former partner, Talmadge Knight, and Knight's entity, K&H.[20] Rainsford's foreclosure action named LL as a defendant in light of LL's already pending Foreclosure Action and claimed that Rainsford had an equitable security interest in the property at issue in LL's Foreclosure Action. LL answered Rainsford's foreclosure action on April 9, 2013. (R. 522).[21]

The instant appeal concerns the force and effect of LL's Foreclosure Action; however, the subsequent filing of Rainsford's foreclosure action illustrates the priority of the LL Foreclosure Action and illustrates the need for, and the validity of, the Special Referee Deed.

c. A Judgment of Foreclosure and Sale in the LL Foreclosure Action Was Filed on July 19, 2013

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[19] Discussed further in the statement of relevant facts, *supra*.
[20] *See* R. 522.
[21] Appellants state the purpose for proceeding with foreclosure was to obtain "clear and marketable title to the Mount Vintage property, unencumbered by subordinate liens, or claims of liens, whether ***known*** or unknown." (*See* App. Br. at 16) (emphasis added). Bettis Rainsford's lien was known, as LL filed a response to Rainsford's complaint on April 9, 2013.

In connection with LL's Foreclosure Action, the Special Referee issued a Foreclosure Order on July 19, 2013.[22] The Foreclosure Order held, among other things, that LL's mortgage was "a purchase money first mortgage lien on the Property," and included a "collateral assignment of all other rights appurtenant to the Property, including, but not limited to, *all developer rights* held by K&H Development Co., LLC as to Mount Vintage." (*See* R. 530 at ¶¶ 12-13, (emphasis added)).

At no time did any party to the LL Foreclosure Action seek to withdraw, vacate, dismiss, or otherwise nullify the lis pendens or Foreclosure Order.[23]

d. The Deed In Lieu of Foreclosure

As the name suggests, a deed in lieu of foreclosure is an alternative to formal foreclosure proceedings. Black's Law Dictionary defines a "deed in lieu of foreclosure" as "[a] deed by which a borrower conveys fee-simple title to a lender in satisfaction of a mortgage debt and as a ***substitute*** for foreclosure." Black's Law Dictionary (10th ed. 2014), available at Westlaw BLACKS (emphasis added). Essentially, "[i]n consideration of the lender not proceeding with foreclosure, the borrower deeds the property to the lender." § 11:1. Generally, 1 *L. Distressed Real Est.* § 11:1. A risk attendant to accepting a deed in lieu instead of proceeding to foreclosure is that all existing liens and encumbrances remain on the property. *See* § 11:5. Subordinate or junior liens, 1 *L. Distressed Real Est.* § 11:5 ("[I]f there are subordinate liens such as junior mortgages, junior judgment liens, or junior mechanic liens, and the lender takes title to the property through a deed in lieu of foreclosure, these junior liens remain on the property."); *see also* (R. 701) ("When a

[22] *See* Statement of Relevant Facts, *supra*.

[23] "A foreclosure may be withdrawn prior to sale for various reasons, such as the borrower's agreement to a loan modification, disposal of the property through a short sale, the lender's agreement to a deed-in-lieu of foreclosure, or the borrower's cure of the default." *State ex rel. Coffman v. Robert J. Hopp & Assocs., LLC*, 2018 COA 69M, ¶ 7, 442 P.3d 986, 993, *as modified* (Nov. 1, 2018).

creditor takes title to property through a deed-in-lieu, he takes the property subject to all existing liens and encumbrances as of the date of transfer.").[24]

Deeds in lieu may also be beneficial to both the mortgagee and the mortgagor: the transaction allows the parties to avoid the costs, delay, and potential embarrassment of a formal foreclosure proceeding. *Decon Grp., Inc. v. Prudential Mortg. Cap. Co., LLC*, 227 Cal. App. 4th 665, 670, 174 Cal. Rptr. 3d 205, 207 (2014) ("The deed in lieu of foreclosure may be advantageous to both parties by, for example, allowing the beneficiary to avoid the delays and costs of foreclosure and saving the trustor to some extent from the embarrassment and impaired credit rating a public foreclosure sale produces.") (internal citations omitted). Accepting a deed in lieu instead of proceeding with a foreclosure sale also may reduce some risks to the mortgagee, *i.e.*, the risk that the mortgagor could file for bankruptcy in the interim period, thereby staying the foreclosure proceedings. *See* "Deeds in Lieu of Foreclosure", C426 ALI-ABA 447, 452.

Here, K&H executed a "Deed in Lieu of Foreclosure" to LL on September 3, 2013. (*See* R. 666). The Deed in Lieu was filed on the same day. (*See id.*). The Deed in Lieu purported to transfer to LL all property and attendant rights possessed by K&H as it related to Mount Vintage which were security for the mortgage executed by K&H in favor of LL. (*See id.*; *see also* "Statement of Relevant Facts", *supra*). After receiving the Deed in Lieu, LL did not move to vacate the Foreclosure Order or dismiss the Foreclosure Action; instead, the Foreclosure Action continued to a sale as ordered.

e. The Foreclosure Sale and Special Referees' Deeds

[24] *See also Moloney v. Bos. Five Cents Sav. Bank FSB,* 422 Mass. 431, 435, 663 N.E.2d 811, 814 (1996) ("Primary among these differences is that formal procedures eliminate junior liens, and deeds in lieu do not.").

A deed conveyed pursuant to a judicial sale is afforded great deference in our jurisprudence:

> When a man buys a piece of property at a judicial sale, he secures every interest in the property which is covered by the proceedings in the actions. If the court has jurisdiction and the parties in interest are properly served and made parties to the suit, the title carried at the sale by the decree of court is a good and sufficient title to such interests as are determined in the suit.

