

RECEIVED

Apr 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable Thomas L. Hughston, Jr.

Common Pleas Case No.: 2020-CP-33-00277
Appellate Case No.: 2024-000632

Bevance Lynch,

v.

Respondent,

Bertha E. Dunham,

Appellant.

RECORD ON APPEAL

April 4, 2025

Paul B. Ferrara, III
S.C. Bar No. 70511
8887 Old University Blvd.
North Charleston, SC 29406
(843) 569-5511
Attorney for Appellant

Jake Kennedy, Esq.
200 E. Dozier St
Marion, SC 29571
(843) 423-5555
jake@kennedysc.com
Attorney for Respondent

ORDERS

- | | | |
|----|---|-----|
| 1. | Order of Continuance dated August 28, 2023; | 001 |
| 2. | Order of Protection dated November 27, 2023; | 004 |
| 3. | Judge Hughston's Order Granting Summary Judgment dated December 4, 2023; | 007 |
| 4. | Judge Hughston's Order Denying Motion for Reconsideration dated March 18, 2024; | 015 |

PLEADINGS

- | | | |
|-----|---|-----|
| 5. | Filed Notice to Quit dated May 21, 2020; | 021 |
| 6. | Dunham's Answer dated May 29, 2020; | 024 |
| 7. | Certificate of Transmittal dated June 2, 2020; | 028 |
| 8. | Lynch's Motion for Summary Judgment with Exhibits dated July 5, 2023; | 029 |
| 9. | Dunham's filed Lis Pendens dated August 17, 2023; | 091 |
| 10. | Dunham's Motion to Leave to Amend dated November 29, 2023; | 093 |
| 11. | Dunham's Amended Answer and Counterclaim dated November 29, 2023; | 095 |
| 12. | Dunham's Motion to Reconsider dated December 10, 2023; | 097 |
| 13. | Dunham's Notice of Appeal dated April 17, 2024; | 103 |

TRANSCRIPTS

- | | | |
|-----|---|-----|
| 14. | Transcript of Hearing on November 29, 2023; | 120 |
|-----|---|-----|

OTHER

- | | | |
|-----|--|-----|
| 15. | Dunham's filed Deed dated November 1975; | 145 |
| 16. | Wilmington Savings Fund Society's Foreclosure Deed dated August 9, 2019; | 147 |
| 17. | 2019 Castle, LLC's Deed dated December 23, 2019; | 151 |
| 18. | Lynch's filed Deed dated March 2020; | 155 |
| 19. | Affidavit of Landowner dated May 20, 2020; | 159 |
| 20. | Affidavit of Beulah Belin dated August 17, 2023. | 160 |

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Bevance Lynch,

Plaintiff,

vs.

Bertha E. Dunham,

Defendant.

Beauliah Mae Belin and James Belin,

Plaintiffs,

vs.

Bevance Lynch,

Defendants.

IN THE COURT OF COMMON PLEAS
IN THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-33-00277

ORDER OF CONTINUANCE

DATE OF HEARING: August 21, 2023
 PRESIDING JUDGE: Judge DeBerry
 ATTORNEY FOR PLAINTIFF: Joseph Jacob Kennedy
 ATTORNEY FOR DEFENDANT: Paul B. Ferrara, III
 COURT REPORTER:

The above matter was scheduled for a virtual hearing for summary judgment/motion to compel on the above date, but is hereby continued for good cause. Mr. Paul Ferrara, III, attorney for Defendant, was called for trial in case number 2020-CP-10-05296 in Charleston County on August 21, 2023 at 9:30 a.m.

IT IS THEREFORE ORDERED that the hearing be scheduled to be heard on the above date is continued and may be rescheduled at the request of either:

IT IS SO ORDERED.

Presiding Court Judge



Marion Common Pleas

Case Caption: Bevance Lynch VS Bertha Dunham

Case Number: 2020CP3300277

Type: Order/Continuance

H. Steven DeBerry, IV

Circuit Court Judge 2771

Electronically signed on 2023-08-28 12:02:51 page 3 of 3

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
IN RE: PAUL B. FERRARA,	)	
III ATTORNEY AT LAW	)	ORDER OF PROTECTION

IT APPEARING unto the Court that Paul B. Ferrara, III, attorney at law, practicing at the Ferrara Law Firm, PLLC, in North Charleston, South Carolina, is scheduled to be out of the state on a previously scheduled family vacation from April 06, 2023 through April 17, 2023, June 05, 2023 through June 19, 2023 and November 20, 2023 through November 27, 2023.

IT FURTHER APPEARING that attorney Ferrara is requesting, and should be granted, for good cause shown, an Order protecting him from all court appearances in all court proceedings at all jurisdiction levels from April 06, 2023 through April 17, 2023, June 05, 2023 through June 19, 2023 and November 20, 2023 through November 27, 2023.

All counsel of record have been notified of this request for protection. It is therefore,

ORDERED that Paul B. Ferrara, III be, and is hereby granted protection from any and all court proceedings at all jurisdictional levels in the State of South Carolina from April 05, 2023 through April 17, 2023, June 05, 2023 through June 19, 2023 and November 20, 2023 through November 27, 2023..

IT IS SO ORDERED at _____ South Carolina this _____ day of
November, 2023

Honorable Michael G. Nettles

PENDING LITIGATION CASES IN MARION COUNTY

CASENUMBER

2020-CP-33-00277

ABBREVIATED CAPTION

Bevance Lynch v. Bertha E. Dunham.

Beaullah Mae Belin and James Belin v.

Bevance Lynch

peteb@rplfirm.com
jake@kennedysc.com



Marion Common Pleas

Case Caption: Bevance Lynch VS Bertha Dunham
Case Number: 2020CP3300277
Type: Order/Protection from Court Appearance

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2023-11-22 11:41:12 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No.: 2020-CP-33-00277

Bevance Lynch,

Plaintiff,

vs.

Bertha E. Dunham,

Defendant.

ORDER GRANTING
SUMMARY JUDGMENT, ORDER TO
QUIT PREMISES, AND
WARRANT OF EJECTMENT

This matter came before the Court on November 28, 2023, for a hearing on the motion of Plaintiff Bevance Lynch who requests an Order granting summary judgment in his favor and a Writ of Assistance instructing the Marion County Sheriff's Office to assist with the eviction of the other parties named in this action. Present at the hearing was counsel for all parties.

FACTUAL AND PROCEDURAL BACKGROUND

This is an eviction action transferred to this Court by the Marion County Magistrate's Court and concerning real property located in Marion County.

1) Bertha E. Dunham owned real property.

In 1975, Bertha E. Dunham and William Dunham, Jr., purchased the real property in Marion County as shown by a recorded quitclaim deed. (MSJ – Exhibit A). In 1983, William Dunham, Jr., transferred his undivided one-half interest to Bertha E. Dunham as shown by a recorded deed. (MSJ – Exhibit B). In 1988, Beula Mae Dunham, the daughter of Bertha E. Dunham, married James Oneal Belin as shown by a marriage certificate. (MSJ – Exhibit C). In 1996, Beulah Mae Dunham n/k/a Beula Mae Belin states she moved a mobile home on the property and, in 2008, installed a fence on the property. (Aff. ¶¶ 2 – 3).

2) Bertha E. Dunham mortgaged her real property, defaulted on her loan, and the mortgage holder commenced a foreclosure action.

In 2006, Bertha E. Dunham executed a mortgage to secure a promissory note in favor of CitiFinancial and said mortgage was recorded in Mortgage Book 819, at page 146. In 2017, the mortgage was later assigned to Citifinacial Servicing, LLC, and said

assignment was recorded in Volume 401, at page 5. The mortgage was then assigned to Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A and said assignment was recorded in Volume 401, at page 6.

In 2018, the mortgage holder commenced a foreclosure action against Bertha E. Dunham after she defaulted on her repayment obligations. (Civil Action No. 2018-CP-33-00653). The above-referenced mortgage and assignments are public records appearing in the Marion County recording office as well as the foreclosure action.

3) The court-appointed special referee, Hon. Haig Porter, ordered the sale of the real property and the real property was sold at public auction to the creditor.

The foreclosure action was referred to the Honorable Haig Porter as Special Referee who issued an Order of Judgment of Foreclosure and Sale Decree. In his Order, the Special Referee found, among other things, that service was proper; Bertha E. Dunham failed to answer and was in default; the promissory note, mortgage, and assignments were properly introduced into evidence at the hearing; and ordered that the property be sold after proper publication. The property was then sold at public auction to the mortgage holder as the highest bidder and a Foreclosure Deed was granted. (MSJ – Exhibit D). The mortgage holder (now owner/grantee) filed a motion for a sheriff's Writ of Assistance claiming the debtor continued her occupancy and refused to leave and remove her personal property. On October 2, 2019, the Special Referee issued an Order for Writ of Assistance authorizing officers with the Marion County Sheriff to enter the premises any time after 1:00 p.m., on October 29, 2019.

4) Beulah Mae and James Belin file a motion to intervene and the Special Referee denied the motion

Four days before the Sheriff's Office was authorized to enter and assist with eviction, the debtor's daughter (Beulah Mae Belin) and son-in-law (James Belin) filed, through counsel, a motion in the foreclosure action to intervene claiming a legal interest in the property through adverse possession and, therefore, were entitled to notice in the foreclosure action. (MSJ – Exhibit E). The Special Referee, however, denied this motion and found, among other things, that the Belins had no deeded interest in the subject property, placement of the Belins' mobile home on the subject property was "no different than the parking of a moped on a piece of property," and that the Belins had not asserted

a claim of adverse possession in a separate civil action against the landowner, Bertha Dunham. (MSJ – Exhibit F).

- 5) The creditor / high bidder sold the property to an LLC; the Belins appeal; the LLC sold the property to Plaintiff; and Plaintiff filed a Notice to Quit Action in Magistrate Court which was transferred to this Court.**

On December 23, 2019, the creditor sold the property to a limited liability company named "2019 Castle, LLC" by quitclaim deed. (MSJ – Exhibit G). On January 28, 2020, the Benlins filed a Notice of Appeal with the South Carolina Court of Appeals to appeal the denial of their motion to intervene in the foreclosure action. On March 3, 2020, the property was sold to Plaintiff Bevance Lynch by special warranty deed. (MSJ – Exhibit H). Plaintiff then filed a Notice to Quit action in Magistrate Court. (MSJ – Exhibit I). Bertha Dunham, through counsel, filed an Answer, Motion to Add Parties, and Motion to Dismiss or Transfer. (MSJ – Exhibit J). The motion sought to add Beulah Mae Belin (f/k/a Beulah Mae Dunham) and James Belin as interested parties and argued that these added parties had an equitable interest in the subject property through adverse possession and the Marion Magistrate Court transferred the Notice to Quit case to this Court¹. (MSJ – Exhibit K).

- 6) This action awaited appellate decisions for more than three (3) years.**

In August of 2022, the South Carolina Court of Appeals affirmed the Special Referee's denial of the Belins' motion to intervene based, in part, on the Belins' delayed attempt to assert their claim of adverse possession. (MSJ – Exhibit L). In May of 2023, the Supreme Court of South Carolina denied the Belins' petition for writ of certiorari. (MSJ – Exhibit M).

LEGAL STANDARD

Summary judgment is appropriate when there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. All ambiguities, conclusions, and inferences arising from the evidence

¹ The Magistrate Court has no jurisdiction "[w]hen the title to real property shall come in question," S.C. Code § 22-3-20, provided that "[a]t the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by a least one sufficient surety and approved by the magistrate[.]" S.C. Code §22-3-1120. The transferred record in this case shows no such written and approved undertaking.

must be construed against the movant. *Willis v. Wu*, 607 S.E.2d 63, 65 (S.C. 2004). The non-moving party, however, "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP.

LEGAL DISCUSSION

Rule 1, SCRCP, requires that procedural rules "be construed to secure the just, speedy, and inexpensive determination of every action." This action has been pending for more than three (3) years pending exhaustion of appeals by the Belins, who were not signatories to the foreclosed mortgage. The South Carolina Court of Appeals affirmed denial of the Belins' request to intervene in the foreclosure action more than one year after the creditor filed a foreclosure *lis pendens* and more than four months after the property was sold at public auction. Thereafter, certiorari was denied by the South Carolina Supreme Court.

In this case, the Belins raise the same arguments previously rejected by our appellate courts. The Belins, once again, claim a right to notice in the foreclosure action based on their repeated argument of adverse possession. In opposition to summary judgment, the defendant "may not rest upon the mere allegations or denials of his pleading". Rule 56(e), SCRCP. Instead, the Court only considers affidavits that "set forth specific facts showing that there is a genuine issue for trial." *Id.* The only affidavit in opposition to summary judgment is the affidavit of Beulah Belin who avers that she and her husband have occupied part of the land, took care of the land they occupied, did not receive notice of the foreclosure action, and are in the process of filing a quiet title action. (Aff. Belin ¶¶ 3 – 7). These affidavit statements do not create genuine issue of fact sufficient to overcome summary judgment.

Nothing in Mrs. Belin's affidavit creates a genuine fact issue concerning her claim of adverse possession. Like the Special Referee noted in the foreclosure action, the Belins have never filed an adverse possession action against their mother / mother-in-law. There is no evidence that they moved the mobile home behind the house of their

mother / mother-in-law and installed a fence without her permission.² Her statement that "[m]y husband and I were advised that if we took care of the property and paid the property taxes, we would receive a deed" (Aff. ¶ 4) is inadmissible hearsay.³ Mrs. Belin's claim that "[m]y husband and I are in the process of filing a quiet title action[.]" is likewise insufficient to create a genuine issue of material fact in this case. The Belins have had many years to file an action for adverse possession and/or quiet title and still have not done so; by cross-claim against Bertha Dunham, a separate action, or otherwise.

The Court also finds that the doctrine of non-mutual offensive collateral estoppel would bar the Belins from intervening in this case. The doctrine of non-mutual offensive collateral estoppel was adopted in this State in *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct.App.1984) and was confirmed as the law of this State by our Supreme Court in *South Carolina Prop. and Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991). Under the doctrine of offensive non-mutual collateral estoppel, a party may be prevented from relitigating issues actually determined in a prior action so long as the party estopped had a full and fair opportunity to litigate the issue in the first action and there are no circumstances which justify affording him an opportunity to retry the issue. *Beall*, 281 S.C. 363, 315 S.E.2d 186; *Roberts v. Recovery Bur., Inc.*, 450 S.E.2d 616, 619 (S.C. App. 1994) (citing *McPherson v. South Carolina Dept. of Highways and Pub. Transp.*, 297 S.C. 303, 376 S.E.2d 780 (Ct.App.1989)). In the prior foreclosure

² See *Davis v. Monteith*, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986) (finding occupation of property with owner's tacit permission was not hostile although such possession may have become hostile when claimant remained on property after being told to vacate); *Fradley v. Ivester*, 118 S.C. 195, 205, 110 S.E. 135, 138 (1921) ("The defendant's entry into possession was permissive, and, as she had a duty to perform, she could not hold adversely to the rights of the mortgagors until she either surrendered the possession or gave notice of an adverse possession."); *Young v. Nix*, 286 S.C. 134, 136, 332 S.E.2d 773, 774 (Ct.App.1985) (holding claimant who had farmed tract of land for more than forty years with permission of property owner's widower did not establish claim of adverse possession without a "clear and positive disclaimer of the title under which entry was made"). While a party cannot adversely possess property used with permission, a party may begin to satisfy the requirement of hostility upon a clear disclaimer of the owner's title. *All Saints Parish, Waccamaw*, 358 S.C. at 233, 595 S.E.2d at 266-67.

³ See Rule 56(e), SCRCP, "affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence[.]"

action, the Special Referee's *Order Denying Third Party Motion to Intervene and Motion to Set Aside Judgment* (MSJ – Exhibit F) demonstrates that the Belins had a full and fair opportunity to litigate their claims of an interest in the subject real property and, after a thorough review of that prior Order and the subsequent appellate Opinion (MSJ – Exhibit L), there are no circumstances which justify affording the Belins an opportunity to retry the issue of a property interest in this case.

Finally, Defense counsel argued at the hearing that summary judgment is premature because discovery might reveal genuine fact issues. The Court notes that this case has been pending since 2020 and the defendant has had years to conduct discovery and advanced no good reason why she had insufficient time to develop genuine admissible evidence of facts in opposition to summary judgment.⁴ Defense counsel also argued at the hearing that the plaintiff did not comply with the eviction procedures required by S.C. Code § 27-47-530 of the South Carolina Manufactured Home Park Tenancy Act, S.C. Code §27-47-10 *et. seq.*, however, that Act applies only to owners of a "manufactured home park" which is defined by statute "as a use of land in which lots or spaces are offered for rent or lease for the placement of manufactured homes and in which the primary use of the park is residential." S.C. Code § 27-47-210(3). In this case, the plaintiff clearly does not operate a "manufactured home park" and the Act does not apply.

⁴ See *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) ("[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery."); *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479-80, 465 S.E.2d 765, 771 (Ct. App. 1995) (holding summary judgment was appropriate because the nonmoving party "advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment"); *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 128, 542 S.E.2d 736, 743 (Ct. App. 2001) (holding the circuit court did not err in granting summary judgment because the record did not demonstrate that further discovery was necessary).

CONCLUSION

Based on the foregoing, **IT IS ORDERED, ADJUDGED, AND DECREED** that:

- (a) Plaintiff Bevance Lynch is the current owner of the subject real property;
- (b) Bertha E. Dunham, Beulah Mae Belin and James Belin occupy and possess lands owned by Plaintiff Bevance Lynch without consent or warrant of law in violation of S.C. Code §15-67-610;
- (c) Summary judgment in favor of Plaintiff Bevance Lynch is hereby GRANTED on all claims;
- (d) Bertha E. Dunham, Beulah Mae Belin, James Belin, and all other occupants of the subject property are hereby ordered to quit the premises within five (5) days from their counsel's receipt of this Order and, if they do not quit the premises within that time, pursuant to S.C. Code §15-67-610, the Marion County Sheriff's Office is authorized and directed to eject all occupants using such force as may be necessary.

IT IS SO ORDERED!

November 29, 2023.

Thomas L. Hughston Jr.
 Thomas L. Hughston, Jr.
 Presiding Judge
 Twelfth Judicial Circuit



Marion Common Pleas

Case Caption: Bevance Lynch VS Bertha Dunham
Case Number: 2020CP3300277
Type: Order/Summary Judgment

So Ordered

s/T.L.HUGHSTON, JR. 2008

Electronically signed on 2023-11-30 12:32:05 page 8 of 8

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

FORM 4

015

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP3300277

Bevance Lynch
PLAINTIFF(S)

Bertha Dunham
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The Defendant's Motion to Reconsider filed on 12/10/23 is denied. (See attached exhibit.)

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/15/2024 .

Bevance Lynch for Bevance Lynch
Bevance Lynch for Bevance Lynch

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

Fw: Lynch v. Dunham; 2020-CP-33-277

Hughston, Thomas L.

Thu 2/8/2024 10:19 AM

Taryoungsc@sccourt.org <taryoungsc@sccourt.org>;

From: Hughston, Thomas L.

Sent: Wednesday, February 7, 2024 12:17 PM

To: Paul Ferrara; DeBerry, H. Steven Secretary (Stacey R. Minton); jake@kennedysc.com; Nettles, Michael G.; Gray, Christy

Cc: Brandy Lewis; DeBerry, H. Steven Law Clerk (James Snyder)

Subject: Re: Lynch v. Dunham; 2020-CP-33-277

Mr. Ferrara:

You did not mention anything about any pending motions prior to the hearing and after that my request for a proposed order granting Summary Judgment. Your email of 2/7/24 is first notice to me of any so called pending motions by you and your clients. I consider that you/they waived these by your failure to tell me of them when you were present for the Summary Judgment Hearing and did not speak up regarding this, and only now many weeks later.

As I recall, we, that is, you, Mr. Kennedy, the other attorney, and I had a nice long and friendly conversation in chambers directly behind the bench after the hearing in the courtroom. You never said anything about just filing motions, etc. You had every opportunity to bring this to my attention then and/or in the many weeks since. You waived such and I refuse to consider such now and refuse to reconsider summary judgment.

This serves as my Order regarding same.

Thomas L. Hughston, Jr.

From: Paul Ferrara <paul@ferraralawfirm.net>

Sent: Wednesday, February 7, 2024 9:38 AM

To: Hughston, Thomas L.; DeBerry, H. Steven Secretary (Stacey R. Minton); jake@kennedysc.com

Cc: Brandy Lewis; DeBerry, H. Steven Law Clerk (James Snyder)

Subject: Re: Lynch v. Dunham; 2020-CP-33-277

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Hughston,

I have been in court every day for the past 4 days and apologize for just now emailing you. In short, there are material questions of fact in this case that go to the heart of this eviction matter. Specifically, whether Mrs.

Dunham was permitted to be on the land by the equitable owner, Buellah Belin. Importantly, there was ⁰¹⁸ motion to intervene by the Belins that is pending and also a motion to amend the complaint prior to your granting summary judgment.

The Summary judgment hearing started at 10:30 am and was heard by Your Honor. Twenty minutes prior to the hearing on summary judgment, the clerk accepted the motion to amend answer and counterclaim at 10:10 am. Those motions have not been scheduled as the Court's Order has ended that matter by summary judgment. The Supreme Court has held in Skydive Myrtle Beach v. Horry County that the Circuit Court erred by failing to consider the motion to amend in the context of a 12 B motion. Similarly, the Court of Appeals has recently held in Lofton v. Berkeley Elec. Coop Inc. and John Lucas Tree Experts Co. that the trial court's failure to rule on the motion to amend prior to granting summary judgment was an abuse of discretion. I have attached both decisions for the Court's reference.

Based on the above, we respectfully request the Court vacate its prior grant of summary judgment and allow the case to proceed forward on the filed motions as there are questions of material fact to be resolved by a jury.