Ex parte Keller, 189 S.C. 26, 199 S.E. 909, 915 (1938). "The purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final." *Buffalo Creek Invs., Inc. v. Pettus*, 440 S.C. 111, 120, 889 S.E.2d 608, 612 (Ct. App. 2023).

Pursuant to the Foreclosure Order, a public auction for the Property and Rights in Mount Vintage was held on November 4, 2013; LL was the high bidder; and LL assigned its successful bid to RTI. (*See* R. 679). On the same day, November 11, 2013, the Special Referee Deed was delivered and filed. (R. 680). The Special Referee Deed granted to RTI all Property and Rights which were the subject of the LL Foreclosure Action. (*See id.*). The Special Referee Deed was recorded in the Edgefield County Register of Deeds on November 11, 2013, at book 1455, page 297, et. seq. (*See id.*; *see also* "Statement of Relevant Facts", *supra*).

A Corrective Special Referee Deed was issued on July 12, 2014, and filed in the Edgefield County Register of Deeds Office on August 4, 2014, at Book 1486, Page 236. (R. 689). The Corrective Deed, again issued to RTI, re-attached the list of lots conveyed with the Special Referee Deed (but added the omitted lot, O-8), and included the same language conveying all rights, appurtenances, etc., as November 11, 2013, Special Referee Deed, but added the following to that language:

> … or by these or any of them, including, but not limited to, *all developer rights* held by K&H Development Co., LLC as to Mount Vintage Plantation.

(R. 691) (emphasis added)). It was drafted by Raiford, LL, and RTI's attorney, Mary Guynn. (*See id.*; *see also* "Statement of Relevant Facts", *supra*). There can be no doubt about the meaning or intent of this Corrective Deed as the Defendants' attorney prepared it, solicited it, and filed it. (*See* R. 690) ("After recording return to Smith, Massey, Brodie, Guynn & Mayes.").

III. The Trial Court Correctly Held, As a Matter of Law, that the Special Referee Deed Conveyed Developer's Rights to RTI

This Court should affirm the trial court's September 10, 2024, Order ("the Order"), which granted Respondent's Motion for Partial Summary Judgment. The Order reflected a proper understanding of the relevant documents in the chain of title as a matter of law.

a. Appellants Took the Deed in Lieu Subject to All Existing Liens and Encumbrances

Appellants have conceded that it took the Deed in Lieu subject to all existing liens and encumbrances. *See, e.g.,* (R. 701); *see also* (R. 335). And, rightfully so, as such a premise is supported by the common law and our state's jurisprudence. (*See* Section II(d), *supra*). There were at least three (3) pending encumbrances that Appellants knew of as of September 3, 2013: pending HOA liens for unpaid assessments which necessitated their being a defendant in LL's Foreclosure Action; LL's own lis pendens and Foreclosure Action (which had been reduced to a judgment and was soon to be subject to an Order of Sale); and the Rainsford lis pendens and foreclosure action. (*See* Section II(b), *supra*). As Appellants have stated, there may have been unknown liens and encumbrances, as well. (*See* R. 335). LL admits that the only way for it to obtain clear title was to continue with the LL Foreclosure Action (*see id.*) and that is because the Deed in Lieu was subject to all previously filed encumbrances and lis pendens, *including* LL's own.

This legal concept which Appellants now seek to avoid is the very legal concept that Appellants sought protection of by continuing to a foreclosure sale. For example, instead of issuing the Deed in Lieu to LL, K&H could have executed a deed in lieu to Rainsford or an unknown,

third-party (such as the aforementioned Chinese investor) at the same time and for the same property and rights at issue here. At the foreclosure sale, Appellants would have succeeded in foreclosing out that hypothetical deed in lieu because it was taken *subject* to Appellants' October 2012 lis pendens.[25] And that is precisely the argument they would have made before the Special Referee. And, it would have succeeded because it is basic, hornbook law, a law which provides the very protection Appellants sought when they continued to a foreclosure sale. Appellants cannot argue that they continued with the foreclosure sale as the priority lienor to ensure they had clean title while simultaneously saying that no title passed via the Special Referee Deed. As Judge McIntosh stated during the hearing on this matter, "I don't think you can have it both ways." (R. 330).

b. The Concept of Merger Does Not Save Appellants' Untenable Position

Appellants seek to avoid the effect of the Special Referee Deed by arguing that the legal estate, which LL obtained from the Deed in Lieu, merged with LL's interest in the underlying mortgage, "yielding unified title in LLSC." (App. Br. at 16). And, in order to ensure that they received clean and alienable title to the Property and Rights at issue, they proceeded with the foreclosure sale (App. Br. at 21). Appellants simultaneously argue the foreclosure sale and resultant Special Referee Deed did not actually transfer any rights or title to RTI because all rights and title were already vested in LL via the Deed in Lieu. (*See id.*).

Before giving this argument more credit than it deserves by proffering a response, let us recognize the obvious. The Deed in Lieu was subject to the lis pendens. The lis pendens said,

[25] And, when it came to priority of LL's mortgage lien which was foreclosed on, the operative date was the mortgage's date of filing. *Atlas Supply Co. v. Davis,* 273 S.C. 392, 395, 256 S.E.2d 859, 860 (1979) (Littlejohn, J., concurring) (indicating lien priority is based on the time at which an instrument is recorded and that recording is accomplished when an instrument is indexed).

paraphrasing, "here, here world, the disposition of this property has been put in the hands of a duly qualified court, and anyone dealing with this property in the future will be subject to that court's order of disposition." In that context, merger cannot occur, unless the lis pendens and court case are dismissed without a disposition – which did not happen. Moreover, the recognition that there were junior liens, which needed to be cleared, and the resulting continuation of the foreclosure, also prevents a merger from happening. But, ignoring the obvious, and continuing with the briefing:

The doctrine of merger, as applied to a mortgagee accepting title to a property in full satisfaction of a debt, operates to *extinguish* the mortgage lien as a matter of law. *Powell v. Patrick*, 64 S.C. 190, 41 S.E. 894, 895 (1902) (emphasis added). [26] Appellants are correct that a contrary intention may prevent a *merger* from taking place, thereby precluding the extinguishment of a mortgagee's lien.[27] However, none of the authorities cited by Appellants, whether in or out of our jurisdiction, stand for the proposition that merger can occur, but that a contrary intention can prevent an *extinguishment* from taking place, thereby allowing a mortgagee to maintain its lien through foreclosure. The fallacy of Appellants' argument is this: when a merger like that proffered by Appellants occurs, the mortgage lien is extinguished, and foreclosure is impossible. *See Nebco & Assocs. v. United States*, 23 Cl. Ct. 635, 643 (1991) ("If merger is found, the mortgage is

[26] *See also First Federal Sav. and Loan Ass'n of South Carolina v. Finn*, 300 S.C. 228. 387 S.E.2d 253 (1989), *quoting Thompson v. Hudgens;* 161 S.C. 450, 159 S.E. 807 (1931) ("Ordinarily, when equitable and legal titles unite in the same person, merger occurs and the equitable encumbrance ceases to exist.").

[27] "An intention to prevent merger may be implied from facts indicating merger would be opposed to the interests of the person in whom the legal and equitable interests became united and that such an intention existed at the time of the merger." *First Federal Sav. and Loan Ass'n of South Carolina v. Finn*, *supra*, citing *McCreary v. Coggeshall*, 74 S.C. 42, 53 S.E. 978 (1906). The relevant inquiry in determining the existence of a contrary intention "**must be understood as the intention existing at the time the two interests came together**." *Thompson v. Hudgens*, 161 S.C. 450, 159 S.E. 807, 810 (1931)(emphasis added).

extinguished and foreclosure is impossible."); 27 S.C. Jur. Mortgages § 156, *citing Henegan v. Drake,* 146 S. C. 157, 143 S. E. 549 (1928); *Singleton v. Singleton,* 60 S. C. 216, 38 S. E. 462 (1901). Either merger *and* extinguishment occur, or no merger occurs at all. As Frank Sinatra aptly put it when singing about love and marriage, "you can't have one without the other."

c. The Out of State Caselaw Cited by Appellants Supports Respondents' Position, Not Appellants'

During the hearing in the trial court, Appellants' counsel suggested that the few cases about a mortgagee accepting a deed in lieu but still proceeding with a foreclosure stand for the proposition that merger occurs via the deed in lieu, but the mortgagee can still pursue a foreclosure to close out junior liens:

> The scant cases that are out there ultimately fall back on the doctrine of merger and say that, well, you know, except for clearing out – **it's basically a backdoor quiet title action**[28] – except for clearing out junior liens, the merger of the equitable interest from the mortgage and the record title interest of the deed merge, so that when the creditor acquires a property through a deed in lieu, **except for extinguishing junior liens, there is no other function for the foreclosure proceeding**.

(R. 325) (emphasis added). That is a bold (and erroneous) derogation of the case law cited by Appellants. *Each* case, discussed below in turn, stands for the proposition, or some derivation of it, that a senior mortgagee who accepts a deed in lieu but still proceeds to a foreclosure to acquire clear title has thusly shown an intention to *prevent* merger from occurring. In those cases, *neither* merger *nor* extinguishment were held to occur, and thus the foreclosure deed acquired by the mortgagee is what transferred clear title to that senior lienholder—not the deed in lieu.

[28] It warrants mention that a foreclosure is not, and cannot be characterized as, a "backdoor quiet title action," as Appellant asserts. The two actions are distinct. "Priorities among valid interests are the subject of foreclosure suits; the alleged invalidity of adverse interests are the subjects of quiet title actions." *Kasdon v. G. W. Zierden Landscaping, Inc.*, 541 F. Supp. 991, 995 (D. Md. 1982), *aff'd sub nom. Kasdon v. United States*, 707 F.2d 820 (4th Cir. 1983).

In *Decon Grp., Inc. v. Prudential Mortg. Cap. Co., LLC*, 227 Cal. App. 4th 665, 668, 174 Cal. Rptr. 3d 205, 206 (2014), an entity known as Wellesley purchased real property ("Property") in Los Angeles via a loan from a financial institution, which loan was secured by a duly filed deed of trust for the Property ("Mortgage") recorded on February 8, 2008. (*See id.).* Subsequently, Wellesley contracted with the plaintiff, Decon, to perform renovations at the property. (*See id.*). Decon completed the work but was not paid in full, and on April 17, 2009, Decon filed a mechanics lien and commenced a collection and quiet title action. (*See id.*). In September of 2009, Wellesley defaulted on the Mortgage, and the financial institution filed a notice of default and election to sell. (*See id.*). The Mortgage was validly assigned to an entity known as PCMF, who accepted a deed in lieu of foreclosure from Wellesley on November 30, 2009. (*See id.* at 207). PCMF proceeded with a foreclosure sale, purchased the Property at the sale, and then sold the Property to a third-party. (*See id.*). Decon argued that PCMF's interests merged upon its acceptance of the deed in lieu; that PCMF's senior Mortgage had therefore been extinguished; and that Decon's lien had priority over the Mortgage and was not closed out by PCMF's foreclosure. The trial court agreed and ordered the Property to be sold. (*See id.*).