I have copied Mr. Kennedy on this email.

Sincerely,
Paul B. Ferrara, III



8887 Old University Blvd., Ste. 201
N. Charleston, SC 29406
(843) 569-5511 (office)
(843) 569-5411 (fax)

This e-mail and the information transmitted is PRIVILEGED and CONFIDENTIAL information and is the property of the sender. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this information, or the taking of any action in reliance on the content of this information is strictly prohibited. If you have received this email in error, please immediately contact Paul B. Ferrara III with Ferrara Law Firm, PLLC at (843) 569-5511 and please delete the original transmittal of this information.

From: Hughston, Thomas L. <thughstonj@sccourts.org>
Sent: Wednesday, January 31, 2024 3:39 PM
To: DeBerry, H. Steven Secretary (Stacey R. Minton) <hsdeberrysc@sccourts.org>; jake@kennedysc.com <jake@kennedysc.com>; Paul Ferrara <paul@ferraralawfirm.net>
Cc: Brandy Lewis <blewis@marionsc.org>; DeBerry, H. Steven Law Clerk (James Snyder) <hsdeberrylc@sccourts.org>
Subject: Re: Lynch v. Dunham; 2020-CP-33-277

I suggest that I handle the Motion to Reconsider without a hearing. Therefore, Mr. Ferrara, please send to me why you think I should reconsider and what you want me to do. Thereafter, Mr. Kennedy send to me your response to this Motion.

Thereafter, I will do my Order.

Thank you for your consideration, cooperation and attention in this matter and I shall look forward to hearing from you.

Thomas L. Hughston, Jr.

From: DeBerry, H. Steven Secretary (Stacey R. Minton)

Sent: Wednesday, January 24, 2024 9:26 AM

To: Hughston, Thomas L.

Cc: Young, Roger Secretary (Robyn R. Hills); Brandy Lewis; DeBerry, H. Steven Law Clerk (James Snyder)

Subject: Lynch v. Dunham; 2020-CP-33-277

Good afternoon, Judge Hughston,

I hope this email finds you well. There is a Motion to Reconsider pending in Marion in the above-referenced case. Given that you were the deciding judge, the reconsideration will need to go before you. We would like to find a time, perhaps during a chambers week, when you would be able to hear this motion via the virtual courtroom or in-person in Marion. Would you let us know when you might be able to fit this into your schedule? Once we receive your preferred dates, we will coordinate with court administration and the attorneys to make sure everything is set up for you.

Thank you so much for your help.

Sincerely,

Stacey R. Minton

Administrative Assistant to

The Honorable H. Steven DeBerry, IV

181 N. Irby St., Suite 3600

Florence, SC 29501

Office: (843) 665-3020

Cell: (843) 908-4799



Marion Common Pleas

Case Caption: Bevance Lynch VS Bertha Dunham

Case Number: 2020CP3300277

Type: Order/Form 4

So Ordered

s/T.L.HUGHSTON, JR. 2008

Electronically signed on 2024-03-15 11:20:18 page 6 of 6

COUNTY OF MARION

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT
NOTICE TO QUIT PREMISES

Bevance Lynch
15660 Sw 152 Place
Miami, FL 33187
(305) 951-2655

PLAINTIFF(S)

Vs

Bertha E Dunham
1701 W Hwy 378
Gresham, SC 29546

DEFENDANT(S)

Upon an affidavit filed by the plaintiff which states you:

Bertha E Dunham

defendant(s), are a trespasser(s) and are occupying the premises at
1701 W Hwy 378

Gresham, SC 29546

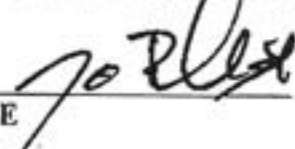
without permission of the owner of said premises. You are required to immediately vacate the premises or
contact the:

Marion County Summary Court
2715 East Highway 76, Suite B
Mullins, SC 29574
Phone: (843) 423-8208
Fax: (843) 423-8394

within five (5) days to show cause, if any you can, why you should not be ejected from these premises.

**FAILURE TO VACATE THE PREMISES OR TO CONTACT THIS OFFICE WITHIN FIVE (5)
DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.**

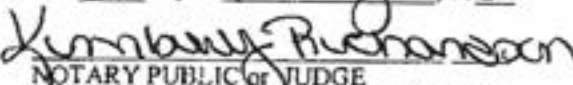
Dated: May 20, 2020


JUDGE

PERSONALLY appeared before me, the undersigned deponent, who being duty sworn, says that s/he served the herein Notice to Quit
Premises/Rule to Show Cause on

Bertha E - Dunham on the 21st day of May,
2020 at 1240 ☐ AM ☒ PM

Sworn to and subscribed before me
this 21st Day of May, 2020


NOTARY PUBLIC or JUDGE
My Commission Expires: 12/31/2023


Sheriff's Deputy or Constable

FILED
2020 JUN -2 PM 3:25
MARION COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF MARION

2020CV3310100522
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

APPLICATION FOR NOTICE
TO QUIT PREMISESBevance Lynch
15660 Sw 152 Place
Miami, FL 33187
(305) 951-2655

PLAINTIFF(S)

Vs

Bertha E Dunham
1701 W Hwy 378
Gresham, SC 29546

DEFENDANT(S)

2020 JUN -2 PM 3:25

FILED

I, **Bevance Lynch** plaintiff in this action, state that I am the owner/agent of the premises within the jurisdiction of the **Marion County Summary Court** which is described as: (address and description of premises)

1701 W Hwy 378
Gresham, SC 29546

I further state that with regard to the above described premises, that the Defendant(s) is in possession of the premises without my consent and that I have requested that the Defendant(s) yield possession and vacate the property. The Defendant(s) has refused. Therefore, I request that the Defendant(s) be removed from the premises according to the SC Code of Laws, Section 15-67-0610.

Sworn to and Subscribed
Before Me:

Walter A. Cornejo
Notary Public
Date: 5/25/20

Plaintiff/Agent/Plaintiff's Attorney



WALTER A. CORNEJO
NOTARY PUBLIC
STATE OF FLORIDA
Commission GG116243
Expires 5/19/2021

2020 JUN 10 10:00 AM 023

Civil Case Worksheet

Marion County Summary Court cannot give you legal advice or tell you how to answer the following questions

Removal of person(s) from my property

Plaintiff Name	BEVANCE W LYNCH
DBA	
Street Address	15660 S.W 152 PLACE
Mailing Address	MIAMI, FL 33187
Telephone #	305-951-2655

VS.

Defendant(s)	BERTHA E DUNHAM
Street Address	1701 W Hwy 378 GRESHAM, SC 29546
Telephone #	

Must check all boxes that apply.

☐ I have a Landlord/Tenant relationship and I want to evict my tenant(s).

(Must provide copy of lease or other written proof, i.e. certified letters)

Please check the box(s) that apply to your case

Non-payment of Rent	Amount of rent in arrears	
End of Tenancy/Occupancy	Tenancy ended	
Violation of Rental Agreement	List Rental Agreement Violation	
Property Abandoned	Date property was abandoned	

OR

☒ I have a trespasser on my property or a person(s) who will not leave my property.

I am the owner of the property AT 1701 W HWY 378 GRESHAM, SC 29546	
Explain how defendant(s) came in possession of property	TO THE BEST OF MY KNOWLEDGE MS. BERTHA E DUNHAM WAS THE PREVIOUS OWNER OF THE SAID PROPERTY AT 1701 W HWY 378 GRESHAM AND THAT PROPERTY WAS FORECLOSED ON HER, I AM NOW THE NEW OWNER OF THAT PROPERTY.

Initial: BL I understand this worksheet is not my official filing and will only be used to prepare my affidavit(s) and application(s) and my case is not officially filed until my filing fee is paid. It is your responsibility to check your affidavit(s) and application(s) to assure accuracy before you sign them and file them.

Dated: 5/18/2020 Signature of Plaintiff or Attorney: Bevance Lynch

Ferrara Law Firm, PLLC

8887 Old University Blvd. Ste. 200
North Charleston, SC 29406
(843) 569-5511 / Fax (843) 569-5411

Paul B. Ferrara, III*
Janel K. Ferrara*

**(also Admitted in N.C.)*

May 28, 2020

SENT VIA U.S. MAIL & FAX TO: 843-423-8394
Marion County Summary Court
2715 East Highway 76, Suite B
Mullins, SC 29574

Re: Bevance Lynch v. Bertha E. Dunham
Case No.: 2020-CV-3310100522
Our File No.: 19-561

Dear Clerk:

Please find the Defendant's Answer to the above-referenced civil action, along with a Motion to Add Parties, Motion to Dismiss or Transfer for filing.

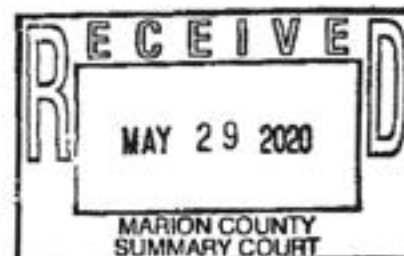
Please file the original and return a clocked copy to our office in the self-addressed, stamped envelope which is enclosed.

Sincerely,

FERRARA LAW FIRM, PLLC

Paul B. Ferrara, III

Enclosures
cc: Bevance Lynch



FILED
2020 JUN -2 PM 3:25

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Bevance Lynch,

Plaintiff,

vs.

Bertha E. Dunham,

Defendant.

IN THE MAGISTRATE'S COURT

CIVIL CASE NO.: 2020CV3310100522

**DEFENDANT'S ANSWER AND
MOTION TO ADD PARTIES/ MOTION
TO DISMISS OR TRANSFER**

Beaullah Mae Belin and James Belin,

Plaintiffs,

Vs.

Bevance Lynch,

Defendant,

2020 JUN -2 PM 3:25

FILED

NOW COMES the Defendants, Bertha E. Dunham, by and through their undersigned attorney, Paul B. Ferrara, III, Esq., answering the Plaintiff's 5-Day Notice and pursuant to Rule 12 of the South Carolina Rules of Civil Procedure, and moves this Court to set a hearing to dismiss this case.

NOW COMES Beaullah Mae Belin and James Belin, by and through their undersigned attorney, Paul B. Ferrara, III, Esq., move this Court under the South Carolina Rules of Civil Procedure, Rule 24, for an order granting them leave to intervene in the above-named action and assert a counterclaim against Defendant Bevance Lynch on the grounds that they have a legal interest in the property which is subject to the above-referenced litigation. The legal issues associated with Mr. and Mrs. Belin's ownership in the subject property are on appeal with the

appellate court in case number 2020-000139. The Magistrate's Court does not have the jurisdiction to rule upon the Defendants' equitable interest, and as such, Plaintiff's Beullah Mae Belin and James Belin hereby move this Court to transfer to the Marion County Court of Common Pleas to determine their legal and equitable claims.

FOR A FIRST DEFENSE
(General Denial)

1. Defendant Bertha E. Dunham denies each and every allegation of the Plaintiff's 5-Day Notice.

MOTION TO DISMISS/TRANSFER

PLEASE TAKE NOTICE that, as soon as the matter may be heard in the above-entitled action, the intervenors Beullah Mae Belin and James Belin, move this Court under the South Carolina Rules of Civil Procedure, Rule 24, for an order granting them leave to intervene in the above-named action.

The grounds for issuance of this order are that intervenors, Beullah Mae and James Belin, have a legal interest in the property which is subject to the above-referenced litigation as a result of adverse possession. Adverse possession when asserted, is an affirmative defense. *Jones v. Legan*, 681 S.2d 10, 11 (2009). The party asserting adverse possession must show continuous, hostile, open, actual, notorious and exclusive possession for a certain period of time. *Mullis v. Winchester*, 237 S.C. 487, 491 (1961). Beullah Mae Belin and James Belin have a 1995 Oakwood mobile home that has been located on the premises of the property subject since 1988. This mobile home has been located on the premises of the subject property since approximately July 16, 1988. Beullah Mae Belin and James Belin have occupied the land continuously, hostilely, openly, obviously, exclusively, notoriously and continuously against the interests of Bertha Dunham a/k/a Bertha E. Dunham and Ernest L. Dunham since 1988. Beullah Mae Belin

2020 JUN -2 PM 3:25

FILED

and James Belin were not served within the above-referenced eviction by Plaintiff and have adversely possessed the property for greater than 10 years. They have not had a chance to answer this eviction matter and assert this defense or any other defenses they may have. As such Beaulah Mae Belin and James Belin have equitable and legal interests in the above referenced property subject and wish to intervene in this matter.

For the above-mentioned reasons, Beaulah Mae Belin and James Belin, move this Court to dismiss this case against Bertha E. Dunham, or transfer to the circuit court to determine their equitable and legal interests in the above-referenced property.

Dated: May 29, 2020
North Charleston, SC

FERRARA LAW FIRM, PLLC

PAUL B. FERRARA, III
Attorney for Defendant Bertha Dunham and
Beaulah Mae Belin and James Belin
8887 Old University Blvd. Ste. 200
North Charleston, SC 29406
843-569-5511 / 843-569-5411 (f)
Email: Paul@ferraralawfirm.net
SC Bar No.: 70511

FILED
2020 JUN -2 PM 3:25

STATE OF SOUTH CAROLINA

COUNTY OF MARION

2020CV3310100522
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

CERTIFICATE OF TRANSMITTAL

Bevance Lynch
15660 Sw 152 Place
Miami, FL 33187
(305) 951-2655

PLAINTIFF(S)

Vs

Bertha E Dunham
1701 W Hwy 378
Gresham, SC 29546

DEFENDANT(S)

The original complaint and all associated paper work in reference to the above listed civil case is being transmitted for disposition to the court listed below:

Date of Transmittal: June 2, 2020

Transmitted to: Common Plea

Transmitted by: Marion County Marion County Summary Court

Civil Case No.: 2020CV3310100522

Comments: This case is in appellate court (case number 2020-000139)

Received and verified by Ariel Smallwood on 6/2/2020.

STATE OF SOUTH CAROLINA
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No.: 2020-CP-33-00277

Bevance Lynch,

Plaintiff,

vs.

Bertha E. Dunham,

Defendant.

**MOTION FOR
SUMMARY JUDGMENT**

Beaullah Mae Belin and James Belin,

Plaintiffs,

vs.

Bevance Lynch,

Defendant.

TO: PAUL B. FERRARA, III, ATTORNEY FOR BERTHA E. DUNHAM, BEULAH MAE BELIN, AND JAMES BELIN

YOU WILL PLEASE TAKE NOTICE that within ten (10) days after the date of this motion, or as soon as counsel may be heard, that Plaintiff Bevance Lynch will request that the Presiding Judge of the Circuit Court for Marion County issue an Order pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*, granting these Defendants summary judgment in their favor on all claims in this action. The grounds for this motion include the following:

1. In November of 1975, William Dunham, Jr., and Bertha E. Dunham were grantees to real property located in Marion County. **Exhibit "A"**.
2. In September of 1983, William Dunham, Jr., granted his interest in the subject property to Bertha E. Dunham. **Exhibit "B"**.
3. In June of 1988, Beula Mae Dunham married James Oneal Belin. **Exhibit "C"**.

4. In August of 2019, the subject property was conveyed by a Foreclosure Deed to Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A. **Exhibit "D"**.

5. In October of 2019, Bertha Dunham, through counsel, filed a motion in the foreclosure case (C/A 2018-CP-33-00653) to set aside the foreclosure judgment and to allow Beula Mae Belin and James Belin to intervene on grounds of adverse possession. **Exhibit "E"**.

6. In December of 2019, Haigh Porter, as Special Referee, denied the motion to intervene in the foreclosure case. **Exhibit "F"**. The Order found, among other things, that the Belins had no deeded interest in the subject property, placement of a mobile home on the subject property was "no different than the parking of a moped on a piece of property," and that the Belins had not asserted a claim of adverse possession in a separate civil action against the landowner, Bertha Dunham.

7. Upon information and belief Beula Mae Belin f/k/a Beula Mae Dunham is the daughter of Bertha Dunham. Written discovery has been served on counsel for Beula Mae Dunham without responses and despite good faith attempts by the undersigned to obtain any and/or adequate responses.

8. In January of 2020, after the foreclosure sale, the subject property was conveyed to 2019 Castle, LLC. **Exhibit "G"**.

9. In March of 2020, the subject property was conveyed to Bevance Lynch. **Exhibit "H"**.

10. In May of 2020, Bevance Lynch filed applied for a Notice to Quit Premises against Bertha Dunham in the Marion Magistrate Court. **Exhibit "I"**.

11. In May of 2020, Bertha Dunham, through counsel, filed an Answer, Motion to Add Parties, and Motion to Dismiss or Transfer. **Exhibit "J"**. The motions added Beulla Mae Belin (f/k/a Beulah Mae Dunham) and James Belin as interested parties and argued that these added parties had an equitable interest in the subject property through adverse possession.

12. In June of 2020, the Marion Magistrate Court transferred the Notice to Quit case to Marion Common Pleas. **Exhibit "K"**.

13. In August of 2022, the South Carolina Court of Appeals affirmed the Special Referee's denial of the Belins' motion to intervene based, in part, on the Belins' delayed attempt to assert their claim of adverse possession. **Exhibit "L"**.

14. In May of 2023, the Supreme Court of South Carolina denied the Belins' petition for writ of certiorari. **Exhibit "M"**.

The foreclosure action is complete. All appeals have been exhausted and denials for intervention affirmed. The Belins' claim for adverse possession has never been pursued against Beulah Belin's mother, Bertha Dunham. Of course, there is absolutely no evidence that Beulah Dunham Belin occupied the subject property without her mother's permission to place a mobile home behind Bertha Dunham's house.¹ In any event, the doctrine of collateral estoppel precludes relitigating the adverse possession issue already determined in the foreclosure suit. *Roberts v. Recovery Bureau, Inc.*, 316 S.C. 492, 495-96, 450 S.E.2d 616, 619 (S.C. Ct. App. 1994).

Plaintiff reserves the right to rely on the exhibits filed with this motion and any additional, applicable, statutory and case law, affidavits, pleadings and any memorandum in support which may be filed with the Court.

KENNEDY LAW OFFICE, LLC

July 5, 2023

Marion, S.C.

/s/ Joseph Jakob Kennedy
J. Jakob Kennedy
SC Bar No. 72619
PO Box 925
Marion, SC 29571
Phone: (843) 423-5555
jake@kennedysc.com

ATTORNEY FOR BEVANCE LYNCH

¹ See *Davis v. Monteith*, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986) (finding occupation of property with owner's tacit permission was not hostile although such possession may have become hostile when claimant remained on property after being told to vacate); *Frady v. Ivester*, 118 S.C. 195, 205, 110 S.E. 135, 138 (1921) ("The defendant's entry into possession was permissive, and, as she had a duty to perform, she could not hold adversely to the rights of the mortgagors until she either surrendered the possession or gave notice of an adverse 444*444 possession."); *Young v. Nix*, 286 S.C. 134, 136, 332 S.E.2d 773, 774 (Ct.App.1985) (holding claimant who had farmed tract of land for more than forty years with permission of property owner's widower did not establish claim of adverse possession without a "clear and positive disclaimer of the title under which entry was made"). While a party cannot adversely possess property used with permission, a party may begin to satisfy the requirement of hostility upon a clear disclaimer of the owner's title. *All Saints Parish, Waccamaw*, 358 S.C. at 233, 595 S.E.2d at 266-67.

CERTIFICATE OF SERVICE

Pursuant to Rule 4(e)(3) of the South Carolina Electronic Filing Policies and Guidelines, service of this pleading is complete at the time of submission and the act of E-filing is the equivalent of depositing it in the United States Mail under Rule 5(b)(1), SCRPC. The date of service of this pleading shall be the date stated on the Notice of Electronic Filing (NEF) which the E-Filing System will automatically generate and transmit to all authorized E-filers Associated with this case including the following attorney(s) of record: **Paul B. Ferrara, III, (SC Bar No. 70511), Ferrara Law Firm, PLLC, 8887 Old University Blvd. Ste 201, N. Charleston, SC 29406-9603; paul@ferraralawfirm.net**

EXHIBIT "A"

583

583

Form FmHA-SC 465-12
(9-3-74)UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

QUITCLAIM DEED

TRANSFERRED

November 5, 1975
Recorded in Book 216 Page 14
E. D. WILLIAMS, AUDITOR
MARION COUNTY, S. C.

STATE OF SOUTH CAROLINA

COUNTY OF MARION

KNOW ALL MEN BY THESE PRESENTS:

THAT the United States of America, for and in consideration of the sum of THIRTEEN THOUSANDTWO HUNDRED Dollars, (\$ 13,200.00),

the receipt whereof is hereby acknowledged, does hereby remise, release, quitclaim and convey unto William Dunham, Jr., and Bertha E. Dunham for and during their joint lives with the right of survivorship all its right, title, claim, interest, equity and estate in and to the following described lands lying in the County of Marion, State of South Carolina, to wit:

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing one-half ($\frac{1}{2}$) acre, bounded northeast 105 feet by U. S. Highway No. 378; southeast 210 feet by road leading into Dog Lake; southwest 105 feet by lands of E. J. Atkinson; and northwest 210 feet by lands of E. J. Atkinson. The said lot being shown on a map of lot sold by E. J. Atkinson to Southeastern Homes, made by Johnson Engineers, July 16, 1969.

FILED

Transfer No. 9612November 5, 1975Map 216 Block I Lot

Lawrence R. Braswell, Assessor

Marion County, S.C. #5

BOOK PAGE

75 NOV-5 PM 4:20

MARION COUNTY, S.C.
W. MARVIN LANE
CLERK OF COURTREVENUE STAMPS
COLLECTED\$ NONE
MARION COUNTY, S. C.