The appellate court reversed, finding that PCMF's foreclosure terminated Decon's lien, and that PCMF became the owner of the Property *at the foreclosure sale* free and clear of all junior liens. (*See id.*) (emphasis added). First, the court clarified the principle that the title conveyed by a referee's deed at foreclosure relates back in time to the execution of the instrument foreclosed upon:

> Title conveyed by a trustee's deed [i.e., in a foreclosure sale] relates back in time to the date on which the deed of trust was executed. **The trustee's deed therefore passes the title held by the trustor as of that earlier time plus any after-acquired title, rather than the title that the trustor held on the date of the foreclosure sale**.

(See id. at 207–08) (emphasis added; internal citations omitted; brackets in original). Accordingly, the trustee's deed issued to PCMF after the foreclosure sale related back in time to the execution of the Mortgage, which predated Decon's mechanic's lien. (*See id.*). The court then explained that the common law doctrine of merger, propounded by Decon, would operate to extinguish PCMF's senior lien upon its acceptance of the deed in lieu, which would make its title subject to Decon's junior liens. (*See id*.). Recognizing the contrary intention exception to merger, the court found that merger did *not* occur upon PCMF's acceptance of the deed in lieu, and explained that:

> the courts have generally held that when a senior lienholder accepts a deed in lieu of foreclosure, the senior lien and title do not merge, so the senior lienholder retains the power to foreclose and thereby eliminate the junior liens.

(*See id.* at 208). Citing this exception, as well as express language in the deed in lieu which provided that merger would not occur, the court held as follows: "***[w]hen PMCF foreclosed and purchased*** the Property ***at the foreclosure sale***, Decon's lien was eliminated, and ***PMCF then owned*** the Property free of Decon's lien." (*See id.* at 209) (emphasis added). Then, and only then, PMCF was free to transfer the third party, free and clear of Decon's lien. (*Id.*).

Decon does not stand for the proposition that Appellants proffer, namely that a deed in lieu given to a senior lienholder merges the senior lienholder's interests but still allows that lienholder to proceed to a foreclosure to eliminate junior liens. (*See* App. Br. at 19); (*see also* R. 325:17-24) ("[I]t's basically a backdoor quiet title action[…]."). Indeed, *Decon* stands for the opposite proposition—when a senior lienholder who initiates foreclosure proceedings is the high bidder at a foreclosure sale, the resulting deed relates back in time to the execution of the foreclosed instrument, and the debtor's title (and appurtenant rights) *at the time of that instrument's execution* is what passes to the senior lienholder with the foreclosure deed. And, most importantly, *Decon* clarifies that the foregoing is true even if the senior lienholder accepts a deed in lieu in the interim:

> When PMCF acquired title to the Property under the deed in lieu of foreclosure, PMCF was already the lienholder and beneficiary of a deed of trust that was senior to Decon's mechanic's lien. PMCF's rights would have been adversely affected if PMCF's lien and title merged—PMCF would then have held title subject to Decon's lien but without the power to foreclose and thereby eliminate Decon's lien.

See Decon Grp., Inc., 227 Cal. App. 4th at 672, 174 Cal. Rptr. 3d at 209 (2014).

Here, using the logic of *Decon*, if LL's lien and title merged upon acceptance of the Deed in Lieu, as Appellants argue, LL would have held title subject to any junior liens "but without the power to foreclose and thereby eliminate [those] liens." (*See id.*). Appellants argue that a merger occurred at the time the Deed in Lieu was transferred, but LL retained the power to foreclose; and, Appellants argue that the foreclosure's sole purpose was to eliminate junior liens and the resulting Special Referee's Deed foreclosed out all junior liens but did not convey any property or interest. That is not what *Decon* stands for and it is not the law. A merger of lien and title into a mortgagee (whether accomplished by deed in lieu or otherwise) destroys that mortgagee's ability to later foreclose.

The other out of jurisdiction cases cited by Appellants follow similar fact patterns as *Decon* and are unhelpful to Appellants' arguments for similar reasons.[29] In *CIT Bank, N.A. v. Buono,* No. 14-CV-6610(JS)(ARL), 2019 WL 5895473 (E.D.N.Y. Nov. 8, 2019), the senior lienholder and debtor reached a settlement (vis a vis the debtor executing a deed in lieu of foreclosure to the senior

[29] Appellants also cite to *Kunesch v. Andover Twp.,* 32 N.J. Tax 407 (2021), although it is unclear why. The court in *Kunesch* ultimately held that the deed in lieu at issue was, in actuality, an equitable mortgage, and did *not* transfer ownership in the collateral to the mortgagee. *See id.* at 417-18 ("If the transaction is recharacterized as an equitable mortgage, the transferee lacks indefeasible title to the property, and the transferor retains his or her equity of redemption."). Again, this supports Respondents' position: LL, as the transferee, did not have indefeasible title to the Property via the Deed in Lieu, and K&H did retain its equity of redemption until the foreclosure sale.

lienholder) during the time period between the entry of the judgment of foreclosure (brought by and in favor of the senior lienholder) and the foreclosure sale itself. (*See id.* at *2). The parties *together* asked the court to vacate the judgment of foreclosure and sale, citing the settlement of the case. (*See id.*). The court granted the joint motion after considering the policy implications of the finality of judgments as well as parties "contract[ing] around a litigated judgment." (*See id.* at *3). Again, rather than bolster Appellant's arguments, *CIT Bank* underscores the legal effect of a judgment of foreclosure and sale and highlights that the senior lienholder's decision to accept a deed in lieu of foreclosure *instead* of proceeding with its foreclosure action is something rarely done by "an experienced and careful lender." (*See id.* at *2, fn. 3). *CIT Bank* also clarifies that a foreclosure plaintiff cannot ignore the force and effect of a court's foreclosure order without petitioning the court for vacatur or dismissal, and, here, LL did neither.

In *Fed. Land Bank of Wichita v. Colorado Nat. Bank of Denver*, 786 P.2d 514, 515 (Colo. App. 1989), a mortgagee ("Landbank") held a senior lien on a tract of real estate ("the Property") by virtue of a loan given to debtor ("Weisbart"). (*See id).* In exchange for the loan, Weisbart gave Landbank a mortgage for the Property, which was recorded in 1978. (*See id*.). In 1986, a second bank ("Colorado National") obtained a money judgment against Weisbart and thereafter recorded a judgment lien. In 1987, Landbank accepted a deed in lieu of foreclosure[30] from Weisbart, and, later that year, initiated foreclosure proceedings and sought a declaratory judgment that Colorado National be barred from claiming any interest in the Property. (*See id.*). Colorado National answered, alleging that Landbank's lien merged into its ownership interests upon acceptance of the deed in lieu and extinguished Landbank's mortgage and precluded foreclosure. The trial court

[30] Like the deed in lieu at issue in *Decon*, the deed in lieu in *Cit Bank* expressly provided that no merger would occur and that its lien would remain in place.

disagreed and granted Landbank's motion for summary judgment. The court of appeals affirmed the trial court's ruling, citing the contrary intent exception to merger as well as the express language of the deed in lieu. (*See id.*). Because no merger had taken place, Landbank's mortgage was not extinguished; it could pursue foreclosure; and Colorado National's lien was junior to Landbank's mortgage. (*See id.*).

Appellant cites *Colorado National* for the proposition that "a lender who had accepted a deed in lieu from debtor could maintain foreclosure action to extinguish junior liens." (App. Br. at 13). A more accurate proposition would be "even though a lender accepts a deed in lieu, because of its senior encumbrance there is a presumption against merger; and, because merger does not occur, the lender is still able to foreclose on its senior encumbrance and take a clean ownership via a foreclosure instead of the deed in lieu." Again, foreclosure was allowed to proceed in *Colorado National* because merger did not occur.

Appellants cannot have it both ways. If merger occurred, it would have *divested* LL of its superior lien position and *subordinated* LL's rights in Mount Vintage to all other existing encumbrances, and Appellants could not have cleared out junior liens via the foreclosure sale *because they no longer had a superior lien.*

d. *McCraney* Involved a Mortgagee's Repudiation of a Deed in Lieu in Favor of Proceeding with Foreclosure

The South Carolina cases cited by Appellants to support their untenable argument do not offer any such support; rather, *McCraney* and *First Federal*[31] bolster Respondents' recitation of South Carolina law on the issues of lien priority, merger, and extinguishment.

[31] *First Federal* simply reaffirmed the contrary intent exception to merger. *See First Fed. Sav. & Loan Ass'n of S.C. v. Finn*, 300 S.C. 228, 231, 387 S.E.2d 253, 254 (1989).

McCraney versus Morris, 170 S.C. 250, 170 S.E. 276, 279 (1933), clarifies South Carolina's adoption of the contrary intent exception to the merger doctrine, discussed *supra*. Importantly, Appellants misstate the procedural posture of the case as involving a deed in lieu which resolved a mortgage foreclosure action. (*See* App. Br. at 14) ("[A] mortgage foreclosure action was resolved by plaintiff's acceptance a deed from defendant in satisfaction of the debt—a deed in lieu."). In reality, the plaintiff, a senior lienholder, accepted a deed in lieu of foreclosure without knowledge of subordinate liens. *See McCraney*, 170 S.C. at 170 S.E. at 277 (1933). When the plaintiff became aware of the subordinate liens, she repudiated the deed in lieu and mortgage satisfaction, returned the deed to the mortgagor, and *thereafter* initiated foreclosure proceedings to close out the junior liens and obtain clear title. (*See id.)* (emphasis added). The subordinate lienholders argued that merger occurred upon the plaintiff's acceptance of the deed in lieu and operated to extinguish her senior lien, thereby precluding her from maintaining priority over the subordinate liens her subsequent foreclosure action. (*See id.*).

Appellants assert that "*McCraney* was a victory for the plaintiff in the sense that her superior title to the property acquired by deed in lieu was upheld by the Supreme Court," but that in order to receive a clean title, she could have avoided the situation by taking a deed in lieu and completing the foreclosure process. (*See* App. Br. at 19). That is not what the Court found. There was no "underlying foreclosure action" in process when the plaintiff (McCraney) took a deed in lieu. McCraney took a deed in lieu and filed a satisfaction of mortgage; discovered junior liens; repudiated the deed in lieu and the mortgage satisfaction; and instituted foreclosure proceedings. Ultimately, the Court allowed the plaintiff to repudiate the deed in lieu and *instead* proceed to foreclosure in order to obtain clear title to the property in question. *McCraney v. Morris*, 170 S.C. 250, 170 S.E. 276, 279 (1933). Citing the contrary intention exception to the doctrine of merger,

the Court found that the plaintiff's acceptance of the deed in lieu and her subsequent release of the mortgage lien was a mistake, and that reviving her priority mortgage lien in the instant foreclosure action would not operate to harm the junior lienholders, as their liens were always subordinate to the plaintiff's. (*See id.* at 279).