FmHA-SC 465-12 (9-3-74)

584

584

This is the identical property conveyed to the United States of America by deed of James Lee Footman
 _____, which deed is recorded in Deed Book A-133
 at Page 5 in the Office of the Clerk of Court for Marion County.
 Subject, however, to all easements and rights-of-way upon, across or through the above-described lands as heretofore
 have been granted by the United States of America or its predecessors in title.
 TO HAVE AND TO HOLD the same ~~to the said parties~~ for and during their joint lives
and upon the death of either of them then to the survivor of them, his or her
heirs and assigns forever, in fee simple.
 IN TESTIMONY WHEREOF, the United States of America has caused these presents to be executed this 15th
 day of October, 19 75, pursuant to the authority contained in Title 7, Code of
 Federal Regulations, Part 1800.

Signed, sealed and delivered
 in the presence of

LaVon F. Yandile
Mary M. Wright

UNITED STATES OF AMERICA

By E. W. Brooks
 State Director (South Carolina)
 Farmers Home Administration
 UNITED STATES DEPARTMENT OF AGRICULTURE

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND

BEFORE ME, Mary M. Wright, a Notary Public in and for said State and
 County, personally appeared LaVon F. Yandile
 and made oath that he saw the within named E. W. Brooks
 State Director of the Farmers Home Administration, United States Department of Agriculture, sign, seal, and as his act and
 deed, deliver the within instrument for the uses and purposes therein mentioned, and as such
 State Director of the Farmers Home Administration, United States Department of Agriculture, on behalf of the Government,
 and that he with Mary M. Wright witnessed the execution thereof and subscribed
 their names as witnesses thereto.

Witness

SWORN to and subscribed before
 me this 15th day of October, 19 75.

Mary M. Wright (SRAL)
 Notary Public for South Carolina
 Commission expires: 8-4-80

EXHIBIT "B"

State of South Carolina

COUNTY OF MARION

037

TITLE TO REAL ESTATE
PATRICK PRINTING CO. FLORENCE, S. C.
FORM NO. 48

Transfer No. 18-145
Map 11.5 Block 55 lot
Lawrence S. Bradwell, Assessor
Marion County, S.C.

TRANSFERRED
September 21, 1983
L. G. WILKINS, AUDITOR
MARION COUNTY, S. C.

Know All Men by These Presents, That I, William Dunham, Jr.

of the County of Pinellas in the State of Florida
of the sum of ONE (\$1.00) DOLLAR and the equitable division of property between myself and my wife, Bertha E. Dunham

to me in handpaid by Bertha E. Dunham
Rt. 2, Box 177, Gretnham, S. C. 29546

in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said Bertha E. Dunham, her

Heirs and Assigns forever:

ALL MY RIGHT, TITLE AND INTEREST IN AND TO THE FOLLOWING DESCRIBED PROPERTY, INCLUDING ALL JOINT RIGHTS AND ALL RIGHTS OF SURVIVORSHIP:

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One Hundred Five (105) feet by U. S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E. J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E. J. Atkinson. The said lot being shown on a Map of lot sold by E. J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

This being the identical property conveyed unto William Dunham, Jr. and Bertha E. Dunham by Deed of United States of America recorded in the Office of the Clerk of Court for Florence County on November 5, 1975, in Deed Book A-136, at Page 583.

5/10/83
Plat. No. 18-145
Johnson Eng.
7/16/69
VILLAGE PAGE

EXHIBIT "C"

LICENSE AND CERTIFICATE FOR MARRIAGE

STATE OF SOUTH CAROLINA

039

14017

Marion

LICENSE NUMBER

COUNTY

GROOM-NAME (FIRST) (MIDDLE) (LAST)			BIRTHDATE (MONTH, DAY, YEAR)	AGE
James Oneal Belin			(2a) 3/2/64	(2b) 24
BIRTHPLACE (State or foreign country)		RACE	RESIDENCE (Street and Number)	
(3) S. C.		(4) Black	(5a) Route 1, Box 150 3A	
CITY, TOWN OR LOCATION		COUNTY	STATE	NO. OF THIS MARRIAGE (1st, 2nd, etc)
(5b) Johnsonville		(5c) Florence	(5d) S. C.	(8) 1st
BRIDE-NAME (FIRST) (MIDDLE) (LAST)			BIRTHDATE (MONTH, DAY, YEAR)	AGE
(7) Beulah Mae Dunham			(8a) July 19, 1967	(8b) 20
BIRTHPLACE (State or foreign country)		RACE	RESIDENCE (Street and Number)	
(9) Florida		(10) Black	(11a) Route 2, Box 2230	
CITY, TOWN OR LOCATION		COUNTY	STATE	NO. OF THIS MARRIAGE (1st, 2nd, etc)
(11b) Gresham		(11c) Marion	(11d) S. C.	(12) 1st
MAIDEN NAME OF BRIDE (if Different From Above)				
(13)				

Application for a license was filed with this court at 10:35 a. m. on the 7th day of June, 1988. These are therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named, and for the so doing this shall be sufficient warrant. Given under my hand and seal at 11:15 a.m. this the 8th day of June, A.D. 1988.

Patricia H. Owens
Signature of Issuing Officer

Associate Probate Judge
Title of Issuing Officer

GROOM-Signature			BRIDE-Signature		
(14) James Belin			(15) Beulah Dunham		
I certify that the above named persons were married on			Place of Marriage		
(16) July 30 1988			(17) Marion		
OFFICIANT-Signature			OFFICIANT-Title		
(18a) Rev. Melville Davis			(18b) Rev. Melville Davis		
OFFICIANT-Mailing Address					
(18c) Rte 2, Box 1737 Gresham, South Carolina. 29546					

A CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE
Ammanda Page
Judge of Probate
Marion County, SC

ELECTRONICALLY FILED - 2028 Jul 05 10:10 AM - MARION - COMMON PLEAS - CAS#202006P3300277

EXHIBIT "D"

Riley Pope & Lang, LLC
201900053279
Post Office Box 10711
Columbia, South Carolina 29209

STATE OF SOUTH CAROLINA

FORECLOSURE DEED

Public Sale

COUNTY OF MARION

201900053279 EXEMPT
CHRISTY M. GRAY
CLERK OF COURTS
MARION COUNTY, SC
08-28-2019 01:30 PM.
REC FEE: 15.00

To all whom these Presents shall concern:

I, Haigh Porter, as Special Referee for Marion County, State of South Carolina, send Greetings:

WHEREAS, in an action in the Court of Common Pleas in the County and State aforesaid, between Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A as Plaintiff and Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham as Defendants, by an Order filed of record on April 25, 2019 in Case No. 2018-CP-33-00653, it was decreed that the property hereinafter described should be sold by the Special Referee for Marion County on the terms and for the purposes mentioned in the order(s) granted in the case, as by reference thereto will appear.

NOW THEREFORE KNOW ALL MEN, that I, the undersigned, as Special Referee for Marion County, on June 11, 2019, pursuant to the foregoing, openly and publicly, in consideration of the premises, and also in consideration of the sum of Thirty five thousand and 00/100 (\$35,000.00) Dollars as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant and release the following property unto Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A, its successors and assigns,

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

Being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A196 at Page 24.

TMS No. 163-00-00-053-000

Property Address: 1701 West Highway 378, Gresham, SC 29546

GRANTEE'S ADDRESS: 1600 South Douglass Road
Suite 200-A
Anaheim, CA 92806

Transfer No. 190759
August 28, 2019
Map 163-00-053-000
Recorder, Clerk, Assessor
Marion County, S.C.

Property Owner of Record: Bertha E. Dunham aka Bertha Dunham

TOGETHER with all and singular the rights, members, hereditaments and appurtenances whatsoever, to the said premises belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, possession, property, benefit,

claim and demand whatsoever, both at law and in equity, of all the parties to the said suit and of all other persons rightfully claiming or to claim the same, or any part thereof, by, from or under them, or either of them.

Subject to assessments, taxes, easements, conditions and restrictions of record and otherwise affecting the property.

TO HAVE AND TO HOLD, the said premises with its hereditaments, privileges and appurtenances unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, I, the undersigned, as Special Referee for Marion County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 9th day of August, 2019.

SIGNED, SEALED, AND DELIVERED
in the Presence of:

E. Jane Joyner
Witness No. 1

Printed name: E. Jane Joyner

Haigh Porter
Haigh Porter

Special Referee for Marion County

Haigh Porter
Witness No. 2/Notary Public

Printed name: Haigh Porter

STATE OF SOUTH CAROLINA

COUNTY OF MARION

PERSONALLY APPEARED before me the undersigned witness and made oath that (s)he saw Haigh Porter, as Special Referee for Marion County, sign, seal and deliver the within Deed; and that deponent, together with the other witness signed their names as witnesses thereto. The subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a party to or beneficiary of the transaction, signed the record as a subscribing witness, and witnessed the principal sign the record.

WITNESS our hands and seals on this 9th day of August, 2019.

E. Jane Joyner
Witness No. 1

Printed name: E. Jane Joyner

Haigh Porter (L.S.)
Notary Public for South Carolina

Printed name: Haigh Porter

My commission expires: 4/14/25

STATE OF SOUTH CAROLINA

COUNTY OF MARION

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 1701 West Highway 378, Gresham, SC 29546, bearing County Tax Map Number 163-00-00-053-000, was transferred by Haigh Porter, as Special Referee for Marion County to Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A on 8/9/19.
3. Check one of the following: The deed is
 - (a) ☐ Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ☐ Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ Exempt from the deed recording fee because (See Information section of affidavit):
(#13) Transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase realty? ☐ Yes ☒ No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of affidavit):
 - (a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$_____.
 - (b) ☐ The fee is computed on the fair market value of the realty which is \$_____.
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$_____.
5. Yes ☐ No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(5), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$_____.
 - (b) Place the amount listed in item 5 above here: \$_____.
 - (If no amount is listed, place zero here.)
 - (c) Subtract line 6(b) from line 6(a) and place result here: \$_____.
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$_____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for the Plaintiff.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

August 16, 2019
Columbia, South CarolinaSWORN to before me this
16 day of August, 2019Notary Public for South Carolina
My Commission Expires: _____Responsible Person Connected with the Transaction
Jacqueline Hunter, Attorney for Plaintiff

Stephanie M. Huggins

EXHIBIT "E"

the premises of the property subject to this foreclosure action. This mobile home has been located on the premises of the subject property since approximately June of 2006. Beulah Mae Belin and James Belin have occupied the land continuously, hostilely, openly, obviously, exclusively, notoriously and continuously against the interests of Bertha Dunham a/k/a Bertha E. Dunham and Ernest L. Dunham since 2006. Beulah Mae Belin and James Belin were not served within the foreclosure process by Plaintiff and have adversely possessed the property for greater than 10 years. They have not had a chance to answer this foreclosure matter and assert this defense or any other defenses they may have. As such Beulah Mae Belin and James Belin have equitable and legal interests in the above referenced property subject to the foreclosure and wish to intervene in this matter.

For the above-mentioned reasons, Beulah Mae Belin and James Belin, move this Court under the South Carolina Rules of Civil Procedure Rule 55, to set aside the Special Referee's Order of Judgment of Foreclosure and Sale Decree dated April 22, 2019 against Bertha Dunham a/ka Bertha E. Dunham and Ernest L. Dunham. Moreover, the post-sale Order for Writ of Assistance dated September 24, 2019 should be vacated or held in abeyance pending a hearing on the above-referenced matters.

These motions are based on this Notice, along with all papers filed in this action and on any evidence or case law that is presented at the hearing.

October 25, 2019

FERRARA LAW FIRM, PLLC

S/Paul B. Ferrara, III
8887 Old University Blvd.
North Charleston, SC 29406
(843) 569-5511/(843) 569-5411 fax
SC Bar No.: 70511
paul@ferraralawfirm.net

STATE OF SOUTH CAROLINA
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-33-00653

Wilmington Savings Fund Society, FSB, as trustee
of Stanwich Mortgage Loan Trust A,
Plaintiff,

ORDER FOR WRIT OF ASSISTANCE

v.

Bertha Dunham aka Bertha E. Dunham; Ernest L.
Dunham,
Defendant(s)

This matter comes before me upon a Petition requesting that the Sheriff of Marion County remove peaceably or forcibly the Defendant, or any occupants, and all of their personal property located within or on the premises described in the Petition.

Upon examining the Judgment of Foreclosure and Sale issued in the above case, and upon reading the Petition, it appears to the Court that a Writ of Assistance should be issued against the above mentioned Defendant or any occupants of the subject premises.

IT IS HEREBY ORDERED that the Sheriff of Marion County or his authorized deputies be, and they are hereby are, authorized and directed to enter upon the premises, 1701 West Highway 378, Gresham, SC 29546, described in the Petition and in the Judgment of Foreclosure and Sale at any time after 1:00 p.m. on the 29th day of October, 2019, and to either peaceably or forcibly remove the Defendant or any occupants and all personal property of same located within or on the premises, and that force may be used, if necessary, to enter the premises.

TMS #: 163-00-00-053-000


Haigh Porter
Special Referee for Marion County

Sept. 24, 2019



EXHIBIT "F"

STATE OF SOUTH CAROLINA
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS
CASE NO.: 2018-CP-33-00653

Wilmington Savings Fund Society, FSB,
as trustee of Stanwich Mortgage Loan
Trust A,
Plaintiff,
vs.

**ORDER DENYING THIRD PARTY MOTION
TO INTERVENE AND MOTION TO SET
ASIDE JUDGMENT**

Bertha Dunham a/k/a Bertha E. Dunham;
and Ernest L. Dunham.
Defendant(s).

INTRODUCTION

THIS MATTER came before me on October 29, 2019 to fully hear and adjudicate the Motion to Intervene and Motion to Set Aside Judgment filed by Beulah Mae Belin and James Belin, by and through their attorney, Paul B. Ferrara, III, (hereinafter "Belins"), who live in a mobile/manufactured home on the land of Bertha Dunham and Ernest Dunham (hereinafter "Defendants"). Present at the hearing was William P. Stork, Esq., attorney for Plaintiff, and appearing telephonically was Paul B. Ferrara, III, attorney for the Belins.

Based upon the arguments, testimony, and evidence presented at trial, I find and conclude as follows:

BACKGROUND

The instant action is one for foreclosure of property located in Marion County, South Carolina. The foreclosure arises out of a Mortgage Note ("Note") executed by Defendants on April 13, 2006 and delivered to CitiFinancial, Inc. a certain Promissory Note ("Note") in writing wherein and whereby the Defendants promised to pay to the Plaintiff, the principal sum of \$37,970.54, together with interest at an adjustable interest rate with an initial interest rate of 10.63% per annum on the unpaid balance; said principal and interest being payable in monthly installments, commencing on the 1st day of each month thereafter until the said Note is fully paid.

In order to secure the payment of said Note, the said Defendant, did on the same date, to wit, April 13, 2006, make, execute, and deliver to CitiFinancial, Inc., its successors and assigns, a certain real estate Mortgage ("Mortgage") covering real property located in Marion County, South Carolina as more fully described in said Mortgage as follows:

ALL that certain piece, parcel of lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-Half (1 / 2) acre, bounded Northeast One Hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

This being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A19 at Page 24.

TMS No. 163-00-00-053-000

Property Address: 1701 West Highway 378, Gresham, SC 29546

The Mortgage was recorded April 13, 2006 in the ROD's Office for Marion County in Book 819 at page 146.

Thereafter, the Mortgage was assigned to Citifinancial Servicing, LLC by assignment recorded on December 21, 2017 in Book 401 at Page 5. Thereafter, the Mortgage was assigned to Plaintiff by assignment recorded on December 21, 2017 in Book 401 at Page 6. The Mortgage evidences and secures the repayment of money advanced by

the Mortgagee to, or on behalf of, the mortgagor(s) and constitutes a purchase money first lien on the Mortgaged premises.

On September 20, 2018, the Plaintiff filed its Lis Pendens, Summons, and Complaint for Foreclosure. By Order filed March 12, 2019, this matter was referred to the Honorable Haigh Porter as Special Referee for Marion County to hear any issues, including motions after sale or judgment. On April 25, 2019, a Special Referee's Order of Judgment of Foreclosure and Sale Decree was filed along with a Notice of Sale directing the subject real property to be sold at public auction on June 11, 2019. The Notice of Sale of the subject real property was advertised in the Star Enterprise, a local newspaper of general circulation, on May 22, 2019, May 29, 2019, and June 5, 2019. On June 11, 2019, the subject real property was sold at public auction with Plaintiff being the high bidder. After compliance with their bid, Plaintiff was issued a deed to the subject real property which was recorded with the Marion County ROD's office on August 28, 2019 in Book 466 at Page 309.

On October 25, 2019, over a year after Plaintiff filed their Lis Pendens and over 4 months since the subject property sold at public auction, the Belins filed a Motion to Intervene and Motion to Set Aside Judgment.

DISCUSSION

STANDARD FOR INTERVENTION

South Carolina courts should not always grant intervention. *Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)*, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004). Though intervention "should be liberally granted," courts should consider judicial efficiency and the practical consequences of decisions to allow or deny intervention. *Id.* Essentially, courts should consider the "unique facts and circumstances" of each case. *Id.*

An applicant is entitled to intervention of right if she timely applies and either "a statute confers an unconditional right to intervene," Rule 24(a)(1), SCRPC, or

the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair

or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24(a)(2), SCRCP. Here, no statute grants the Belins an unconditional right to intervene. Accordingly, the Belins asserts a right to intervene based on Rule 24(a)(2) of the South Carolina Rules of Civil Procedure.

"Intervention of right requires a direct, substantial, legally protectable interest in the proceedings." *Dep't of Health & Envtl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993). An application for intervention of right must

- (1) Establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented.

Id. At 498, S.E.2d at 663; *Berkeley Electric Coop., Inc. v. Mount Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). All four factors are required to intervene on this basis; failing to establish any one prevents an applicant from intervening. *Dep't of Health & Envtl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993).

An applicant can ask a court to allow permissive intervention if the applicant timely applies and either "a statute confers a conditional right to intervene," Rule 24(b)(1), SCRCP, or "an applicant's claim or defense and the main action have a question of law or fact in common." Rule 24 (b)(2), SCRCP. "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Rule 24, SCRCP. While it is unclear from the body of the Belins' Motion, they may assert that either S.C. Code Ann. §15-67-210 or §15-67-240 provide the Belins a conditional right to intervene. If this is not their assertion, then the Belins assert a right to intervene based on Rule 24(b)(2) of the South Carolina Rules of Civil procedure.

South Carolina courts have the discretion to grant or deny permissive intervention. *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 262, 368 S.E.2d 72, 75 (Ct. App. 1988). However, courts should only grant permissive intervention when an applicant "has a

cause of action or defense it could bring or assert." *Id.* At 263, 368 S.E.2d at 75-76. Permissive intervention exists because administrative procedures support disposing of claims or defenses together when they have common questions. *Id.* At 263, 368 S.E.2d at 75. Without permissive intervention, an applicant could be forced to "institute or ... defend a separate proceeding that would substantially duplicate the one in question." *Id.* At 263, 368 S.E.2d at 75-76.

A. THE BELINS ARE NOT ENTITLED TO INTERVENE IN THE LITIGATION

1. The Belins are Not Entitled To Intervention Of Right.

The Belins are not entitled to intervention of right. Because the Belins have no interest in the subject real property, because the Belins failed to timely apply for intervention, and because the Belins interest was already adequately protected through the foreclosure proceeding, the Belins' Motion to Intervene fails.

A. The Belins are not entitled to intervention of right because they have no interest in the subject real property.

The Belins do not have any interest in the subject real property, and therefore they are not entitled to intervention of right. One of the elements which must be satisfied for a Court to grant intervention of right is that the Intervenor must, "assert an interest relating to the property or transaction which is the subject of the action." *Horry Cnty. State Bank v. Flemington Props., LLC*, 631 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). The Belins have no such interest. "Failure to satisfy *any one* of the four requirements precludes intervention." *Dep't of Health & Envtl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993)(*emphasis added*).

i. The Belins have no title to the subject property.

In their Motion to Intervention, the Belins merely assert a possible civil claim for adverse possession. they do not claim that any portion of the real property was ever deeded to them. Prior to the initiation of foreclosure proceedings, a title search was conducted to determine which parties may have an interest in the subject real property. No additional parties were found to have any interest in the subject real property. A review of the public

4/5
1/16/20

records shows that no deed vesting any legal interest to the subject real property to the Belins is recorded with the Marion County Register of Deeds. Generally, for a deed to be a valid conveyance, it is required to be recorded with the office of the register of deeds. S.C. Code Ann. §30-7-10 (2017). "No possession of real property described in an instrument of writing required by law to be recorded shall operate as notice of such instrument." S.C. Code Ann. §30-7-90 (2017).

The Belins argued that the placement of a mobile home on the subject real property may provide an interest in the real property upon which the mobile home is situated. This assertion is wrong and contrary to law governing the ownership of mobile homes. Under S.C. Code Ann. 56-19-10(39) (1976), a mobile home is not considered real property, but is considered personal property which must be titled with the Department of Motor Vehicles and is taxed just like any other personal property which is taxed by the Department of Motor Vehicles. The argument that the placement of a mobile home on property leads to adverse possession is essentially the same argument as if to say that the parking of a moped on a piece of property leads to a claim of adverse possession.

ii. The Belins merely assert a possible civil cause of action for adverse possession.

Adverse possession is not an interest in real property, it is merely a civil cause of action. Black's Law Dictionary 6th Ed. (1990). After a civil action asserting adverse possession is filed, a trier of fact must determine whether there is enough evidence to substantiate a claim of adverse possession, and only then would title be transferred to the alleged adverse possessor. *see Miller v. Leaird*, 307 S.C. 56, 413 S.E.2d 841 (1992). Even if the assertion of adverse possession were to create an interest, no action has been filed by the Belins at this time. A review of the public index finds no Lis Pendens filed by the Belins much less a suit for adverse possession. In this matter, the Belins claim for adverse possession must be construed in the same light as a claim for premises liability would. Both adverse possession and premises liability are civil causes of action which must be asserted against the landowner, and neither creates an interest in the real property.