McCraney, a South Carolina case, supports Respondents' position that a party who accepts a deed in lieu but proceeds to a foreclosure is ultimately electing to take title via the foreclosure. It also supports the premise that a contrary intention can defeat merger, but that merger cannot exist without extinguishment.

IV. By Proceeding with the Foreclosure Action, Appellants Either Nullified or Superseded the Deed in Lieu

By proceeding with the judicially ordered foreclosure sale after "accepting" a Deed in Lieu—for the express purpose of obtaining "clear and marketable title to the Mount Vintage property" (*see* App. Br. at 16)—Appellants elected to achieve ownership of the Property and Rights in Mount Vintage through the Foreclosure Action. It is unnecessary for this Court, or for the trial court, to determine whether the Deed in Lieu was repudiated, nullified, or superseded, because the end result is the same: a Special Referee Deed was issued to RTI for all Property and Rights in Mount Vintage; K&H no longer had a right of redemption; and all junior liens filed subsequently to the 2012 Lis Pendens were closed out.

Here, Judge McIntosh recognized that a senior lienholder who proceeds with a foreclosure sale effectively rejects, repudiates, or supersedes a deed *in lieu of* foreclosure:

THE COURT:	What's the affect [sic] of proceeding, or deciding, to go forward with your foreclosure in lieu of accepting the deed in lieu? I mean, I thought a lot of times – and I'm just throwing this out there—
ATTORNEY BUCKINGHAM:	Sure.

THE COURT:	--you have shareholder saying I'm going to get a deficiency judgment against you. I say I want to give you a deed in lieu if you don't get a deficiency judgment. They say too bad, we're getting a deficiency judgment anyway. Those are the kind of things that happen out there. So at that point when the foreclosure goes forward, the whole kit and caboodle goes back over to the mortgagee, right?
ATTORNEY BUCKINGHAM:	Yes.
[…]	
THE COURT:	But again under the example I gave you, if I'm trying to avoid having a deficiency against myself I'll give you a deed in lieu of property, waive deficiency. No, we're not going to do that, we'll go forward. So that means they don't accept the deed in lieu and they go forward with their rights under the foreclosure.
ATTORNEY BUCKINGHAM:	That's right.

(*See* R. 331:5-17; R. 334:6-12).[32]

The Deed in Lieu may have transferred all Property and Rights in Mount Vintage to LL for a short period of time (September 3, 2013 until November 11, 2013), subject to the resolution of the recorded lis pendens. (*See* R. 320:25-321:7). However, any conveyance K&H made of the Property and Rights during that time was made subject to the resolution of the Foreclosure Action.[33] This premise was illustrated in *Ray v. JP Morgan Chase Bank, N.A.*, 145 A.D.3d 812, 813–14, 45 N.Y.S.3d 108 (2016), where the court examined the effect of a *post*-foreclosure judgment, but *pre*-foreclosure sale, deed of property to a third-party. The court held that the mortgagor could transfer its interests in the mortgaged premises, which were the subject of the

[32] Courts in other jurisdictions have similarly found that when a holder of a deed in lieu continues with a foreclosure sale, the deed in lieu is effectively rejected. *See, e.g., In re Shaw*, No. 11-30032, 2012 WL 1190695, at *6 (Bankr. E.D. Ky. Apr. 9, 2012) ("Farmers' revival of the state court foreclosure lawsuit strongly contradicts Farmers' acceptance of the deed.").

[33] "Unless divested of the property through a foreclosure sale, a mortgagor has an alienable estate in the property." 27 S.C. Jur. Mortgages § 49.

foreclosure judgment, to a third-party before the foreclosure sale; however, the foreclosure sale and resulting referee's deed would divest that third-party's rights and title in favor of the winning bidder at the foreclosure sale:

> Accordingly, until such time as the foreclosure sale took place on November 21, 2008, Murray remained the owner of the premises, and could, and did, transfer her full interest in the premises to Ray via the deed dated December 14, 2007. However, since Ray was made a defendant in the foreclosure action, all his interest in the property was foreclosed once the property was sold at auction and the title was conveyed to CHF via the referee's deed.

(*See id.* at 813–14) (internal citations omitted). In *Ray*, as is the case here, the winning bidder at the foreclosure sale was the plaintiff in the foreclosure action. (*See id.* at 812) ("On November 21, 2008, the property was sold to CHF at public auction, and title was conveyed to CHF by referee's deed."). The court found that even though the mortgaged premises may have been validly deeded to Ray during the time between foreclosure and sale, the transfer was subject to the pending foreclosure action. (*See id.*). As a result, the foreclosure sale divested Ray of any ownership in the property, and this was especially so because Ray was a party the foreclosure action. *See id.* at 813-14.

Appellants have maintained that the Deed in Lieu executed during the time between foreclosure and sale unequivocally transferred all of K&H's Property and Rights in Mount Vintage to LL. (*See, e.g.*, R. 329:6-14; *see also* App. Br. at 16). However, at the time the Deed in Lieu was given, there were at least two Lis pendens which affected K&H's ability to freely transfer the Property and Rights in Mount Vintage. *See In re Shiver*, 598 B.R. 221, 230 (Bankr. D.S.C. 2019) ("South Carolina law provides that a lis pendens places a cloud on title to the property that prevents the owner of the property from freely transferring it before the litigation is resolved."). K&H could not transfer to LL what it did not own; here, that would be unclouded ownership of the Property and Rights in Mount Vintage. *See Cummings v. Varn,* 307 S.C. 37, 42, 413 S.E.2d 829, 832 (1992)

("No deed can convey an interest which the grantor does not have in the land described in the deed, even though by its terms the deed may purport to do so."). Appellants acknowledge this, saying:

> [T]here is great caution that is made to lenders about just accepting a deed in lieu because you don't know what other junior claims might be out there that could compromise your ability to, in the future, convey the property, or do any financing of the property, or whatever. And so the advice that's out there, at least that I've read by practitioners that do this, is if you take a deed in lieu, either do the foreclosure behind it so you can extinguish any of those other claims that might be out there, or do a quiet title, but get the certainty to yourself if you want to have good, clean, marketable title.

(R. 335:13-24).

If Appellants acknowledge that clean and marketable title to K&H's Property and Rights could only be achieved through the Special Referee Deed given at the conclusion of the Foreclosure Action, then the Court may be wondering what controversy or issue is left for it to decide. Because Appellants are coy in their language, Respondents will state it more clearly: Appellants are asking this Court to find that the Special Referee Deed was a "back-door quiet title action;" that it succeeded in securing clean title but did not actually pass title to RTI; and that instead of being a deed, it was a merely a declaratory judgment clarifying clean ownership of the Property and Rights in Mount Vintage. This Court can rely entirely on South Carolina jurisprudence to reject Appellants' argument.

V. To the Extent Such an Argument is Preserved, Any Subsidiary Relationship Which May Exist Between LL and RTI Does Not Affect the Developer Rights Granted to RTI in the Special Referee Deed

In their statement of facts, Appellants assert that "[RTI] is a wholly owned subsidiary of LLSC" by virtue of an assignment executed by Raiford which purported to assign all of Raiford's interests in RTI to LL. (*See* App. Br. at 5, 7). Appellants do not, however, argue to this Court that the subsidiary relationship affects the issues on appeal. Therefore, any such argument (to the extent it may be raised in reply) has been waived. *See, e.g.*, *Fields v. Melrose Ltd. Partnership,* 312 S.C.

102, 106, 439 S.E.2d 283, 285 (Ct.App.1993) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court."); *see also Glasscock, Inc. v. U.S. Fid. & Guar. Co.,* 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[A]n argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief."). However, in an abundance of caution, Respondents will briefly address the issue of RTI's "subsidiary" relationship with LL.

As an initial matter, the "Assignment of Interest" on which Appellants rely was executed in September of 2014 and was *backdated* to December 31, 2013. (*See* R. 323:19-23; R. 337:18-19; *see also* Statement of Relevant Facts, *supra*). To the extent RTI is a subsidiary of LL, which Respondents are not conceding, it was not a subsidiary until approximately ten (10) months after the issuance of the Special Referee Deed to RTI.

Even if RTI became a subsidiary of LL on December 31, 2013, it would not alter the effect of the Special Referee's Deed granting all Property and Rights in Mount Vintage to RTI. A parent company does not own the assets or the debts of its subsidiary, even a wholly owned subsidiary. *See Hunting v. Elders*, 359 S.C. 217, 223, 597 S.E.2d 803, 809 (Ct. App. 2004) ("[A] corporation and a shareholder are separate and distinct, and the debts of the corporation are not the debts of the shareholder."); *see also Kreisler v. Goldberg*, 478 F.3d 209, 213 (4th Cir. 2007) ("It is a fundamental precept of corporate law that each corporation is a separate legal entity with its own debts and assets, even when such corporation is wholly owned by another corporate entity."). Furthermore, there has never been an assignment of Developer's Rights from RTI to LL. Therefore, LL did not (and does not) own the assets of RTI, including Developer's Rights. Appellants constructively conceded this point when RTI deeded over a large portion of the lots it received in the Special Referee Deed to LL in 2018. (*See* R. 336:5-6).

VI. Respondents Have Consistently Questioned Whether RTI or LL Received Developer Rights

Appellants assert that Respondents' motion regarding who holds developer rights in Mount Vintage was an "11th-hour injection" of a "late-stage litigation stratagem" that "almost worked," and further that this was the first time Respondents asserted that RTI, not LL, received developer rights via the November 2013 Special Referee Deed. (App. Br. at 25). These statements are demonstrably false.

Respondents have consistently questioned whether RTI or LL received developer rights through the foreclosure process, and Appellants have consistently taken the position that it does not matter which entity received these rights (or even which entity currently holds these rights) because RTI and LL are "the same." (*See* R. 1292) ("Raiford Topsail Island Investments, LLC is wholly owned by LL of SC, LLC."); *(See also* R. 1295:23-1296:19) ("[LL of SC], LLC and Raiford Topsail Island, all of it is "one and the same".).

Indeed, a component of Respondents' damage claim is (and has always been) that only the Class "A" Member under the governing documents—the "Developer"— is entitled to receive the benefit of not having to pay dues on lots it owns. (*See* R. 23 at ¶ 47). To combat Respondents' argument that LL must pay dues on its lots if RTI is the developer or that RTI must pay dues on lots that it owns if LL is the developer,[34] Appellants have, for at least three (3) years, taken the above position—that the two are "one and the same." Appellants argue that it does not matter what entity owns the non-dues paying "Developer" lots because RTI and LL are the same, interchangeable, owned by the same person(s), etc. Appellants put it most succinctly when they

[34] Courts have rejected the notion that shareholders or affiliates of a developer are able to take advantage of dues exemptions extended to the named developer under the applicable governing documents. *See Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 640 (Iowa 1996).

said, "[t]he issue of who holds developer rights is much ado about absolutely nothing." (See R. 705) (emphasis added). Appellants argued:

> At its core, Plaintiffs' argument is that Raiford Topsail Island Investments, LLC holds developer rights in Mount Vintage, not LL of SC. This leads to an obvious question: *Does it matter?*

(*See id.*). Again, to sustain their position that neither RTI nor LL should pay dues on the lots they own, Appellants' argument *was* that the issue of who holds developer rights as between LL and RTI *does not matter* because the two companies are the same. Now, Appellants maintain that the question is of great import. In truth, Respondents have always questioned this issue, but Appellants ignored it because, to them, it was "much ado about nothing."