Because the Belins have no legal title to the subject real property, and because adverse possession is a civil cause of action which, when merely referenced in a pleading, does not create an interest in the subject property, the Belins have no interest in the subject real property.

B. The Belins are not entitled to intervention of right because they did not apply in a timely fashion.

The Belins did not timely apply for intervention of right. The following factors determine whether a motion to intervene is timely:

- 1) The time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention.

Dep't of Health & Envtl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn), 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993).

#7
The Belins filed their Motion to Intervene on October 25, 2019. This filing was over a year after Plaintiff filed their Lis Pendens in this matter. "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 ..." S.C. Code Ann. §15-11-20 (1976). As of September 20, 2018, the Belins were on constructive notice of the Plaintiff's action because of the filing of Plaintiff's Lis Pendens. The clock to intervene started ticking the moment that Plaintiff filed their Lis Pendens. In addition to the notice proffered by the Lis Pendens, the subject real property was sold at public auction. This auction was advertised for three consecutive weeks in a local paper of general circulation. The publication provided additional notice to the Belins of the pending action. In spite of the notice provided by the Lis Pendens, and in spite of the notice provided by the publication for three consecutive weeks of the public auction, the Belins took no action to intervene in the subject action.

No reason has been delineated by the Belins which would justify this delay.

Litigation of this matter has progressed to the point that the case is finalized and the subject property has been sold at public auction. This is the penultimate point of the matter and would be extremely prejudicial to Plaintiff to allow for intervention. Assuming,

arguendo, that intervention were allowed. Plaintiff has incurred a plethora of costs, expenses, and loss of revenue which would be ongoing. A denial of intervention, in the alternative, does not prejudice the Belins. According to their own Motion, their mobile home was not placed on the subject real property until June of 2006. Plaintiff's Mortgage was recorded with the Marion County Register of Deeds on April 13, 2006, so even if the Belins were allowed to intervene, and even if they were to succeed on their cause of action for adverse possession, any and all interest gained would be "subject to" Plaintiff's mortgage and would be wiped out through the subsequent foreclosure sale.

In summation, the Belins' Motion to Intervene is untimely, there is no justification proffered for the delay, litigation has progressed to the point where all issues have been fully adjudicated and the real property sold, and the Plaintiff would be extremely prejudiced by intervention while the Belins are not prejudiced by the denial of intervention.

C. The Belins are not entitled to intervention of right because this action does not impair or impede their ability to protect their interest.

As was discussed above, Plaintiff's Mortgage was executed by the Dunhams on April 13, 2006 and was filed of record with the Marion County Register of Deeds on April 13, 2006 in Book 819 at Page 146. According to the Belins own motion, the mobile home was not placed on the subject real property until June of 2006. *Mtn. to Intervene* at 2. As South Carolina is a race-notice state whereby any interest or lien created after the recording of a prior interest or lien is junior and "subject to" that certain senior lien. *see* S.C. Code Ann. 30-7-10 & 30-7-20 (1976).

In the present action, because Plaintiff's Mortgage encumbering the subject real property was recorded on April 13, 2006, and because the Belins allege that their mobile home was not placed on the subject real property until June of 2006, and possible interest that the Belins would be vested through a successful adverse possession claim would be "subject to" Plaintiff's mortgage and, therefore, would be subsequently eliminated through Plaintiff's foreclosure.

In summation, even if the Belins were to eventually bring an adverse possession cause of action, and even if the Belins were successful with their cause of action, because

the Belins' interest would be "subject to" Plaintiff's Mortgage we would wind up in the exact same position we are now, only with much more time and money wasted from all parties.

D. The Belins are not entitled to intervention of right because any interest they may have if they are successful in an adverse possession cause of action would be adequately represented by existing parties.

Any interest that the Belins may have gained if they were to have brought and were successful in an adverse possession cause of action prior to the initiation of Plaintiff's foreclosure would have been adequately represent by the existing Defendants to the foreclosure action. Whether existing representation is adequate to protect the interests of an applicant depends on:

- 1) Whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent.

Berkeley Electric Coop., Inc. v. Mount Pleasant, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990). Courts presume that an applicant's interests are adequately represented "[w]hen an applicant for intervention and an existing party have the same interests or ultimate objective." *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988)(denying intervention because applicant's only objective was to retain disputed tax funds, which was identical to the objective of the County Treasurer); *see also Ken's Cabana LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004. In deciding adequacy of representation, courts consider "whether the absentee is likely to have anything of his own to say that will be of value." *Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)* 361 S.C. 503, 510, 604 S.E.2d 723, 726 (Ct. App. 2004). The applicant has the burden to show that existing representation is inadequate. *Id.*

In the present case, the Belins did not meet their burden to show inadequate representation. Since the Belins are not parties to the Note and Mortgage at issue, they

cannot assert any unique arguments which would not have been raised by the Defendants. Indeed, the Belins would have had the exact same goal as the Defendants; attempting to delay or stop Plaintiff's foreclosure and eviction proceedings.

In a case similar to this one, the South Carolina Court of Appeals denied the intervention of a mortgagee in regards to a dispute of a mortgagor's possession or and title to real property. *see Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). In *Ken's Cabana*, a married couple sold restaurant property to Ken's Cabana. *Id.* At 505, 604 S.E.2d at 724. As part of the purchase, the married couple's company granted Ken's Cabana a nonexclusive parking easement. *Id.* Ken's Cabana borrowed money from Horry County State Bank to make the purchase; the loan was secured by a mortgage on the restaurant and the easement. *Id.* At 506, 604 S.E.2d at 724. Later, another company bought the property on which the easement was located. *Id.* When Ken's Cabana violated the terms of the easement, the new owner terminated it. *Id.* Ken's Cabana sued the new owner, and Horry County State Bank tried to intervene. *Id.* At 506-507, 604 S.E.2d at 724-25.

The South Carolina Court of Appeals upheld the trial court's ruling that Horry County State Bank could not intervene because Ken's Cabana adequately represented Horry County State Bank's interests. *Id.* At 513, 604 S.E.2d at 728. The Court found that the interests of both parties were "essentially the same" – to retain the easement. Indeed, the Court found that,

"The Bank's mortgage on the parking easement is only as good as Ken's Cabana's right to use it. As the trial judge found, 'The rights and defenses of the Bank rise and fall with the acts and omissions of their mortgagor, Ken's Cabana.' They share the same interest and objective."

Id. At 510, 604 S.E.2d at 727. Horry County State bank could not identify any arguments or defenses that Ken's Cabana could not have raised. *Id.* Additionally, Horry County State Bank could not enumerate any "unique knowledge, experience, or perspective that [it] could bring to the proceedings." *Id.* As such, the South Carolina Court of Appeals upheld the lower court's denial of intervention of right.

In this matter, the Belins are like Horry County State Bank in *Ken's Cabana*. The Belins' interests are identical to that of the Defendants', delaying or defending against the foreclosure and eviction proceedings.

Indeed, the Belins argument for intervention of right is even weaker than that of Horry County State Bank's. Unlike Horry County State Bank, the Belins are not in privity of contract with any party to this case. The Belins now assert an interest based on a possible cause of action which would have begun to accrue after the filing of Plaintiff's Mortgage.

Plaintiff also asserts that the Belins' interests are adequately represented even in the Defendants and the Belins have different goals for the litigation. The mere possibility that two parties could have different intentions about the disposition of property is not enough to prove that representation is inadequate. *Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)* 361 S.C. 503, 509, 604 S.E.2d 723, 726 (Ct. App. 2004). In *Ken's Cabana*, Horry County State Bank claimed that its intentions for the mortgage property might be different from Ken's Cabana. *Id.* Ken's Cabana might want to sell the restaurant or declare bankruptcy, which Horry County State Bank's intent was to protect its security interest. *Id.* The South Carolina Court of Appeals found that the possible difference in intentions did not show that Ken's Cabana was an inadequate representative of Horry County State Bank's interests. The same logic applies here.

Because the Belins interests in this matter are the mirror image of the Defendant's interests, and because the Belins cannot not identify any arguments or defenses which could not have been raised by the Defendants, and because the mere possibility that the Belins and the Defendants intentions about the disposition of the property is inadequate to show inadequate representation, the Belins are not entitled to intervention of right.

2. The Belins are Not Entitled To Permissive Intervention.

The Belins are not entitled to permissive intervention.

"To warrant intervention under Rule 24(b) an applicant should ordinarily show he is charged with a public duty requiring him to intervene, or he has a claim or defense involving a question of law or fact in common with the main action. A mere general interest in the subject matter of the litigation is not sufficient." *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 262, 368 S.E.2d 72, 75 (Ct. App. 1988).

Since no statute conveys the Belins the right to intervene, there is no public duty requiring them to intervene. Because the Belins are not a party to the subject promissory note and mortgage, because the Belins have no interest in the subject real property, and because any possible claim for adverse possession would have begun to accrue after the filing of Plaintiff's Mortgage, there are no claims or defenses which she may assert in the present action. At this junction, the Belins have a mere general interest in the litigation, and as was stated in *S.C. Tax Comm'n v. Union Cnty. Treasurer*, a mere general interest in the litigation is not sufficient for intervention.

Furthermore, like intervention of right, permissive intervention requires that an applicant's interests be different than those of existing parties to the action. *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 263-64, 368 S.E.2d 72, 75 (Cl. App. 1988). Here, as was discussed above, the Belins interests are the mirror image of the interests of the Defendants.

Because there is no statute which conveys the Belins the right to intervene, because the Belins are not a party to the subject promissory note and mortgage, because the Belins have no legal interest in the subject real property, and because any interest which would be gained through adverse possession (if the Belins ever bring the action and assuming they are successful in Court) would be "subject to" Plaintiff's mortgage, and because the Belins' interests in the litigation are the same as that of the Defendants, they are not entitled to permissive intervention.

B. THE BELINS ARE NOT ENTITLED TO HAVE THE JUDGMENT VACATED

While the Belins' Motion to set aside the Special Referee's order of Judgment of Foreclosure and Sale asserts to be a motion pursuant to Rule 55, SCRCP, the proper Rule under which to move to set aside a Judgment is Rule 60, SCRCP. A motion under Rule 55, SCRCP would be proper if the Belins were seeking to get relief from default, but as a Judgment has been entered, and that Judgment has been of record for quite some time, the proper motion would be under Rule 60, SCRCP. "Relief from a final judgment must be had through Rule 60 which is the mechanism for relief from a judgment or order." *Thompson v. Bullentine*, 298 S.c. 289, 291, 379 S.E.2d 896, 898 (1989). Since the proper motion for

relief from judgment is under Rule 60, SCRCP, it is that analysis that Plaintiff will discuss in this Order. As no clerical error is asserted by the Belins, this motion is pursuant to Rule 60(b), SCRCP.

"Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge." *Tobias v. Rice* 379 S.C. 357, 665 S.E.2d 216, 219 (Ct.App 2008) *reversed* 386 S.C. 306, 688 S.E.2d 552 (2010). "Rule 60(b), SCRCP requires a show in of one of five enumerated reasons before the court may grant relief from a judgment." *Patterson v. McNeil & Associates, Inc.*, 312 S.C. 471, 441 S.E.2d 328, 329 n.2 (Ct.App 1994). "It is well settled that the moving party in a Rule 60(b) motion has the burden of presenting evidence entitling him to relief. Memorandum in support of a motion is not evidence." *McClurg v. Deaton* 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011). "In determining whether one should be relieved from the entry of default, a court shall consider the following factors: (1) the timing of the motion for relief; (2) whether one has a meritorious defense; and (3) the degree of prejudice to the nonmoving party if the relief is granted." *Top Value Homes, Inc. v. Harden*, 319 S.C. 302, 460 S.E.2d 427, 429 (Ct.App 1995). While the Belins' Motion is made within the 1-year timeframe as delineated by Rule 60(b), SCRCP, there is no meritorious defense and the granting of the motion would be extremely prejudicial to the Plaintiff.

1. The Belins have no meritorious defense to the foreclosure action.

It is paramount that a moving party must show a meritorious defense to be entitled to relief under Rule 60(b), SCRCP. *see Bowers v. Bowers*, 304 S.C. 65, 66, 403 S.E.2d 127, 129 (Ct. App. 1991). "A motion to open or vacate judgment should be supported by affidavits as to the facts on which the application relies." *Arnold v. Arnold*, 285 S.C. 296, 328 S.E.2d 924 (Ct. App. 1985).

In the instant matter, no affidavits executed by the Belins have been filed. Because no affidavits have been filed, there is no evidence presented to the Court which shows a meritorious defense to the foreclosure action. All that is presented to the Court is a motion which alleges that a mobile home owned by the Belins was placed on the Defendants' property two months after Plaintiff's mortgage was filed of record.

The Belins assert a possible civil cause of action for adverse possession, but the mere assertion of a possible cause of action does not rise to the level of a meritorious defense. To

prove a cause of action/defense of adverse possession, a party must show that the occupation of the land was (1) actual; (2) open; (3) notorious; (4) hostile; (5) continuous; and (6) exclusive. *Getsinger v. Midlands Orthopedic Profit Sharing Plan*, 327 S.C. 424, 489 S.E.2d 223 (Ct. App. 1997). No affidavit as to any of the adverse possession factors has been filed with the Court. Because no affidavit has been filed with the Court, the Belins fail to show any meritorious defense to the foreclosure action.

Examining the Belins' Motion, they allege that the mobile home was placed on the subject real property in June of 2006. The Plaintiff's Mortgage was filed on April 13, 2006. Because the Plaintiff's Mortgage was filed before the Belins' placed their mobile home on the property, any land which would possibly be adversely possessed would be "subject to" Plaintiff's mortgage. Therefore, even if the Belins' Motion was supported by an affidavit, their adverse possession claim would not rise to the level of a meritorious defense.

Because the Belins have not presented any evidence to the Court supporting their Rule 60(b) Motion, and because any land adversely possessed from the Defendants would be "subject to" Plaintiff's Mortgage, no meritorious defense exists.

2. The granting of the Belins' 60(b) motion would be extremely prejudicial to Plaintiff.

The last payment credited to the Defendant's mortgage account was on November 24, 2017. Since that time, Plaintiff has been paying all escrows for this account in addition to attorney's fees and costs to bringing the underlying foreclosure action and present eviction action. Plaintiff initiated the underlying foreclosure lawsuit by the filing of a Summons, Complaint, and Lis Pendens on September 20, 2018. Since that time, Plaintiff has reviewed the Defendants for possible loss mitigation (which resulted in denial), obtained judgment, completed a public auction, and obtained title to the subject real property.

To allow the judgment to be overturned at this point would be extremely prejudicial. Plaintiff would have to continue to make escrow advances, corporate advances, and pay attorney fees and costs. This is in addition to losing the contractual interest amount as was agreed upon by the Defendants. Because deficiency is waived in the underlying foreclosure, if this property was to go back through the foreclosure process and be resold, there is a very real possibility that the Plaintiff would not be able to recoup the entirety of the judgment amount to which they are entitled.

As was discussed above, there is no merit to the Belins' proffered adverse possession claim. It is much more likely than not that if the Belins' Rule 60(b) Motion is granted, that all parties will be in this exact same position a number of months from now, only having expended much more money and money on needless litigation.

Because of the massive amount of money already expended by Plaintiff, because of the continuing money being lost by Plaintiff, because the Belins' adverse possession cause of action lacks merit, because of the waste of additional money and time that vacating judgment would necessitate, and because all vacating judgment would do is delay proceedings with the same result once litigation is finished, the Plaintiff would be extremely prejudiced by the granting of the Belins' Rule 60(b) motion.

CONCLUSIONS OF LAW

The Belins not entitled to intervention of right nor permissive intervention. The common factor with both intervention of right and permissive intervention is that the intervening party must have an interest in the litigation beyond a mere general interest in the litigation. While the Belins are currently residing in a mobile/manufactured home situated on the real property which is subject of this litigation, they have no legal nor equitable interest in the property.

Additionally, the Belins did not timely apply for intervention. The Motion to Intervene was filed and served over a year after the Plaintiff filed their Lis Pendens, and several months after the subject real property was advertised and sold at public auction.

Any interest that the Belins may have in the subject real property was adequately protected by the Defendants. The Belins' interest in the litigation is the mirror image of the Defendants', and no arguments or defenses could have been raised by the Belins that could not have been raised by the Defendants.

No statute conveys the Belins the right to intervene.

The Belins Motion to Set Aside Judgment is properly considered under Rule 60(b), SCRCP, not the proffered Rule 55, SCRCP. Therefore, under Rule 60(b), SCRCP, the Belins must show a meritorious defense to the foreclosure and the degree of prejudice to the Plaintiff must be considered.

The Belins possible assertion of a future adverse possession claim does not create a meritorious defense. No affidavits have been received by this Court from the Belins as to their possible assertion of adverse possession. Additionally, the Belins state that the mobile/manufactured home was not placed on the subject real property until after the Mortgage was recorded, and therefore any adverse possession would be "subject to" Plaintiff's Mortgage.

The Plaintiff would be extremely prejudiced if this Court were to grant the Belins' Motion to Set Aside Judgment. The Plaintiff has already lost a significant amount of money during the court of the Defendants' breach and the following litigation; to set aside the sale and Judgment would merely cause the Plaintiff to expend more money while leading to the same result.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Belins' Motion to Intervene is hereby denied, and;
2. That the Belins' Motion to Set Aside Judgment is denied.

AND IT IS SO ORDERED.

Date: Dec. 27, 2019
 Florence, South Carolina

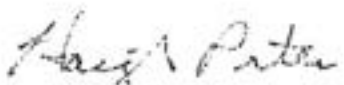

 The Honorable W. Haigh Porter
 Special Referee for Marion County

EXHIBIT "G"

Instrument	Vol	Page
202000054472 OR	483	169

202000054472
Filed for Record in
MARION COUNTY, SC
CHRISTY M. GRAY, CLERK OF COURTS
01-07-2020 At 11:25 am.
QTCL DEED 22.40
Vol 483 Page 169 - 173

Please send tax statements to:
2019 Castle, LLC, a New York Limited Liability Company
333 Westchester Ave., W2100, White Plains, NY 10604

Return To:
Fidelity Land Title Agency
10723 Montgomery Rd., Cincinnati OH 45242

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS THAT:

THIS QUITCLAIM DEED, made and entered into on this 23rd day of December, 2019 between Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A ("Grantor") whose address is 1600 South Douglas Rd., Suite 200-A, Anaheim CA 92806 and 2019 Castle, LLC, a New York Limited Liability Company ("Grantee") whose address is 333 Westchester Ave., W2100, White Plains, NY 10604.

FOR VALUABLE CONSIDERATION, in the amount of One Thousand Eight Hundred DOLLARS (\$1,800.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby REMISES, RELEASES, AND FOREVER QUITCLAIMS to Grantee, all right, title, interest and claim to the plat. Piece or parcel of land, with all the buildings, appurtenances and improvements thereon, if any, in the County of Marion, State of South Carolina described as follows:

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One hundred Five (105) feet by US. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

Transfer No: 200005
Sign 2020
Map 163 Block 53 Lot
Rueben Butler, Assessor
Marion County, S.C.

Being the same property conveyed to Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A by Foreclosure Deed, dated August 9, 2019 and recorded August 28, 2019 in Deed Book 466 at Page 309.

TMS No. 163-00-00-053-000

Property Address: 1701 West Highway 378, Gresham, SC 29546

SELLER AND PURCHASER ACKNOWLEDGE AND AGREE THAT THE PROPERTY IS BEING SOLD "WITH ALL FAULTS" AND IN "AS IS" CONDITION WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER INCLUDING WITHOUT LIMITATION ANY WARRANTY OF HABITABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES ACKNOWLEDGE THAT THIS PROVISION WAS SPECIFICALLY NEGOTIATED FOR AS PART OF THE CONSIDERATION FOR SELLER'S AGREEMENT TO SELL THE PROPERTY TO PURCHASER.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed on this 23rd day of December, 2019.

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A, By Carrington Mortgage Services, LLC as Attorney in Fact

By: DEC 23 2019
Name: Scott Hazen
REO Director
Title: Carrington Mortgage Services, LLC

Glenda Maldonado
Witness: Glenda Maldonado
Print Name:

Cecilia Alonso
Witness: Cecilia Alonso
Print Name:

State of
County of

SS:

see Attached

Before me the undersigned, a Notary Public in and for said County and State, on this ____ day of December, 2019, personally appeared _____ the _____ of Carrington Mortgage Services, LLC as Attorney in Fact for Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A who subscribed her name as the authorized officer hereof to the foregoing instrument and acknowledged to me that she executed the same as on behalf of the corporation, for the uses and purposes herein set forth.

Give under my hand and seal the day and year last above written.

Notary Public

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

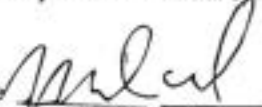
State of California
County of Orange

On December 23, 2019 before me, Marisela J Islas - Notary Public
(insert name and title of the officer)

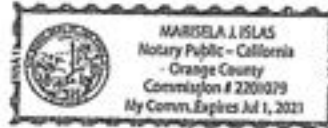
personally appeared Scott Hazen
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



Ohio
STATE OF ~~XXXXXXXXXXXX~~
COUNTY OF Hamilton) AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 1701 W Hwy 378, Gresham SC 29546 bearing Marion County Tax Map Number 163-00-00-053-000, was transferred by Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A to 2019 Castle, LLC, a New York Limited Liability Company on 12/20/2019.

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) ☐ exempt from the deed recording fee because (See Information section of affidavit):
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?
Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$1,800.00
- (b) ☐ The fee is computed on the fair market value of the realty which is
- (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is:

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$1,800.00
- (b) Place the amount listed in item 5 above here: 0.00
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$1,800.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$7.40

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Coordinator

EXHIBIT "H"

Instrument	Vol	Page
202000055030 OR	490	236

202000055030	
CHRISTY H. GRAY	
CLERK OF COURTS	
MARION COUNTY, SC	
03-10-2020	02:40 pm
REC FEE:	15.00
State	\$
Local	\$
	44.20
	18.70

202000055030
BLACK, SLAUGHTER & BLACK, PA

PREPARED BY:
BLACK, SLAUGHTER & BLACK, P.A.
JOSEPH W. THOMPSON, IV
1927 S. TRYON STREET, UNIT 100
CHARLOTTE, NC 28203

Transfer No. 200215
Map 1103 Block 53 Lot 2020
Rushen Butler, Assessor
Marion County, S.C.

STATE OF SOUTH CAROLINA

SPECIAL WARRANTY DEED

COUNTY OF MARION

KNOW ALL MEN BY THESE PRESENTS that 2019 Castle, LLC, a New York limited liability company, hereinafter called Grantor in consideration of Seventeen thousand and 00/100 (\$17,000.00) Dollars to the Grantor in hand paid at and before the sealing of these presents by the Grantee(s) hereinafter named, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto Bevance Lynch, its successors and assigns forever, the following described property, to-wit:

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-Half (1/2) acre, bounded Northeast One Hundred Five (105) feet by US Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

TMS#: 163-00-00-053-000

PROPERTY ADDRESS: 1701 W Hwy 378, Gresham, SC 29546

GRANTEES ADDRESS: 15660 SW 152nd, Miami, SC 33187

DERIVATION: This being the property as conveyed to Grantor by Quit Claim Deed recorded on January 7th, 2020 in Book 483, Page 169 in the Marion County Clerk of Courts.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any way incident or appertaining, including, but not limited to, all improvements of any nature located on the Premises and all easements and rights-of-way appurtenant to the Premises.

ELECTRONICALLY FILED - 2023 Jul 05 10:10 AM - MARION - COMMON PLEAS - CASE#2020CPCP3300277

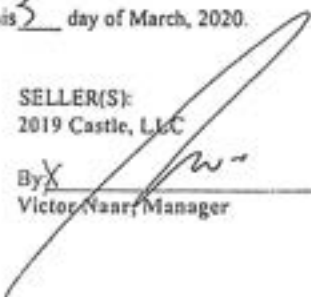
TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, and Grantee's heirs successors and assigns forever.

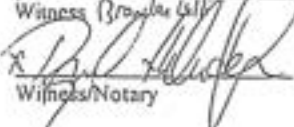
And, **SUBJECT TO** the matters set forth above, Grantor does hereby bind Grantor and Grantor's heirs, successors and assigns, executors, administrators and other lawful representatives, to warrant and forever defend all and singular the Premises unto Grantee and Grantee's heirs, successors and assigns against Grantor and Grantor's successors lawfully claiming, or to claim, the same or any part thereof but no others.

Witness the execution hereof by Grantor this 3 day of March, 2020.

Signed, Sealed and Delivered
in the Presence of:

SELLER(S):
2019 Castle, LLC

By X 
Victor Naar, Manager

X 
Witness (Brother, LLC)
X 
Witness/Notary

STATE OF NY)
COUNTY OF Westchester)

ACKNOWLEDGEMENT

I, the undersigned, a Notary Public for North Carolina hereby certify that Victor Naar, as Manager for 2019 Castle, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 3 day of March, 2020.

(SEAL)


NOTARY PUBLIC FOR
MY COMMISSION EXPIRES: _____
RAQUEL HELENA DESOUZA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DE6380847
Qualified in Putnam County
My Commission Expires 09-17-2022

STATE OF SOUTH CAROLINA)
) AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS
COUNTY OF MARION)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. The property being transferred is designated as 1701 W Hwy 378, Gresham, SC 29546, Tax Map #163-00-00-053-000, was transferred by 2019 Castle, L.L.C. to Bevance Lynch on 3/3/2024

2. Check one of the following: The deed is

- (a) XX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) exempt from the deed recording fee because (See information section of affidavit)
(If exempt, please skip items 3-6, and go to item 7 of this affidavit).

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? _____

3. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of this affidavit):

- (a) XX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$17,000.00.
(b) The fee is computed on the fair market value of the realty which is _____
(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is: _____

4. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

5. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 3 above here: \$17,000.00
(b) Place the amount listed in item 4 above here: \$0.00
(c) Subtract Line 5(b) from Line 5(a) and place result here: \$17,000.00

6. The deed recording fee due is based on the amount listed on Line 5(c) above and the deed recording fee due is: \$62.90.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

8. I have read this affidavit and I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one

Instrument 202000055030 OR Vol Page
490 239

thousand dollars or imprisoned not more than one year, or both.

BY


2019 Cash, LLC, Victor Naar as Manager

Sworn to before me this 13 day of March 2020.


Notary Public for
My Commission Expires: _____

RAQUEL HELENA DESOUZA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DE6380847
Qualified in Putnam County
My Commission Expires 09-17-2022

All statements are to the best of seller's knowledge.*

EXHIBIT "I"

STATE OF SOUTH CAROLINA
COUNTY OF MARION

2020CV3310100522
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT
NOTICE TO QUIT PREMISES

Bevance Lynch
15660 Sw 152 Place
Miami, FL 33187
(305) 951-2655

PLAINTIFF(S)

Vs

Bertha E Dunham
1701 W Hwy 378
Gresham, SC 29546

DEFENDANT(S)

Upon an affidavit filed by the plaintiff which states you:

Bertha E Dunham

defendant(s), are a trespasser(s) and are occupying the premises at
1701 W Hwy 378

Gresham, SC 29546

without permission of the owner of said premises. You are required to immediately vacate the premises or contact the:

Marion County Summary Court
2715 East Highway 76, Suite B
Mullins, SC 29574
Phone: (843) 423-8208
Fax: (843) 423-8394

within five (5) days to show cause, if any you can, why you should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO CONTACT THIS OFFICE WITHIN FIVE (5) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Dated: May 20, 2020

JUDGE

PERSONALLY appeared before me, the undersigned deponent, who being duly sworn, says that s/he served the herein Notice to Quit Premises/Rule to Show Cause on

Bertha E. Dunham on the 21st day of May,
2020 at 1240 ☐ AM ☒ PM

Sworn to and subscribed before me
this 21st day of May, 2020

Kimberly Richardson
NOTARY PUBLIC or JUDGE
My Commission Expires: 12/31/2023

[Signature]
Sheriff's Deputy or Constable

FILED
2020 JUN -2 PM 3:25
MARION COUNTY CLERK OF COURT

ELECTRONICALLY FILED - 2023 JUN 05 10:10 AM - MARION - COMMON PLEAS - CASE#2020CP3300277

STATE OF SOUTH CAROLINA

COUNTY OF MARION

2020CV3310100522
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

APPLICATION FOR NOTICE
TO QUIT PREMISESBevance Lynch
15660 Sw 152 Place
Miami, FL 33187
(305) 951-2655

PLAINTIFF(S)

Vs

Bertha E Dunham
1701 W Hwy 378
Gresham, SC 29546

DEFENDANT(S)

FILED
2020 JUN -2 PM 3:25
H. C. CLEGG

I, Bevance Lynch plaintiff in this action, state that I am the owner/agent of the premises within the jurisdiction of the Marion County Summary Court which is described as: (address and description of premises)

1701 W Hwy 378
Gresham, SC 29546

I further state that with regard to the above described premises, that the Defendant(s) is in possession of the premises without my consent and that I have requested that the Defendant(s) yield possession and vacate the property. The Defendant(s) has refused. Therefore, I request that the Defendant(s) be removed from the premises according to the SC Code of Laws, Section 15-67-0610.

Sworn to and Subscribed
Before Me:

Notary Public

Date: 5/20/20

Plaintiff/Agent/Plaintiff's Attorney



WALTER A. CORNEJO
NOTARY PUBLIC
STATE OF FLORIDA
Commission GG116243
Expires 6/19/2021

EXHIBIT "J"

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT)

COUNTY OF MARION)

Bevance Lynch,)

CIVIL CASE NO.: 2020CV3310100522)

Plaintiff,)

vs.)

Bertha E. Dunham,)

**DEFENDANT'S ANSWER AND
MOTION TO ADD PARTIES/ MOTION
TO DISMISS OR TRANSFER**)

Defendant.)

Beaullah Mae Belin and James Belin,

Plaintiffs,

Vs.

Bevance Lynch,

Defendant,

NOW COMES the Defendants, Bertha E. Dunham, by and through their undersigned attorney, Paul B. Ferrara, III, Esq., answering the Plaintiff's 5-Day Notice and pursuant to Rule 12 of the South Carolina Rules of Civil Procedure, and moves this Court to set a hearing to dismiss this case.

NOW COMES Beaullah Mae Belin and James Belin, by and through their undersigned attorney, Paul B. Ferrara, III, Esq., move this Court under the South Carolina Rules of Civil Procedure, Rule 24, for an order granting them leave to intervene in the above-named action and assert a counterclaim against Defendant Bevance Lynch on the grounds that they have a legal interest in the property which is subject to the above-referenced litigation. The legal issues associated with Mr. and Mrs. Belin's ownership in the subject property are on appeal with the

FILED
2020 JUN -2 PM 3:25
CLERK OF COURT

ELECTRONICALLY FILED - 2023 Jul 05 10:10 AM - MARION - COMMON PLEAS - CASE#2020CP3300277

appellate court in case number 2020-000139. The Magistrate's Court does not have the jurisdiction to rule upon the Defendants' equitable interest, and as such, Plaintiffs Beaulah Mae Belin and James Belin hereby move this Court to transfer to the Marion County Court of Common Pleas to determine their legal and equitable claims

FOR A FIRST DEFENSE
(General Denial)

1. Defendant Bertha E. Dunham denies each and every allegation of the Plaintiff's 5-Day Notice.

MOTION TO DISMISS/TRANSFER

PLEASE TAKE NOTICE that, as soon as the matter may be heard in the above-entitled action, the intervenors Beaulah Mae Belin and James Belin, move this Court under the South Carolina Rules of Civil Procedure, Rule 24, for an order granting them leave to intervene in the above-named action.

The grounds for issuance of this order are that interveners, Beaulah Mae and James Belin, have a legal interest in the property which is subject to the above-referenced litigation as a result of adverse possession. Adverse possession when asserted, is an affirmative defense. Jones v. Logan, 681 S.2d 10, 11 (2009). The party asserting adverse possession must show continuous, hostile, open, actual, notorious and exclusive possession for a certain period of time. Mullis v. Winchester, 237 S.C. 487, 491 (1961). Beaulah Mae Belin and James Belin have a 1995 Oakwood mobile home that has been located on the premises of the property subject since 1988. This mobile home has been located on the premises of the subject property since approximately July 16, 1988. Beaulah Mae Belin and James Belin have occupied the land continuously, hostilely, openly, obviously, exclusively, notoriously and continuously against the interests of Bertha Dunham a/k/a Bertha E. Dunham and Ernest L. Dunham since 1988. Beaulah Mae Belin

2020 JUN -2 PM 3:25

FILED

ELECTRONICALLY FILED - 2023 Jul 05 10:10 AM - MARION - COMMON PLEAS - CASE#2020CP3300277

and James Belin were not served within the above-referenced eviction by Plaintiff and have adversely possessed the property for greater than 10 years. They have not had a chance to answer this eviction matter and assert this defense or any other defenses they may have. As such Beaulah Mae Belin and James Belin have equitable and legal interests in the above referenced property subject and wish to intervene in this matter.

For the above-mentioned reasons, Beaulah Mae Belin and James Belin, move this Court to dismiss this case against Bertha E. Dunham, or transfer to the circuit court to determine their equitable and legal interests in the above-referenced property.

Dated: May 29, 2020
North Charleston, SC

FERRARA LAW FIRM, PLLC

PAUL B. FERRARA, III
Attorney for Defendant Bertha Dunham and
Beaulah Mae Belin and James Belin
8887 Old University Blvd. Ste. 200
North Charleston, SC 29406
843-569-5511 / 843-569-5411 (f)
Email: Paul@ferraralawfirm.net
SC Bar No.: 70511

2020 JUN -2 PM 3:25

ELECTRONICALLY FILED - 2023 Jul 05 10:10 AM - MARION - COMMON PLEAS - CASE#2020CP3300277

EXHIBIT "K"

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)
)
) **2020CV3310100522**
) **CIVIL CASE NUMBER**
)
) **IN THE MAGISTRATE'S COURT**
)
) **CERTIFICATE OF TRANSMITTAL**

Bevance Lynch
 15660 Sw 152 Place
 Miami, FL 33187
 (305) 951-2655

PLAINTIFF(S)

Vs

Bertha E Dunham
 1701 W Hwy 378
 Gresham, SC 29546

DEFENDANT(S)

The original complaint and all associated paper work in reference to the above listed civil case is being transmitted for disposition to the court listed below:

Date of Transmittal: June 2, 2020
 Transmitted to: Common Plea
 Transmitted by: Marion County Marion County Summary Court
 Civil Case No.: 2020CV3310100522
 Comments: This case is in appellate court (case number 2020-000139)

Received and verified by Ariel Smallwood on 6/2/2020.

EXHIBIT "L"

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Ex Parte Beaulah Belin and James Belin, Appellants

In re Wilmington Savings Fund Society, FSB, as trustee
of Stanwich Mortgage Loan Trust A, Plaintiff,

v.

Bertha Dunham a/k/a Bertha E. Dunham; and Ernest L.
Dunham, Defendant(s)

of which Wilmington Savings Fund Society, FSB, as
trustee of Stanwich Mortgage Loan Trust A is the
Respondent.

Appellate Case No. 2020-000139

Appeal From Marion County
W. Haigh Porter, Special Referee

Unpublished Opinion No. 2022-UP-333
Submitted July 27, 2022 – Filed August 10, 2022

AFFIRMED

Paul B. Ferrara, III, of Ferrara Law Firm, PLLC, of N.
Charleston, for Appellants.

Peter M. Balthazor, of Riley Pope & Laney, LLC, of Columbia; and William Price Stork, of Zwicker & Associates, P.C., of Columbia, both for Respondent.

PER CURIAM: Beullah and James Belin appeal an order denying their motion to intervene and set aside judgment in a mortgage foreclosure action between Bertha and Ernest Dunham and Wilmington Savings Fund Society, FSB (the Bank). On appeal, the Belins argue the special referee abused its discretion by denying their motion to intervene and public policy favored intervention to serve the interest of justice. We affirm pursuant to Rule 220(b), SCACR.

We hold the special referee did not abuse its discretion by denying the Belins' motion to intervene pursuant to Rule 24(a)(2), SCRCP. *See In re Horry Cnty. State Bank*, 361 S.C. 503, 507, 604 S.E.2d 723, 724 (Ct. App. 2004) ("The standard of review for a Rule 24(a)(2)[, SCRCP,] motion is whether the judge abused his discretion in granting or denying the motion."); *id.* at 508, 604 S.E.2d at 725 (providing that pursuant to Rule 24(a)(2), in order to intervene as of right, a party must "(1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties").

Based on the time that had passed since the Belins knew or should have known of their interest, the stage to which the litigation had progressed, and the prejudice to the original parties, we hold the special referee did not abuse its discretion by finding the Belins did not timely file their application to intervene. *See Ex parte Reichlyn*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993) ("[A] court must consider the following factors in determining whether a motion to intervene is timely: 1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention."). Here, the Bank filed its lis pendens and summons and complaint for foreclosure in September 2018. On April 25, 2019, the special referee filed an order of judgment of foreclosure and sale and a notice of sale, directing the subject property be sold at public auction on June 11, 2019. The notice of sale was advertised in a local newspaper on May 22 and 29, 2019, and June 5, 2019. The property was sold to the Bank on June 11, 2019, and the Bank recorded its deed on August 28, 2019.

The Belins did not file their motion to intervene and motion to set aside judgment until October 25, 2019—more than a year after the Bank filed the lis pendens and more than four months after the property was sold. Nothing in the record establishes the reason for the Belins' delay. Accordingly, we affirm the special referee's denial of the Belins' motion.¹ *See id.* at 500, 427 S.E.2d at 664 (explaining it is unnecessary to consider the remaining factors required for intervention pursuant to Rule 24(a)(2) "because failure to satisfy any one of the four requirements precludes intervention").

We find the Belins' second issue not preserved for appellate review because neither the order on appeal nor the remainder of the record show that this argument was raised to and ruled on by the special referee. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (finding an issue must be raised to and ruled upon by the trial court to be preserved for appeal).

AFFIRMED.²

THOMAS, MCDONALD, and HEWITT, JJ., concur.

¹ The Belins' arguments related to Rule 71, SCRCP, are not preserved for appellate review because neither the order on appeal nor the record show that this argument was raised to and ruled on by the special referee. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (finding an issue must be raised to and ruled upon by the trial court to be preserved for appeal). Further, although the Belins argue the factors enumerated in *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir. 1983), were not considered, we find this argument without merit. The special referee's order quoted the *Sagebrush* factors through its citation to *Berkeley Electric Co-op. v. Town of Mt. Pleasant*, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990), and addressed the factors in its analysis following the quote.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

EXHIBIT "M"

The Supreme Court of South Carolina

Ex Parte Beaulah Belin and James Belin, Petitioners, **May 24 2023**

In re Wilmington Savings Fund Society, FSB, as trustee
of Stanwich Mortgage Loan Trust A, Plaintiff,

v.

Bertha Dunham a/k/a Bertha E. Dunham; and Ernest L.
Dunham, Defendant(s)

of which Wilmington Savings Fund Society, FSB, as
trustee of Stanwich Mortgage Loan Trust A is the
Respondent.

Appellate Case No. 2022-001450

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY Patricia A. Howard

CLERK

Columbia, South Carolina
May 24, 2023

cc:

Paul B. Ferrara, III, Esquire
William Price Stork, Esquire
Peter M Balthazor, Esquire
The Honorable Jenny Abbott Kitchings

STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

Bevance Lynch,)

Plaintiff,)

vs.)

Bertha E. Dunham,)

Defendant.)

Beaullah Mae Belin and James Belin,)

Plaintiffs,)

vs.)

Bevance Lynch,)

Defendants.)

IN THE COURT OF COMMON PLEAS
IN THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-33-00277

LIS PENDENS

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One Hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TMS # 163-00-00-053-000

Property Address: 1701 West Highway 378, Gresham, SC 29546.

Respectfully submitted,

/s/ Paul B. Ferrara III

Paul B. Ferrara, III (S.C. Bar No. 70511)
FERRARA LAW FIRM, PLLC
8887 Old University Blvd., Suite 200
North Charleston, SC 29406
Telephone: (843)569-5511
Facsimile: (843) 569-5411
Attorney for Beullah Mae Belin

August 17, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	C/A NO.: 2020-CP-33-00277
	)	
Bevance Lynch ,	)	MOTION FOR AMENDED ANSWER
Plaintiff,	)	OF BERTHA DUNHAM
	)	
Vs.	)	
	)	
Bertha E. Dunham	)	
	)	
Defendant(s).	)	
	)	
Beaullah Mae Belin and James Belin,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
Vs.	)	
	)	
Bevance Lynch,	)	
	)	
Third-Party Defendant.	)	

NOW COMES, Bertha Dunham, by and through her attorney, Paul B. Ferrara, III, Esq., for an Order allowing an amended answer as forth below not sooner than ten (10) days henceforth by the presiding Judge.

PLEASE TAKE NOTICE that, as soon as the matter may be heard in the above-entitled action, Bertha Dunham, moves this Court under the South Carolina Rules of Civil Procedure, Rule 15, for an order granting her leave to file an amended answer for the above-named action.

These motions are based on this Notice, along with all papers filed in this action and on any evidence or case law that is presented at the hearing.

November 28, 2023

FERRARA LAW FIRM, PLLC

S/Paul B. Ferrara, III
8887 Old University Blvd.
North Charleston, SC 29406
(843) 569-5511/(843) 569-5411 fax
SC Bar No.: 70511
paul@ferraralawfirm.net

4. Mr. Lynch did not take title to the property as an innocent purchaser for value without notice of any claims and was aware that claim of title was at issue when he purchased the property.
5. Mr. Lynch and others conspired and took, and are continuing to take, unlawful actions against Bertha Dunham, Beaulah Mae Belin and James Belin knowing the conduct is improper.
6. All of the above caused special harm and actual damages to Bertha Dunham, Beaulah Mae Belin and James Belin.
7. I request a jury trial on the above-case.

FURTHERING ANSWERING AND BY WAY OF MOTION
FAILURE TO ADD NECESSARY PARTIES

8. Beaulah Mae Belin and James Belin are owners of the property and/or have an interest in the property.
9. They are indispensable parties to this action pursuant to SCRCF 19.
10. Plaintiff failed to bring Beaulah Mae Belin and James Belin in this action.

Therefore, this action must be dismissed.

Respectfully submitted,

/s/ Paul B. Ferrara III

Paul B. Ferrara, III (S.C. Bar No. 70511)
FERRARA LAW FIRM, PLLC
8887 Old University Blvd., Suite 200
North Charleston, SC 29406
Telephone: (843)569-5511
Facsimile: (843) 569-5411
Attorney for Bertha E. Dunham

November 28, 2023

STATE OF SOUTH CAROLINA
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No.: 2020-CP-33-00277

Bevance Lynch,

Plaintiff,

vs.

Bertha E. Dunham,

Defendant.

**DEFENDANT'S MOTION TO
RECONSIDER**

To: Judge Hughston and Jake Kennedy, Esq.