VII. Appellants' Section Regarding the "Impact" of the Order is Inappropriate, Unpreserved, Not on Appeal, and Should Be Disregarded

Appellants have already successfully convinced this Court that the Order now on appeal concerned an issue that warranted immediate review. The potential impact of the Order, if affirmed, is irrelevant to a *de novo* review of the Order itself. None of the arguments proffered by Appellants in this final section of their Initial Brief are properly before this Court because these arguments were not ruled upon in the Order. The Order made no findings as to (1) who currently holds developer rights; (2) whether RTI or LL abandoned developer rights; (3) whether LL is acting as a "rogue" developer; or (4) whether the current HOA board is properly appointed. (*See* App. Br. at 24-25). *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and **ruled upon** by the trial court. Issues not raised and ruled upon in the trial court will not be considered on appeal.") (emphasis added).[35]

[35] Contrary to Appellants' prayer for relief, which asks this Court to reverse for any basis that may appear from the record, "[a]n appellate court may not, of course, *reverse* for any reason appearing

VIII. Alternatively, the Trial Court's Summary Judgment Order on a Question of Law Was Not Immediately Appealable and Therefore This Appeal Should Be Dismissed.

Perhaps with the benefit of the additional information detailed here, this Court can better contextualize Respondents' arguments in return to Appellants' Petition for Supersedeas, which Respondents incorporate herein in full. Namely, that by deciding an issue of law- here, the interpretation of an unambiguous instrument- no party has come to the "end of the road." As it relates to the immediate appealability of questions of law, this Court in *Watson* explained that:

> [a] judgment that determines what law is applicable but leaves questions of fact unsettled is not a final judgment. Additionally, a decree or judgment that leaves in doubt whether the plaintiff will prevail is not final. An order is not immediately appealable when appellants have not arrived at the end of the road and would be able to appeal the decision after the trial was finished.

See Watson v. Underwood, 407 S.C. 443, 459, 756 S.E.2d 155, 163 (Ct. App. 2014) (emphasis added), *quoting Good v. Hartford Accident & Indem. Co*., 201 S.C. 32, 41, 21 S.E.2d 209, 212 (1942) ("A judgment that determines what law is applicable but leaves questions of fact unsettled is not a final judgment."). Courts have construed exceptions to the final judgment rule narrowly "[t]o avoid circuitous litigation and needless appeals," and have considered "the nature and effect of the order, not merely its label." *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017).

Respondents respectfully submit that the Bar would benefit from this Court's guidance on when summary judgments on issues of law are and are not immediately appealable. The Plaintiffs' Bar often avoids use of Rule 56 to avoid trials being delayed by piecemeal appeals (as was the

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in the record." *Johnson v. Sam Eng. Grading, Inc.*, 412 S.C. 433, 457, 772 S.E.2d 544, 556–57 (Ct. App. 2015) (emphasis in original).

case here). The avoidance of this procedural tool, especially as to questions of law such as the interpretation of unambiguous instruments, results in longer trials.

CONCLUSION

Under South Carolina law, a properly filed lis pendens binds *every person* who thereafter acquires and records an interest in the property to all proceedings evolving from the litigation. The Special Referee Deed, executed and filed on November 11, 2013, provides the definitive terms regarding the ownership of the Property and Rights in Mount Vintage because it relates back in time to the filing of the Lis Pendens (and Foreclosure Action) on October 23, 2012. The Deed in Lieu, executed on September 3, 2013, post-dates the Lis Pendens and cannot alter or supersede whatever judgment results from the Lis Pendens and the related Foreclosure Action. Here, the culmination of the Foreclosure Action which evolved from the filing of the Lis Pendens is the Special Referee Deed conveying all Property and Rights in Mount Vintage to RTI. To the extent there is any doubt, the Corrective Deed filed in 2014 confirms that all Property and Rights—including Developer's Rights—were conveyed to RTI.

To overcome the application of these longstanding principles of property law, Appellants ask this Court to find that the Special Referee Deed, which was the culmination of the Foreclosure Action, did not convey title to any property, rights, or interests to anyone, and was merely a backdoor quiet title action. There is no such action in law or equity. For the foregoing reasons, as well as any basis that may appear from the record, the trial court's ruling on Respondents' Motion for Partial Summary Judgment should be affirmed by this Court.

Alternatively, should this Court find that interlocutory orders deciding questions of law are not immediately appealable, this Court should dismiss the appeal.

Signature on following page

Respectfully,

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April 17, 2025
Mount Pleasant, South Carolina

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Hon. R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2024-001510
Circuit Court Case No.: 2021-CP-19-00050

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl, Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood, Paul Vichroski, Nydza Vichroski, James Montellese, Roxann Montellese, Individually, Derivatively, and on Behalf of all the Mount Vintage Homeowners Association Members,…….....Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales Plantation, LLC, and Mount Vintage Plantation Homeowners Association, Inc. a/k/a Mount Vintage Homeowners Association, Inc...…….Defendants,

Of which LL of SC, LLC, Raiford Topsail Island Investments, LLC, and TR Sales Plantation, LLC, are the ….…….Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

April 17, 2025

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