PLEASE TAKE NOTICE that on the Tenth (10th) day following service hereof, or as soon thereafter as they may be heard, the Defendant, Bertha Dunham, by and through her undersigned attorney, will move before your honor for an Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure granting the Defendants' Motion to Reconsider/Alter or Amend Judgment dated December 4, 2023 awarded in the above captioned case based upon the following:

Counsel articulated in Court and respectfully requests your honor to rule upon the following issues:

1. Inquiry into the facts of this case is still required and as such the grant of summary judgment was premature. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Lanham, 349 S.C. at 362, 563 S.E.2d at 333; Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000); Mosteller v. County of Lexington, 336 S.C. 360, 520 S.E.2d 620 (1999); Redwend Ltd. Pship, 354 S.C. at 468, 581 S.E.2d at 501; Baril, 352 S.C. at 280, 573 S.E.2d at 835; Trivelas, 348 S.C.

at 130, 558 S.E.2d at 273; Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002); Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001); Bayle v. South Carolina Dept of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); Vermeer Carolinas, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999); Middleborough Horizontal Prop. Regime Council v. Montedison, 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995). Summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law. Lee v. Kelley, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989).

There was a filed affidavit of Mrs. Belin asserting that she had, at a minimum, an equitable interest in the property and claimed an ownership interest in the property that is the subject of this notice to quit. Our Supreme Court has held that even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Redwend Ltd. Pship, 354 S.C. at 468, 581 S.E.2d at 501; Baril, 352 S.C. at 280, 573 S.E.2d at 835; Hall, 349 S.C. at 173-74, 561 S.E.2d at 656; Glasscock, Inc. v. United States Fid. & Guar. Co., 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001); Stewart v. State Farm Mut. Auto. Ins. Co., 341 S.C. 143, 533 S.E.2d 597 (Ct. App. 2000); see also Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom). A motion to add Mr. and Mrs. Belin was pending before the Court and not yet heard. Additionally, Bertha Dunham's amended answer was filed and pending prior to this Court issuing its order of summary judgment. Importantly, the

amended answer asserted the defense of consent to this pending action- notice to quit. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003); Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Rule 56(c), SCRCP. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Bayle v. South Carolina Dept of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); see also Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002) (On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.). Summary Judgment should not be granted when there are material questions of fact.

2. Discovery was not complete in this matter and the grant of summary judgment was premature. Many South Carolina cases point out summary judgment is a drastic remedy which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. Cunningham v. Helping Hands, Inc., 352 S.C. 485, 575 S.E.2d 549 (2003); Lanham v. Blue Cross & Blue Shield, 349 S.C. 356, 563 S.E.2d 331 (2002); Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606 (2002); Redwend Ltd. Pship v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003); Baril v. Aiken Regl Med. Ctrs., 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); Trivelas v. South Carolina Dept of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001); Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001); McNair v. Rainsford, 330 S.C. 332, 499

S.E.2d 488 (Ct. App. 1998). Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); Lanham, 349 S.C. at 363, 563 S.E.2d at 334; Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).;

3. Dunham has met her burden of proof to withstand summary judgment based upon the filed affidavit of Belin and filed deed of Lynch. "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." 432 S.C. at 275, 851 S.E.2d at 729 (alteration in original) (quoting Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)). Moreover, as all inferences are viewed in the light most favorable to the non-moving party, Dunham met her burden of proof through the filed affidavit of Belin. Specifically, the affidavit of Belin establishes that title to the property that is subject of the notice to quit is at issue. Additionally, the filed "as is" deeds from Wilmington Savings Bank to Lynch and his predecessor in title, viewed with the scintilla of evidence standard establish that Lynch knew or should have known that there were competing claims to the ownership of the property. Viewing all the above in the light most favorable to Dunham, considering the scintilla of proof standard, summary judgment should have been denied.
4. Rule 71(e) of the South Carolina Rules of Civil Procedure requires testimony when title is at issue. South Carolina Rules of Civil Procedure provide a mechanism to take testimony when title is at issue. When title to real property is at issue the court or

master to whom the action is referred shall take testimony and receive evidence as to the title and interest in the premises of the several parties. In all such actions the judge or master shall ascertain the rights and interests of the several parties and set forth in the report or order of judgment the conveyances or probate estates, if any, through which the rights or interest were acquired. In all such actions a transcript of record shall be made and preserved in the case file in the office of the clerk of court. As there was no testimony to allow the parties or proposed intervenors to intervene, title to the subject property is at issue based upon the affidavit of Belin.

5. There is a question of fact of whether Beulah Belin or her husband James were served with the 5 day notice to quit as required by S.C. Code Ann. **15-67-610**. A review of the record indicates that neither Beulah Belin, nor James Belin, were ever served with the notice to quit or made a party to this action. As they are not a party to this action, they can not be ejected by order of this court. This is yet another reason why the summary judgment order of December 4, 2023 should be vacated.
6. S.C. Code Ann. 27-37-80 allows for a jury trial to be had on an ejectment action. Dunham's amend answer asserts a request for a jury trial. A Defendant's right to a trial by jury should be honored inviolate.
7. **S.C Code Ann. 15-67-620** provides an independent basis why summary judgment should be granted as to the Belins. Although they are not a party, yet ordered by the court to vacate, they have not been allowed to appear and assert any defenses. S.C. Code Ann. 15-67-620 states

"If the person in possession shall, before the expiration of the five days, appear before such magistrate and satisfy him that he has a bona fide color of claim to the possession of such premises and enter into bond to the person claiming the land, with good and sufficient security, to be approved by the magistrate, conditioned for the payment of all such costs and expenses as the person claiming to be the owner

of the land may incur in the successful establishment of his claim and also for any damages which the owner of the land may sustain by reason of the possession being withheld from him, by any of the modes of proceeding now provided by law, the magistrate shall not issue his warrant as provided in Section 15-67-610."

Here, the Belin's have not been served, are not allowed to appear although requested by Dunham, and can not assert their colorable claim of title, despite being ordered to vacate the premises. The Order commanding immediate ejectment within five (5) days is a due process violation against the Belin's and the Order commanding the Belin's should be vacated until Mr. Lynch can make the Belin's a party. If the Belin's default or do not assert a colorable claim of title, summary judgment could then be issued. However, summary judgment is simply premature and not appropriate at this stage per Baughman and it's progeny.

Based upon the above, Defendant Dunham respectfully requests this Court to vacate the summary judgment order issued and allow the matter to proceed to trial. This motion is supported by the evidence presented at hearing, filed pleadings, including all motion in the court's file, and the attached memorandum in support of defendants' motion to reconsider/alter or amend judgment filed contemporaneously with this motion, applicable case law, and any further memoranda or affidavits submitted to the Court prior to the hearing on this matter.

/s Paul B. Ferrara, III
Ferrara Law Firm, PLLC
8887 Old University Blvd.
North Charleston, SC 29406
843-569-5511
843-569-5411 fax
Attorney for Defendant

December 5, 2023

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Thomas L. Hughston, Circuit Court Judge

Case No.: 2020-CP-33-00277

Bevance Lynch,

Respondent,

v.

Bertha E. Dunham,

Appellant.

NOTICE OF INTENT TO APPEAL

Bertha E. Dunham appeals the order of the Honorable Thomas L. Hughston granting Summary Judgment, Order to Quit Premises, and Warrant of Ejectment dated November 29, 2023. Appellant received written notice of entry of this order on December 4, 2023. Additionally, Bertha E. Dunham appeals the order of the Honorable Thomas L. Hughston denying Defendant's Motion to Reconsider dated March 18, 2024. Appellant received written notice of entry of this order on March 18, 2024.

FERRARA LAW FIRM, PLLC

April 16, 2024

s/ Paul B. Ferrara, III
Paul B. Ferrara, III (S.C. Bar No. 70511)
Attorney for Plaintiffs
8887 Old University Boulevard
North Charleston, SC 29406
T: (843) 569-5511 | F: (843) 569-5411
paul@ferraralawfirm.net

Other Counsel of Record:
Jake Kennedy, Esq.
200 E Dozier St
Marion, SC 29571
Attorney for Respondent

PROOF OF SERVICE

I certify that I have served a copy of the notice of intent to appeal by emailing a copy to Judge Thomas L. Hughston at thughstonj@sccourts.org and Mr. Jake Kennedy Esq. at jake@kennedysc.com, on April 17, 2024.

/s Paul B. Ferrara, III
Paul B. Ferrara, III
SC Bar No. 70511
8887 Old University Blvd. Suite 200
North Charleston, SC 29406
(843) 569-5511 / (843) 569-5411 fax
paul@ferrara-lawfirm.net
Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF MARION

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No.: 2020-CP-33-00277

Bevance Lynch,

Plaintiff,

vs.

Bertha E. Dunham,

Defendant.

ORDER GRANTING
SUMMARY JUDGMENT, ORDER TO
QUIT PREMISES, AND
WARRANT OF EJECTMENT

This matter came before the Court on November 28, 2023, for a hearing on the motion of Plaintiff Bevance Lynch who requests an Order granting summary judgment in his favor and a Writ of Assistance instructing the Marion County Sheriff's Office to assist with the eviction of the other parties named in this action. Present at the hearing was counsel for all parties.

FACTUAL AND PROCEDURAL BACKGROUND

This is an eviction action transferred to this Court by the Marion County Magistrate's Court and concerning real property located in Marion County.

1) Bertha E. Dunham owned real property.

In 1975, Bertha E. Dunham and William Dunham, Jr., purchased the real property in Marion County as shown by a recorded quitclaim deed. (MSJ – Exhibit A). In 1983, William Dunham, Jr., transferred his undivided one-half interest to Bertha E. Dunham as shown by a recorded deed. (MSJ – Exhibit B). In 1988, Beula Mae Dunham, the daughter of Bertha E. Dunham, married James Oneal Belin as shown by a marriage certificate. (MSJ – Exhibit C). In 1996, Beulah Mae Dunham n/k/a Beula Mae Belin states she moved a mobile home on the property and, in 2008, installed a fence on the property. (Aff. ¶¶ 2 – 3).

2) Bertha E. Dunham mortgaged her real property, defaulted on her loan, and the mortgage holder commenced a foreclosure action.

In 2006, Bertha E. Dunham executed a mortgage to secure a promissory note in favor of CitiFinancial and said mortgage was recorded in Mortgage Book 819, at page 146. In 2017, the mortgage was later assigned to Citifinacial Servicing, LLC, and said

assignment was recorded in Volume 401, at page 5. The mortgage was then assigned to Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A and said assignment was recorded in Volume 401, at page 6.

In 2018, the mortgage holder commenced a foreclosure action against Bertha E. Dunham after she defaulted on her repayment obligations. (Civil Action No. 2018-CP-33-00653). The above-referenced mortgage and assignments are public records appearing in the Marion County recording office as well as the foreclosure action.

- 3) The court-appointed special referee, Hon. Haig Porter, ordered the sale of the real property and the real property was sold at public auction to the creditor.**

The foreclosure action was referred to the Honorable Haig Porter as Special Referee who issued an Order of Judgment of Foreclosure and Sale Decree. In his Order, the Special Referee found, among other things, that service was proper; Bertha E. Dunham failed to answer and was in default; the promissory note, mortgage, and assignments were properly introduced into evidence at the hearing; and ordered that the property be sold after proper publication. The property was then sold at public auction to the mortgage holder as the highest bidder and a Foreclosure Deed was granted. (MSJ – Exhibit D). The mortgage holder (now owner/grantee) filed a motion for a sheriff's Writ of Assistance claiming the debtor continued her occupancy and refused to leave and remove her personal property. On October 2, 2019, the Special Referee issued an Order for Writ of Assistance authorizing officers with the Marion County Sheriff to enter the premises any time after 1:00 p.m., on October 29, 2019.

- 4) Beulah Mae and James Belin file a motion to intervene and the Special Referee denied the motion**

Four days before the Sherriff's Office was authorized to enter and assist with eviction, the debtor's daughter (Beulah Mae Belin) and son-in-law (James Belin) filed, through counsel, a motion in the foreclosure action to intervene claiming a legal interest in the property through adverse possession and, therefore, were entitled to notice in the foreclosure action. (MSJ – Exhibit E). The Special Referee, however, denied this motion and found, among other things, that the Belins had no deeded interest in the subject property, placement of the Belins' mobile home on the subject property was "no different than the parking of a moped on a piece of property," and that the Belins had not asserted

a claim of adverse possession in a separate civil action against the landowner, Bertha Dunham. (MSJ – Exhibit F).

- 5) **The creditor / high bidder sold the property to an LLC; the Belins appeal; the LLC sold the property to Plaintiff; and Plaintiff filed a Notice to Quit Action in Magistrate Court which was transferred to this Court.**

On December 23, 2019, the creditor sold the property to a limited liability company named "2019 Castle, LLC" by quitclaim deed. (MSJ – Exhibit G). On January 28, 2020, the Belins filed a Notice of Appeal with the South Carolina Court of Appeals to appeal the denial of their motion to intervene in the foreclosure action. On March 3, 2020, the property was sold to Plaintiff Bevance Lynch by special warranty deed. (MSJ – Exhibit H). Plaintiff then filed a Notice to Quit action in Magistrate Court. (MSJ – Exhibit I). Bertha Dunham, through counsel, filed an Answer, Motion to Add Parties, and Motion to Dismiss or Transfer. (MSJ – Exhibit J). The motion sought to add Beulah Mae Belin (f/k/a Beulah Mae Dunham) and James Belin as interested parties and argued that these added parties had an equitable interest in the subject property through adverse possession and the Marion Magistrate Court transferred the Notice to Quit case to this Court¹. (MSJ – Exhibit K).

- 6) **This action awaited appellate decisions for more than three (3) years.**

In August of 2022, the South Carolina Court of Appeals affirmed the Special Referee's denial of the Belins' motion to intervene based, in part, on the Belins' delayed attempt to assert their claim of adverse possession. (MSJ – Exhibit L). In May of 2023, the Supreme Court of South Carolina denied the Belins' petition for writ of certiorari. (MSJ – Exhibit M).

LEGAL STANDARD

Summary judgment is appropriate when there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. All ambiguities, conclusions, and inferences arising from the evidence

¹ The Magistrate Court has no jurisdiction "[w]hen the title to real property shall come in question," S.C. Code § 22-3-20, provided that "[a]t the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by a least one sufficient surety and approved by the magistrate[.]" S.C. Code §22-3-1120. The transferred record in this case shows no such written and approved undertaking.

must be construed against the movant. *Willis v. Wu*, 607 S.E.2d 63, 65 (S.C. 2004). The non-moving party, however, "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRPC.

LEGAL DISCUSSION

Rule 1, SCRPC, requires that procedural rules "be construed to secure the just, speedy, and inexpensive determination of every action." This action has been pending for more than three (3) years pending exhaustion of appeals by the Belins, who were not signatories to the foreclosed mortgage. The South Carolina Court of Appeals affirmed denial of the Belins' request to intervene in the foreclosure action more than one year after the creditor filed a foreclosure *lis pendens* and more than four months after the property was sold at public auction. Thereafter, certiorari was denied by the South Carolina Supreme Court.

In this case, the Belins raise the same arguments previously rejected by our appellate courts. The Belins, once again, claim a right to notice in the foreclosure action based on their repeated argument of adverse possession. In opposition to summary judgment, the defendant "may not rest upon the mere allegations or denials of his pleading". Rule 56(e), SCRPC. Instead, the Court only considers affidavits that "set forth specific facts showing that there is a genuine issue for trial." *Id.* The only affidavit in opposition to summary judgment is the affidavit of Beulah Belin who avers that she and her husband have occupied part of the land, took care of the land they occupied, did not receive notice of the foreclosure action, and are in the process of filing a quiet title action. (Aff. Belin ¶¶ 3 – 7). These affidavit statements do not create genuine issue of fact sufficient to overcome summary judgment.

Nothing in Mrs. Belin's affidavit creates a genuine fact issue concerning her claim of adverse possession. Like the Special Referee noted in the foreclosure action, the Belins have never filed an adverse possession action against their mother / mother-in-law. There is no evidence that they moved the mobile home behind the house of their

mother / mother-in-law and installed a fence without her permission.² Her statement that "[m]y husband and I were advised that if we took care of the property and paid the property taxes, we would receive a deed" (Aff. ¶ 4) is inadmissible hearsay.³ Mrs. Belin's claim that "[m]y husband and I are in the process of filing a quiet title action[.]" is likewise insufficient to create a genuine issue of material fact in this case. The Belins have had many years to file an action for adverse possession and/or quiet title and still have not done so; by cross-claim against Bertha Dunham, a separate action, or otherwise.

The Court also finds that the doctrine of non-mutual offensive collateral estoppel would bar the Belins from intervening in this case. The doctrine of non-mutual offensive collateral estoppel was adopted in this State in *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct.App.1984) and was confirmed as the law of this State by our Supreme Court in *South Carolina Prop. and Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991). Under the doctrine of offensive non-mutual collateral estoppel, a party may be prevented from relitigating issues actually determined in a prior action so long as the party estopped had a full and fair opportunity to litigate the issue in the first action and there are no circumstances which justify affording him an opportunity to retry the issue. *Beall*, 281 S.C. 363, 315 S.E.2d 186; *Roberts v. Recovery Bur., Inc.*, 450 S.E.2d 616, 619 (S.C. App. 1994) (citing *McPherson v. South Carolina Dept. of Highways and Pub. Transp.*, 297 S.C. 303, 376 S.E.2d 780 (Ct.App.1989)). In the prior foreclosure

² See *Davis v. Monteith*, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986) (finding occupation of property with owner's tacit permission was not hostile although such possession may have become hostile when claimant remained on property after being told to vacate); *Fradley v. Ivester*, 118 S.C. 195, 205, 110 S.E. 135, 138 (1921) ("The defendant's entry into possession was permissive, and, as she had a duty to perform, she could not hold adversely to the rights of the mortgagors until she either surrendered the possession or gave notice of an adverse possession."); *Young v. Nix*, 286 S.C. 134, 136, 332 S.E.2d 773, 774 (Ct.App.1985) (holding claimant who had farmed tract of land for more than forty years with permission of property owner's widower did not establish claim of adverse possession without a "clear and positive disclaimer of the title under which entry was made"). While a party cannot adversely possess property used with permission, a party may begin to satisfy the requirement of hostility upon a clear disclaimer of the owner's title. *All Saints Parish, Waccamaw*, 358 S.C. at 233, 595 S.E.2d at 266-67.

³ See Rule 56(e), SCRCP, "affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence[.]"

action, the Special Referee's *Order Denying Third Party Motion to Intervene and Motion to Set Aside Judgment* (MSJ – Exhibit F) demonstrates that the Belins had a full and fair opportunity to litigate their claims of an interest in the subject real property and, after a thorough review of that prior Order and the subsequent appellate Opinion (MSJ – Exhibit L), there are no circumstances which justify affording the Belins an opportunity to retry the issue of a property interest in this case.

Finally, Defense counsel argued at the hearing that summary judgment is premature because discovery *might* reveal genuine fact issues. The Court notes that this case has been pending since 2020 and the defendant has had years to conduct discovery and advanced no good reason why she had insufficient time to develop genuine admissible evidence of facts in opposition to summary judgment.⁴ Defense counsel also argued at the hearing that the plaintiff did not comply with the eviction procedures required by S.C. Code § 27-47-530 of the South Carolina Manufactured Home Park Tenancy Act, S.C. Code §27-47-10 *et. seq.*, however, that Act applies only to owners of a "manufactured home park" which is defined by statute "as a use of land in which lots or spaces are offered for rent or lease for the placement of manufactured homes and in which the primary use of the park is residential." S.C. Code § 27-47-210(3). In this case, the plaintiff clearly does not operate a "manufactured home park" and the Act does not apply.

⁴ See *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) ("[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery."); *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479-80, 465 S.E.2d 765, 771 (Ct. App. 1995) (holding summary judgment was appropriate because the nonmoving party "advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment"); *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 128, 542 S.E.2d 736, 743 (Ct. App. 2001) (holding the circuit court did not err in granting summary judgment because the record did not demonstrate that further discovery was necessary).

CONCLUSION

Based on the foregoing, **IT IS ORDERED, ADJUDGED, AND DECREED** that:

- (a) Plaintiff Bevance Lynch is the current owner of the subject real property;
- (b) Bertha E. Dunham, Beulah Mae Belin and James Belin occupy and possess lands owned by Plaintiff Bevance Lynch without consent or warrant of law in violation of S.C. Code §15-67-610;
- (c) Summary judgment in favor of Plaintiff Bevance Lynch is hereby GRANTED on all claims;
- (d) Bertha E. Dunham, Beulah Mae Belin, James Belin, and all other occupants of the subject property are hereby ordered to quit the premises within five (5) days from their counsel's receipt of this Order and, if they do not quit the premises within that time, pursuant to S.C. Code §15-67-610, the Marion County Sheriff's Office is authorized and directed to eject all occupants using such force as may be necessary.

IT IS SO ORDERED

November 29, 2023.

Thomas L. Hughton Jr.
Thomas L. Hughton, Jr.
President Judge
Twelfth Judicial Circuit

ELECTRONICALLY FILED - 2024 Apr 17 11:20 AM - MARION - COMMON PLEAS - CASE#2020CP3300277
 ELECTRONICALLY FILED - 2023 Dec 04 10:40 AM - MARION - COMMON PLEAS - CASE#2020CP3300277



Marion Common Pleas

Case Caption: Bevance Lynch VS Bertha Dunham
Case Number: 2020CP3300277
Type: Order/Summary Judgment

So Ordered

s/T.L.HUGHSTON, JR. 2008

Electronically signed on 2023-11-30 12:32:05 page 8 of 8

ELECTRONICALLY FILED - 2024 Apr 17 11:20 AM - MARION - COMMON PLEAS - CASE#2020CP3300277
ELECTRONICALLY FILED - 2023 Dec 04 10:40 AM - MARION - COMMON PLEAS - CASE#2020CP3300277

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP3300277

Bevance Lynch
PLAINTIFF(S)

Bertha Dunham
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The Defendant's Motion to Reconsider filed on 12/10/23 is denied. (See attached exhibit.)

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/15/2024 .

Bevance Lynch for Bevance Lynch
Bevance Lynch for Bevance Lynch

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

ELECTRONICALLY FILED - 2024 Apr 17 11:20 AM - MARION - COMMON PLEAS - CASE#2020CP3300277
ELECTRONICALLY FILED - 2024 Mar 18 9:42 AM - MARION - COMMON PLEAS - CASE#2020CP3300277

Fw: Lynch v. Dunham; 2020-CP-33-277

Hughston, Thomas L.

Thu 2/8/2024 10:19 AM

Tc:youngsc@sccourt.org <ryoungsc@sccourt.org>;

From: Hughston, Thomas L.

Sent: Wednesday, February 7, 2024 12:17 PM

To: Paul Ferrara; DeBerry, H. Steven Secretary (Stacey R. Minton); jake@kennedysc.com; Nettles, Michael G.; Gray, Christy

Cc: Brandy Lewis; DeBerry, H. Steven Law Clerk (James Snyder)

Subject: Re: Lynch v. Dunham; 2020-CP-33-277

Mr. Ferrara:

You did not mention anything about any pending motions prior to the hearing and after that my request for a proposed order granting Summary Judgment. Your email of 2/7/24 is first notice to me of any so called pending motions by you and your clients. I consider that you/they waived these by your failure to tell me of them when you were present for the Summary Judgment Hearing and did not speak up regarding this, and only now many weeks later.

As I recall, we, that is, you, Mr. Kennedy, the other attorney, and I had a nice long and friendly conversation in chambers directly behind the bench after the hearing in the courtroom. You never said anything about just filing motions, etc. You had every opportunity to bring this to my attention then and/or in the many weeks since. You waived such and I refuse to consider such now and refuse to reconsider summary judgment.

This serves as my Order regarding same.

Thomas L. Hughston, Jr.

From: Paul Ferrara <paul@ferraralawfirm.net>

Sent: Wednesday, February 7, 2024 9:38 AM

To: Hughston, Thomas L.; DeBerry, H. Steven Secretary (Stacey R. Minton); jake@kennedysc.com

Cc: Brandy Lewis; DeBerry, H. Steven Law Clerk (James Snyder)

Subject: Re: Lynch v. Dunham; 2020-CP-33-277

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Hughston,

I have been in court every day for the past 4 days and apologize for just now emailing you. In short, there are material questions of fact in this case that go to the heart of this eviction matter, Specifically, whether Mrs.

Dunham was permitted to be on the land by the equitable owner, Buellah Belin. Importantly, there was a motion to intervene by the Belins that is pending and also a motion to amend the complaint prior to your granting summary judgment.

The Summary judgment hearing started at 10:30 am and was heard by Your Honor. Twenty minutes prior to the hearing on summary judgment, the clerk accepted the motion to amend answer and counterclaim at 10:10 am. Those motions have not been scheduled as the Court's Order has ended that matter by summary judgment. The Supreme Court has held in Skydive Myrtle Beach v. Horry County that the Circuit Court erred by failing to consider the motion to amend in the context of a 12 B motion. Similarly, the Court of Appeals has recently held in Lofton v. Berkeley Elec. Coop Inc. and John Lucas Tree Experts Co. that the trial court's failure to rule on the motion to amend prior to granting summary judgment was an abuse of discretion. I have attached both decisions for the Court's reference.

Based on the above, we respectfully request the Court vacate its prior grant of summary judgment and allow the case to proceed forward on the filed motions as there are questions of material fact to be resolved by a jury.

I have copied Mr. Kennedy on this email.

Sincerely,
Paul B. Ferrara, III



8887 Old University Blvd., Ste. 201
N. Charleston, SC 29406
(843) 569-5511 (office)
(843) 569-5411 (fax)

This e-mail and the information transmitted is PRIVILEGED and CONFIDENTIAL information and is the property of the sender. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this information, or the taking of any action in reliance on the content of this information is strictly prohibited. If you have received this email in error, please immediately contact Paul B. Ferrara III with Ferrara Law Firm, PLLC at (843) 569-5511 and please delete the original transmittal of this information.

From: Hughston, Thomas L. <thughstonj@sccourts.org>
Sent: Wednesday, January 31, 2024 3:39 PM
To: DeBerry, H. Steven Secretary (Stacey R. Minton) <hsdeberryesc@sccourts.org>; jake@kennedysc.com <jake@kennedysc.com>; Paul Ferrara <paul@ferraralawfirm.net>
Cc: Brandy Lewis <blewis@marionsc.org>; DeBerry, H. Steven Law Clerk (James Snyder) <hsdeberrylc@sccourts.org>
Subject: Re: Lynch v. Dunham; 2020-CP-33-277

I suggest that I handle the Motion to Reconsider without a hearing. Therefore, Mr. Ferrara, please send to me why you think I should reconsider and what you want me to do. Thereafter, Mr. Kennedy send to me your response to this Motion.

Thereafter, I will do my Order.

Thank you for your consideration, cooperation and attention in this matter and I shall look forward to hearing from you.

Thomas L. Hughston, Jr.

From: DeBerry, H. Steven Secretary (Stacey R. Minton)
Sent: Wednesday, January 24, 2024 9:26 AM
To: Hughston, Thomas L.
Cc: Young, Roger Secretary (Robyn R. Hills); Brandy Lewis; DeBerry, H. Steven Law Clerk (James Snyder)
Subject: Lynch v. Dunham; 2020-CP-33-277

Good afternoon, Judge Hughston,

I hope this email finds you well. There is a Motion to Reconsider pending in Marion in the above-referenced case. Given that you were the deciding judge, the reconsideration will need to go before you. We would like to find a time, perhaps during a chambers week, when you would be able to hear this motion via the virtual courtroom or in-person in Marion. Would you let us know when you might be able to fit this into your schedule? Once we receive your preferred dates, we will coordinate with court administration and the attorneys to make sure everything is set up for you.

Thank you so much for your help.

Sincerely,

Stacey R. Minton

Administrative Assistant to

The Honorable H. Steven DeBerry, IV

181 N. Irby St., Suite 3600

Florence, SC 29501

Office: (843) 665-3020

Cell: (843) 908-4799



Marion Common Pleas

Case Caption: Bevance Lynch VS Bertha Dunham

Case Number: 2020CP3300277

Type: Order/Form 4

So Ordered

s/T.L.HUGHSTON, JR. 2008

Electronically signed on 2024-03-15 11:20:18 page 6 of 6

ELECTRONICALLY FILED - 2024 Apr 17 11:20 AM - MARION - COMMON PLEAS - CASE#2020CP3300277
ELECTRONICALLY FILED - 2024 Mar 18 9:42 AM - MARION - COMMON PLEAS - CASE#2020CP3300277

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION)	2020-CP-33-00277
BEVANCE LYNCH,)	
Plaintiff,)	Transcript of Record
vs.)	(Motion for Summary Judgment)
BERTHA E. DUNHAM,)	November 29, 2023
Defendant.)	

B E F O R E:

Honorable Thomas L. Hughston, Jr.
Marion, County Courthouse
Marion, South Carolina

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

Joseph Jakob Kennedy, Esquire
Attorney for Plaintiff

Paul B. Ferrara, III, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

LYNCH V. DUNHAM - 2020-CP-33-00277
INDEX

2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E XNOVEMBER 29, 2023Pg.

Motion for Summary Judgment 3
Ruling of the Court 22
Certificate of Court Reporter 25

E X H I B I T SNo.IDEV

(No exhibits were marked or admitted.)

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

3

1 NOVEMBER 29, 2023

2 ON THE RECORD - 10:09 A.M.

3 THE COURT: Mr. Kennedy, I believe this is your motion on
4 behalf of your client for summary judgment, and I have
5 received the materials that you gave me in support of that,
6 but I'll be glad to hear from you anything -- anything you'd
7 like to say.

8 MR. KENNEDY: Thank you, Your Honor.

9 Jake Kennedy on behalf of plaintiff, Bevance Lynch. This
10 is, as Your Honor mentioned, our motion for summary judgment.
11 I would like to recite the factual background of this case. I
12 have handed up to Your Honor and shared with opposing counsel
13 a proposed order in this case. My argument -- my oral
14 argument this morning will largely track that proposed order,
15 because as Your Honor already knows, having reviewed the
16 attachments to our motion that this is a fact-intensive case
17 from a chronology standpoint.

18 We'll begin with the fact that Bertha Dunham owned real
19 property here in Marion County. She and, I believe, her
20 husband William purchased it in 1975 before Mr. Dunham deeded
21 his one-half interest over to Ms. Bertha Dunham.

22 In 1998, Ms. Dunham's daughter and husband moved a mobile
23 home onto the property. In fact, well, 1998, the daughter got
24 married, and in 1996, the daughter and the husband moved a
25 mobile home onto the property.

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

4

1 Of course, as we'll discuss very shortly, when a mobile
2 home is moved onto a property, there's no deed recorded. A
3 mobile home is registered with the DMV, and as Haigh Porter or
4 Honorable Haigh Porter mentioned in his findings, a mobile
5 home on a piece of property is no different than a car or a
6 moped parked on the property. So, a property search, a title
7 search by a creditor or bank in this case would not have
8 revealed a mobile home on the property.

9 In any event, Ms. Dunham did not pay her mortgage, and
10 the mortgage holder, after multiple assignments of course
11 between finance companies, brought a foreclosure action
12 against Ms. Dunham. She did not answer, as many foreclosure
13 debtors don't; she defaulted. The matter was referred to the
14 Honorable Haigh Porter, who was then and still is Special
15 Referee for this area. He's Master over in Florence, because
16 they're a bigger county. And he held her in default, held a
17 hearing. The note and the mortgage were introduced into
18 evidence, according to his order. And he ordered that the
19 property be sold at public foreclosure sale. The property was
20 sold at public foreclosure sale, and as is often the case the
21 mortgage holder, with the credit bid, based on the amount
22 owed, was the high bidder. When Ms. Dunham would not leave
23 the property, Judge Porter entered a Writ of Assistance
24 instructed and authorizing the Marion County Sheriff to remove
25 Ms. Dunham and her personal property from the premises after

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

5

1 -- at any time after 1 o'clock p.m. on October 29th of 2019.
2 Four days before that deadline or that authorization to
3 forcibly remove Ms. Belin, or Ms. Dunham, the daughter and
4 son-in-law, the Belins hired counsel, filed a motion to
5 intervene, and in essence that motion to intervene said that
6 the Belins have a right because they've lived on the property
7 in the mobile home and are having a claim for adverse
8 possession of the property. That motion was heard. That
9 motion was denied by Judge Porter at the first or lower court
10 level.

11 And again, his reasoning was the creditor would not find
12 the Belins in a title search or a person having an interest in
13 property. The creditor would not find the Belins having filed
14 an action for adverse possession or quiet title if they had
15 searched the docket. The Belins never have filed an action
16 against their mother and mother-in-law for adverse possession.
17 In this case, they filed an affidavit and said we plan to file
18 an action for quiet title. I searched the docket this
19 morning; they haven't. They have never made a claim for
20 adverse possession. They have never brought an action for
21 quiet title. They only raise these issues in defense. They
22 raised them with Judge Porter, and it was denied. They
23 appealed that denial to the Court of Appeals, who denied them
24 again. They appealed the Court of Appeals to the Supreme
25 Court of South Carolina and request a Writ or Certiorari, and

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

6

1 the Supreme Court denied their appeal to our highest court
2 based on these arguments.

3 My client comes into the picture because after the
4 foreclosure sale and after the sale to an LLC, who buys these
5 foreclosed properties, sold it to my man, Mr. Bevance Lynch.
6 Mr. Bevance Lynch thinks he owns property in Marion, South
7 Carolina and people won't leave. He files an eviction action
8 in Magistrate Court. Once again, Ms. Dunham files a motion in
9 Magistrate Court and says this Court doesn't have jurisdiction
10 because Magistrate Courts can't hear real property
11 jurisdiction. And the Belins deserve to be a part of this
12 lawsuit because once again they have a claim for adverse
13 possession, just like they did in the foreclosure case, just
14 like was denied by Judge Porter, just like was denied by the
15 Court of Appeals, and cert was denied by the Supreme Court.
16 But they're making the same argument, using the same parties.

17 So, here we are three years after my client tries to get
18 possession of the property that he bought. When we do real
19 estate closings and I explain notes and mortgages, I say if
20 you don't pay you can't stay. But in this case, that's an
21 exception to the rules. The Belins and the Dunhams have not
22 been paying for years, but they've been staying for years. We
23 bring this motion because time is up. Everybody has got a
24 right to appeal, everybody's got a right to defense. They
25 have brought these actions or these defenses over and over

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

7

1 again, and they have been thwarted and denied over and over
2 again. We are asking this Court to finally say time is up.
3 The Belins and the Dunhams and all other occupants, whether
4 it's a mobile home or a motorcycle or a moped, these things
5 and these folks have to go because they don't own it. The
6 adverse possession claim is -- I've got to choose my words
7 very carefully -- is creative. Adverse possession requires
8 open hostility to the property owner. There is no evidence by
9 affidavit or otherwise, and just common sense says a momma
10 lets her daughter move onto her property behind her house.
11 There's no evidence -- this looks like total permission among
12 family members. Where is the hostility? Where is the adverse
13 nature of the occupancy? How can they ever sustain an adverse
14 possession action. But you know what, that's beside the
15 point, Judge, because they never filed one.

16 Technically speaking, if we were doing a law school exam,
17 I believe that the basis for the motion is they've raised
18 these arguments before in other courts, and they've been
19 denied. And we are using them as offensive collateral
20 estoppel, otherwise known as judicial estoppel.

21 Now, opposing counsel may argue, and I expect they will,
22 is wait a minute, Bevance Lynch wasn't a party to the
23 foreclosure; Bevance Lynch wasn't a party to the Court of
24 Appeals; Bevance Lynch, the plaintiff in this case and my
25 client, wasn't a party to our appeal to the Supreme Court.

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

8

1 But I cite in my motion, and I explain here today, Your Honor,
2 the cases of *Roberts vs. Recovery Bureau* says whether to allow
3 a stranger -- Bevance Lynch would be a stranger to those other
4 actions -- to use offensive collateral estoppel so as to bar a
5 party, the Belins, the Dunhams, from relitigating an issue in
6 a subsequent action, this one, is one addressed to the broad
7 discretion of the Trial Judge.

8 So, I completely recognize, Your Honor, that Bevance
9 Lynch wasn't a party, but the issues are no different. The
10 arguments are no different. They've been litigating. Unless
11 there are some new facts or twists to this case that I haven't
12 heard, and it's certainly not in an affidavit. The rule says
13 -- 56 says you got to put some issue of fact in the affidavit
14 and not just say it. I don't see how, and we would
15 respectfully request that the Court estop the defendant and
16 defendants in this case from relitigating this issue year
17 after year after year and now.

18 Thank you.

19 THE COURT: All right. Mr. Ferrara, what would you like
20 to say?

21 MR. FERRARA: Yes, Your Honor. May it please the Court?

22 THE COURT: And by the way your clients -- you represent
23 who?

24 MR. FERRARA: Your Honor, I'm representing Beaulah Mae
25 Belin and James Belin, and ---

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

9

1 THE COURT: All right. They're not here?

2 MR. FERRARA: They're not, Your Honor. And also, Bertha
3 Dunham.

4 THE COURT: All right.

5 MR. FERRARA: I did -- I let my client know initially
6 that we were scheduled for yesterday, and ---

7 THE COURT: You thought it was yesterday?

8 MR. FERRARA: Originally it was, Your Honor.

9 THE COURT: All right. I thought it was Monday,
10 actually.

11 MR. FERRARA: Or Monday; I'm sorry. I'm sorry, Your
12 Honor.

13 THE COURT: I don't know whether you knew that or not,
14 but this is my second trip to Marion this week, and -- some
15 how or another, I didn't get the word that it was today and,
16 you know, the long story of how I end up presiding here today,
17 but anyway -- with this case. But anyway, so -- but you and I
18 both had some confusion about when this was gonna be. But go
19 right ahead.

20 MR. FERRARA: Respectfully, Your Honor, summary judgment,
21 as Your Honor is aware of the standard should be denied
22 because it's premature.

23 THE COURT: Because why?

24 MR. FERRARA: It's premature. It's premature to this
25 case. So, Your Honor, just by way of procedural background,

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

10

1 when the appeal was pending, Mr. Lynch -- when the appeal was
2 pending at the Court of Appeals in the underlying -- in the
3 underlying matter with Wilmington Savings Bank, which is not
4 in this case, but just by way of background, Your Honor, the -
5 - Mr. Lynch had filed the Magistrate Court action, as Mr.
6 Kennedy stated. And then I let the Magistrate Court know that
7 the case was still on appeal and it was still -- we were still
8 within the Petition for Rehearing, right? And so, the
9 Magistrate Court dismissed that matter at that time. And then
10 subsequent to that, Your Honor, Mr. Lynch filed a new
11 Magistrate Court action, which is what's before Your Honor
12 right now, which is a Writ -- a Notice to Quit. In that
13 Notice to Quit, Your Honor, and it's the first document in the
14 Court's file, it's entitled Summons. The summons for the
15 Motion to Quit, right, along with my clients' answer
16 requesting that the case be transferred because of the claim
17 in excess of 7500, as Your Honor is aware of. And
18 additionally, inside of that answer, Your Honor, a motion to
19 allow Beulah Belin and James Belin to be added to this case as
20 a necessary party. That motion has never been heard. Why is
21 that important, Your Honor? Essentially this, the plaintiff
22 is seeking an order for ejecting all persons off the property
23 as trespassers. But my client has not been allowed to be
24 added, right? When Mr. Lynch filed the action, he just filed
25 it against Bertha Dunham. He didn't file it against Bertha

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

11

1 Dunham, Beulah Belin, and James Belin. So, what I did, Your
2 Honor, was file a motion to allow them to intervene, to
3 interpose their legal defenses and claims.

4 Your Honor, I don't know if the Court -- if the Court --
5 well, let me back up. Your Honor, this was originally
6 scheduled to be heard back in August. My office, we filed a
7 lis pendens in August, and I was under the mistaken belief
8 that at the last hearing we were going to hear the motion to
9 -- the motion to intervene that was already, that was filed
10 prior to the motion for summary judgment. Upon careful review
11 of the file, I noticed that that motion was not scheduled or
12 heard. And so, in the affidavits that are filed in opposition
13 to the summary judgment motion, it's asserted that my clients
14 are going to assert an adverse possession claim. It's
15 asserted number -- three things, Your Honor. The affidavit of
16 Beulah Belin and James -- Beulah Belin that was filed, I
17 think, August 17th or so, Your Honor. Beulah Mae Belin says
18 she has never been a party to any of this. And that she would
19 -- she wants the Court to allow her to be added as a party so
20 that she can have her day in court. And that basically, she's
21 never had her day in court.

22 Now, the reason why summary judgment should be denied is
23 because it's premature because there's discovery that needs to
24 be completed, there is -- this motion to intervene, which has
25 not been heard.

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

12

1 And Your Honor, if I can briefly address the judicial
2 estoppel argument by counsel, Judge Porter -- and you can look
3 at his ruling, Your Honor. But Judge Porter's ruling, when I
4 was hired, you know, at very end -- Judge Porter essentially
5 ruled, as I read his order, that Bertha Dunham, while she was
6 in default, she was the defendant, and she could assert any
7 defenses that Beulah Belin or James Belin may have. And so,
8 he basically did not allow her to be added. The sale had
9 already occurred. The hearing had occurred, the sale had
10 occurred, and I made a motion for my clients to intervene, but
11 he did not want to do that. And that's what the basis of the
12 appeal was, but that's not what we're here on, Your Honor.
13 That ship has sailed. I'm not attempting to relitigate any of
14 that, Your Honor. We're talking about now the interest --
15 the interest that my clients have in the property. My clients
16 were never named, you know, in the foreclosure. My clients
17 weren't allowed to be added in the foreclosure. And now we
18 have Mr. Lynch is attempting to eject the persons off the
19 property. And so, my clients, Beulah Belin and James Belin
20 would like -- are requesting the Court -- it's not before the
21 Court, but it's in the Court's file, but eventually, we'll
22 have a hearing on the motion to intervene.

23 Other than time, other than it's taken quite a bit of
24 time to have this motion heard, the -- Mr. Lynch -- Mr.
25 Lynch's rights are not prejudiced any more other than time by

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

13

1 allowing Mr. and Mrs. Belin to be added. Why does that matter
2 at all? Okay. Your Honor, you're thinking, it matters
3 because if Beulah Belin and James Belin post-foreclosure sale,
4 meaning after Bevance Lynch takes title, are allowing their
5 mother to reside on the property with consent, then that is a
6 defense to the writ of possession that Mr. Lynch is seeking.

7 Additionally, Your Honor, I had filed a motion to leave
8 -- a motion for leave to amend Bevance Lynch's -- excuse me --
9 Bertha Dunham's answer to clarify the issue that I just talked
10 about. And additionally, there is an allegation of a
11 conspiracy claim -- or excuse me -- yeah, a conspiracy claim
12 against Mr. Lynch, and there is also factual allegations in
13 the amended answer, Your Honor, and claim that Mr. Lynch did
14 not take title to the property as a bonified purchaser for
15 value without notice. He did -- he was aware of it at the
16 time that he took title that there were persons that were
17 claiming an interest in the property. And so, before -- Your
18 Honor, other than the phone conference I had with Judge
19 Porter, my client Beulah Belin and James Belin have never had
20 their opportunity to be heard in court on anything. This is
21 the first time Your Honor that we've been before you.

22 And so, respectfully, Your Honor, because the summary
23 judgment would be premature at this time. There is a question
24 of fact -- well, more discovery is needed. And additionally,
25 Your Honor, relevant facts such as my clients are -- or Ms.

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

14

1 Dunham is asserting that she has consent to reside on the
2 property, which is a complete defense to the action for
3 possession of Lynch. My client asserted that she had consent
4 of Beulah Belin and James Belin. Additionally, Your Honor,
5 the affidavit of Beulah Belin that's in the Court's file
6 establishes that they then resided on the property. There's a
7 fence around the mobile home. It's not the entirety of the
8 full legal description that was foreclosed. It's a portion of
9 that. And so, all these things are questions of fact, and if
10 we think about the standard for summary judgment, which is the
11 light most favorable to the non-moving party, respectfully,
12 Your Honor, we would request that you deny the summary
13 judgment and allow the case to go forward to have the motion
14 to -- the motion to allow intervention to be heard, and then
15 also the motion to -- the motion for relief to amend the
16 answer of Bertha Dunham to be heard.

17 So, for those reasons, respectfully, Your Honor, we would
18 request you deny summary judgment.

19 THE COURT: All right. Mr. Kennedy, what would you like
20 to say in response to that?

21 MR. KENNEDY: Briefly, Your Honor, Mr. Lynch's property
22 ownership rights will indeed be harmed if this case continues
23 in time. He's purchased property that he can't use. He can't
24 ---

25 THE COURT: When did he purchase it?

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

15

1 MR. KENNEDY: He purchased it -- I think that -- hold on,
2 Your Honor. Let me ---

3 THE COURT: Take your time. I've got several questions I
4 want to ask. That's the first one.

5 MR. KENNEDY: Okay. That would be Summary Judgement
6 Exhibit G, on December 23rd, 2019, the high bid creditor at
7 the foreclosure sale sold it to a Limited Liability Company
8 named 2019 Castle, LLC. Then ---

9 THE COURT: So, he bought it in 2019?

10 MR. KENNEDY: No, sir. On March 3rd, 2020, that LLC sold
11 it to Mr. Lynch.

12 THE COURT: I see. But anyway, okay, 2020. So, we're --
13 that's over three years ago or something like that I believe,
14 if my math is correct.

15 MR. KENNEDY: Yes, sir.

16 THE COURT: How much -- how much did the purchaser, how
17 much did he -- what are we talking about? What's this
18 property worth?

19 MR. KENNEDY: Let's see. Exhibit E to the motion should
20 be the deed to Mr. Lynch. So, let's look at Exhibit E. No;
21 that's wrong.

22 THE COURT: I don't know how much property it is, really.
23 I don't remember.

24 MR. KENNEDY: You know, foreclosure -- foreclosed
25 properties are -- do you know this answer?

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

16

1 MR. FERRARA: Your Honor, I believe it \$35,000.

2 THE COURT: 35,000, that's a lot more than I thought.
3 But anyway, so how much property are we talking about?

4 MR. KENNEDY: Exhibit H.

5 THE COURT: How much property are we talking about?

6 MR. FERRARA: I believe, Your Honor, it is three -- I
7 think it's -- I believe it's -- I need to make sure, Your
8 Honor, but I seem to think it's -- I can pull up the legal
9 description, but I think it's three acres.

10 THE COURT: Have you ever been out there to it?

11 MR. FERRARA: Your Honor, I thought about going by there
12 this morning, but I've seen it on Google maps.

13 THE COURT: Okay. So, the answer is no.

14 MR. FERRARA: I have not.

15 THE COURT: Have you ever been out there?

16 MR. KENNEDY: No, I haven't, Your Honor. I'm looking at
17 the special warranty deed from that LLC to Mr. Lynch. The
18 stated purchase price was \$17,000, and the description says
19 one-half an acre.

20 THE COURT: Well, we got a dispute about ---

21 MR. KENNEDY: Well, that's Exhibit H to the motion.

22 THE COURT: Okay. Anyway, okay. I'm just curious about
23 all this. So much time, trouble, and expenses that's been put
24 into this thing.

25 MR. KENNEDY: And I mention in the proposed order, Your

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

17

1 Honor, I mean, I happen to think that our rules of Civil
2 Procedure, they put Number 1 for a reason. Rule Number 1, I
3 quote it here in this proposed order, but Rule Number 1 says
4 that, you know, the purpose of these rules -- the rules are to
5 be construed to secure the just, speedy, and inexpensive
6 determination of every action. I understand that's a broad
7 statement, but it still means something.

8 THE COURT: Yeah. It sounds good -- it sure sounds good.
9 Maybe we ought to make -- did you cite that in your proposed
10 order.

11 MR. KENNEDY: I did. I started off with Rule 1 from the
12 top.

13 THE COURT: Okay. Good. And ---

14 MR. KENNEDY: Of course, opposing counsel says more
15 discovery is needed. This action has been filed and pending
16 since 2020. When are we gonna do the discovery? Nothing
17 prevented them from engaging in discovery while they were up
18 in the Court of Appeals in this case.

19 THE COURT: Well, let me see your proposed order.

20 MR. KENNEDY: I handed it up, Your Honor.

21 THE COURT: Okay. Oh, I see it. Yeah, yeah, yeah. Let
22 me -- I haven't had a chance to read it. Let me take a few
23 minutes here. I'm gonna sit here and read it, and Mr.
24 Ferrara, you have a chance to read it also and make any
25 comments you want to make.

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

18

1 MR. KENNEDY: And I can tell Your Honor, I just found
2 where my exhibit citations in the order are off, so, there
3 could be some small adjustments.

4 THE COURT: Okay.

5 MR. KENNEDY: In form but not substance.

6 THE COURT: Okay. (Reviews order.)

7 All right. I've read the proposed order.

8 Mr. Ferrara, anything you want to say?

9 MR. FERRARA: Yes, Your Honor. The proposed order misses
10 the mark somewhat.

11 THE COURT: I'm sorry?

12 MR. FERRARA: Respectfully, Your Honor, the proposed
13 order misses the mark. It misses the mark in this case. This
14 was before Your Honor today. It's not the foreclosure. It's
15 not the intervention that was in the foreclosure case. That's
16 not what's before the Court. What's before the Court is
17 Bevance Lynch's claim to assert that my clients are
18 trespassers on the property. That's the summons and
19 complaint. And the reply and answer to that that was filed in
20 the Court's file is that Beulah Belin and James Belin are
21 necessary parties that need to be added. Why? Because if
22 they're allowed to have a trial, okay, which we should be able
23 to have a trial on this to establish their rights or not.
24 Your Honor, we're here on summary judgment. Let's just assume
25 the light most favorable to the non-moving party that my

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

19

1 clients have established through the affidavits that are on
2 the Court's file are able to establish that they had the
3 authority, they had a right, an equitable right at a minimum,
4 just a minimum equitable right to be on the property. Okay?
5 That they can give consent to Ms. Dunham to reside, to be on
6 the property today. If that is true, if those facts are true,
7 Your Honor, then that's a complete defense to the writ of
8 possession that Mr. Lynch is asserting. He's -- Mr. Lynch is
9 not foreclosing any mortgage. Mr. Lynch is not suing to quiet
10 title. Mr. Lynch has simply filed an action for ejectment or
11 a notice to quit. And in defense of that, Ms. Dunham has
12 filed an answer that says I deny that, and I think that -- and
13 the Court needs to add Beulah Belin and James Belin. That's
14 been filed before the Court.

15 Respectfully, Your Honor, I wasn't even aware that the
16 case got transferred, but it's water under the bridge. I
17 looked it up and saw that the case got transferred. I have no
18 notice.

19 Mr. and Mrs. Belin are still not a party to this case
20 today, and that's why they haven't had a chance to do any
21 discovery themselves. They're not a party. They don't have
22 the authority to enter into any discovery.

23 And if Your Honor grants summary judgment here, it's a
24 travesty because it's violating the due process rights of
25 Beulah Belin and James Belin. Bertha Dunham also has a

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

20

1 defense which has been raised to add these proper parties,
2 which has never been allowed to this point.

3 If Your Honor will allow the case to move forward, we can
4 move forward with traditional discovery, the -- Mr. Lynch can
5 take the deposition of Bertha Dunham, and Beulah Belin, and
6 James Belin, and find out -- find out what their claims are.
7 There is a motion as well, Your Honor, for a motion to amend
8 Bertha Dunham's answer to assert a claim. If Your Honor
9 grants summary judgment, that's not gonna do anything but
10 delay the case further, and it's unnecessary to do that,
11 because if Your Honor will allow -- deny summary judgment,
12 allow the case to move forward, have the motion to intervene
13 heard. If Your Honor or whoever -- whatever judge presides
14 over that denies the motion for intervention, well, that's the
15 end of that. But for Your Honor to grant summary judgment
16 right now and cut off the rights that have been asserted prior
17 to this summary judgment that just seems to be premature.

18 All of the other stuff that Your Honor has read, it
19 misses the mark because it's not to the heart of the issue,
20 which is we're here before Your Honor on an action by the
21 plaintiff to declare that just Bertha Dunham is a trespasser.
22 And considering the light most favorable to the non-moving
23 party, Your Honor. And that additional discovery is necessary
24 to find out -- my clients assert that they've been on the
25 property continuous for all of these years, and that Bevance

LYNCH V. DUNHAM - 2020-CP-33-00277
MOTION FOR SUMMARY JUDGMENT

21

1 Lynch or his predecessor in title should have named them in
2 the foreclosure essentially, Your Honor. And that's the
3 issue.

4 You know, Bevance Lynch bought a title. Your Honor, I'd
5 respectfully request the Court to look at Haigh Porter -- I
6 think it's in the exhibit to plaintiff's motion. Hague
7 Porter, Judge Porter issued just a Master's title -- a
8 Master's Deed. It's not a warranty deed. It's just a -- this
9 is -- you're purchasing whatever -- whatever Wilmington
10 Savings Bank is conveying, you're purchasing it lock, stock,
11 and barrel. And respectfully, Your Honor, the problem here is
12 that the Belins were on the property. Their mobile home is on
13 the property.

14 An additional statute, Your Honor, that I didn't mention
15 was the mobile home -- I know Your Honor may be familiar with
16 it. I call it new. And maybe you would agree with me that
17 it's relatively new, the Mobile Home Act. The Mobile Home Act
18 is something that ---

19 THE COURT: I'm not familiar with that. What do you want
20 me to know about it?

21 MR. FERRARA: Yes, Your Honor. The Mobile Home Act
22 requires that in situations similar to this that the mobile
23 home park have to follow certain requirements before -- I'm
24 paraphrasing, Your Honor -- but certain requirements before
25 just ejecting a mobile home from the property. Right? Even

LYNCH V. DUNHAM - 2020-CP-33-00277
RULING OF THE COURT

22

1 though the mobile home owner owns the property, they have to
2 give 20-days notice, okay, to the mobile home person. And
3 then say the mobile home tenant does not appear in the
4 Magistrates Court, then they still have to go through another
5 process to get the mobile home to be declared abandoned on the
6 property. None of that stuff has happened here.

7 And so, that's another independent basis about why Your
8 Honor should deny summary judgment. I mean, and so ---

9 RULING OF THE COURT:

10 THE COURT: Well, I appreciate that. I think that's an
11 interesting argument to make, you know, but I'm gonna -- I'm
12 more inclined -- in sympathy or whatever you want to call it
13 with Rule 1. It seems to me that this thing has gone on long
14 enough, and it's time to bring it to a conclusion. So, I'm
15 gonna grant the motion for summary judgment.

16 MR. KENNEDY: Your Honor, if I may?

17 THE COURT: Yes, sir.

18 MR. KENNEDY: You know, whenever a ruling is in your
19 favor, they say to sit down and shut up, but I do have some
20 things based on arguments today that I would like to add to
21 the proposed order to submit to Your Honor.

22 THE COURT: Okay.

23 MR. KENNEDY: And then of course now, as Your Honor
24 probably knows, we don't -- we electronically file them
25 anyway. So, I'm happy to -- if Your Honor will allow to add

LYNCH V. DUNHAM - 2020-CP-33-00277
RULING OF THE COURT

23

1 some to the proposed order, share it with opposing counsel of
2 course, and email it to Your Honor.

3 THE COURT: Well, yeah, okay. Well, I -- anyway,
4 actually I've already signed this one right here. I'll
5 scratch through that. I'll scratch through that.

6 MR. KENNEDY: Cause I think Deputy Clark and Ms. ---

7 THE COURT: And take that off and you can add to it, and
8 send it to me. I have a -- Judge Roger Young's secretary
9 helps me with all my -- all the secretary work. I have an
10 office -- I share an office with him in his suite of offices
11 that he has, and his secretary is kind enough to help me in
12 regard to I'm computer illiterate just about. And also,
13 she'll be able to get it off the computer, if you email it to
14 me, and I can sign it and she can file it electronically and
15 all that stuff and everything. So, if I still want to grant
16 the motion after I get it and everything. So, I'll just hold
17 on to this, what you've given me, and I've scratched out my
18 name on it. And you send me a revised order granting your
19 motion, and I'll consider it.

20 MR. KENNEDY: I'll have it to Your Honor by this evening.

21 THE COURT: Well, I don't know that I'll get by this
22 evening.

23 MR. KENNEDY: Well, I understand. I've got to go to
24 Atlanta tomorrow for Trial Lawyers, so I need to get this out.

25 THE COURT: Okay, good. Okay, good. All right. And of

LYNCH V. DUNHAM - 2020-CP-33-00277
RULING OF THE COURT

24

1 course you're gonna copy Mr. Ferrara.

2 MR. KENNEDY: Absolutely.

3 THE COURT: And I'll wait till you have a chance to
4 respond before I do anything.

5 MR. FERRARA: Thank you, Your Honor.

6 THE COURT: All right. Thank you very much.

7 MR. KENNEDY: Thank you, Your Honor.

8 MR. FERRARA: Thank you.

9 ADJOURNED - 10:49 A.M.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

LYNCH V. DUNHAM - 2020-CP-33-00277
RULING OF THE COURT

25

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Bevance Lynch v Bertha E. Dunham, held in the Court of Common Pleas for Marion County, Marion County Courthouse, Marion, South Carolina, on November 29, 2023.

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

Kay H. Richardson
Official Court Reporter

May 22, 2024.

583

Form FmHA-SC 465-12
(9-3-74)

Position: J

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

QUITCLAIM DEED

TRANSFERRED

November 5, 1975

Recorded in Book P, Page 44

E. D. WILLIAMS, AUDITOR
MARION COUNTY, S. C.

STATE OF SOUTH CAROLINA

COUNTY OF MARION

KNOW ALL MEN BY THESE PRESENTS:

THAT the United States of America, for and in consideration of the sum of THIRTEEN THOUSANDTWO HUNDRED Dollars, (\$ 13,200.00),

the receipt whereof is hereby acknowledged, does hereby remise, release, quitclaim and convey unto William Dunham, Jr., and Bertha E. Dunham for and during their joint lives with the right of survivorship all its rights, title, claim, interest, equity and estate in and to the following described lands lying in the County of Marion, State of South Carolina, to wit:

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing one-half ($\frac{1}{2}$) acre, bounded northeast 105 feet by U. S. Highway No. 378; southeast 210 feet by road leading into Dog Lake; southwest 105 feet by lands of E. J. Atkinson; and northwest 210 feet by lands of E. J. Atkinson. The said lot being shown on a map of lot sold by E. J. Atkinson to Southeastern Homes, made by Johnson Engineers, July 18, 1969.

FILED

BOOK PAGE

75 NOV -5 PM 4:20

MARION COUNTY, S. C.
W. MARVIN LANE
CLERK OF COURT

Transfer No. 9512

November 5, 1975

Map 216 Block 1 Lot

Lawrence E. Braswell, Assessor

Marion County, S.C. #5

REVENUE STAMPS
COLLECTED\$ NONE
MARION COUNTY, S. C.

FmHA-SC 465-12 (9-3-74)

584

This is the identical property conveyed to the United States of America by deed of James Lee Woolman
 _____, which deed is recorded in Deed Book A-133
 at Page 6 in the Office of the Clerk of Court for Marion County.
 Subject, however, to all easements and rights-of-way upon, across or through the above-described lands as heretofore
 have been granted by the United States of America or its predecessors in title.
 TO HAVE AND TO HOLD the same ~~to the United States of America~~ for and during their joint lives
and upon the death of either of them then to the survivor of them, his or her
heirs and assigns forever, in fee simple.
 IN TESTIMONY WHEREOF, the United States of America has caused these presents to be executed this 15th
 day of October, 19 75, pursuant to the authority contained in Title 7, Code of
 Federal Regulations, Part 1800.

Signed, sealed and delivered
 in the presence of

LaVon F. Yandle
Mary M. Wright

UNITED STATES OF AMERICA

By E. W. Brooks
 State Director (South Carolina)
 Farmer Home Administration
 UNITED STATES DEPARTMENT OF AGRICULTURE

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND

BEFORE ME, Mary M. Wright, a Notary Public in and for said State and
 County, personally appeared LaVon F. Yandle
 and made oath that he saw the within named E. W. Brooks
 State Director of the Farmer Home Administration, United States Department of Agriculture, sign, seal, and as his act and
 deed, deliver the within instrument for the uses and purposes therein mentioned, and as such
 State Director of the Farmer Home Administration, United States Department of Agriculture, on behalf of the Government,
 and that he with Mary M. Wright witnessed the execution thereof and subscribed
 their names as witnesses thereto.

LaVon F. Yandle
 Witness

SWORN to and subscribed before
 me this 15th day of October, 19 75.

Mary M. Wright (SEAL)
 Notary Public for South Carolina.
 Commission expires - 8-4-80

STATE OF SOUTH CAROLINA

COUNTY OF MARION

FORECLOSURE DEED
Public Sale



To all whom these Presents shall concern:

I, Haigh Porter, as Special Referee for Marion County, State of South Carolina, send Greetings:

WHEREAS, in an action in the Court of Common Pleas in the County and State aforesaid, between Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A as Plaintiff and Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham as Defendants, by an Order filed of record on April 25, 2019 in Case No. 2018-CP-33-00653, it was decreed that the property hereinafter described should be sold by the Special Referee for Marion County on the terms and for the purposes mentioned in the order(s) granted in the case, as by reference thereto will appear.

NOW THEREFORE KNOW ALL MEN, that I, the undersigned, as Special Referee for Marion County, on June 11, 2019, pursuant to the foregoing, openly and publicly, in consideration of the premises, and also in consideration of the sum of Thirty five thousand and 00/100 (\$35,000.00) Dollars as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant and release the following property unto **Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A, its successors and assigns,**

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

Being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A196 at Page 24.

TMS No. 163-00-00-053-000

Property Address: 1701 West Highway 378, Gresham, SC 29546

**GRANTEE'S ADDRESS: 1600 South Douglass Road
Suite 200-A
Anaheim, CA 92806**

201900053279 EXEMPT
CHELSEA N. GRAY
CLERK OF COURTS
MARION COUNTY, SC
08-28-2019 01:30 pm.
REC FEE: 15.00

Property Owner of Record: Bertha E. Dunham aka Bertha Dunham

TOGETHER with all and singular the rights, members, hereditaments and appurtenances whatsoever, to the said premises belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, possession, property, benefit,

4043.17718

claim and demand whatsoever, both at law and in equity, of all the parties to the said suit and of all other persons rightfully claiming or to claim the same, or any part thereof, by, from or under them, or either of them.

Subject to assessments, taxes, easements, conditions and restrictions of record and otherwise affecting the property.

TO HAVE AND TO HOLD, the said premises with its hereditaments, privileges and appurtenances unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, I, the undersigned, as Special Referee for Marion County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 9th day of August, 2019.

SIGNED, SEALED, AND DELIVERED
in the Presence of:

E. Jane Joyner
Witness No. 1

Printed name: E. Jane Joyner

Haigh Porter
Haigh Porter
Special Referee for Marion County

Haigh Porter
Witness No. 2/Notary Public

Printed name: Haigh Porter

STATE OF SOUTH CAROLINA

COUNTY OF MARION

PERSONALLY APPEARED before me the undersigned witness and made oath that (s)he saw Haigh Porter, as Special Referee for Marion County, sign, seal and deliver the within Deed; and that deponent, together with the other witness signed their names as witnesses thereto. The subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a party to or beneficiary of the transaction, signed the record as a subscribing witness, and witnessed the principal sign the record.

WITNESS our hands and seals on this 9th day of August, 2019.

E. Jane Joyner
Witness No. 1
Printed name: E. Jane Joyner

Haigh Porter (L.S.)
Notary Public for South Carolina
Printed name: Haigh Porter
My commission expires: 4/14/25

STATE OF SOUTH CAROLINA

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

COUNTY OF MARION

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 1701 West Highway 378, Gresham, SC 29546, bearing County Tax Map Number 163-00-00-053-000, was transferred by Haigh Porter, as Special Referee for Marion County to Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A on 8/9/19
3. Check one of the following: The deed is
 - (a) ☐ Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ☐ Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ Exempt from the deed recording fee because (See information section of affidavit); (#13) Transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase realty? ☐ Yes ☐ No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of affidavit):
 - (a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$_____.
 - (b) ☐ The fee is computed on the fair market value of the realty which is \$_____.
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$_____.
5. Yes ☐ No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 1 above here: \$_____
 - (b) Place the amount listed in item 5 above here: \$_____
 - (If no amount is listed, place zero here.)
 - (c) Subtract line 6(b) from line 6(a) and place result here: \$_____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$_____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for the Plaintiff.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

August 16, 2019
Columbia, South CarolinaSWORN to before me this
16 day of August, 2019Notary Public for South Carolina
My Commission Expires:Steph M. Huggins
Responsible Person Connected with the Transaction
Jason M. Hunter, Attorney for Plaintiff

Stephanie M. Huggins

Kilby Page & Loney, LLC
2836 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29209

COPY

STATE OF SOUTH CAROLINA

COUNTY OF MARION

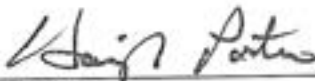
RELEASE OF LIEN
MORTGAGE FORECLOSURE

I, Haigh Porter, as Special Referee for Marion County, pursuant to Foreclosure proceedings in the Action entitled Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A vs. Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham, as appears of record in the Office of the Clerk of Court, Marion County, Civil Action No. 2018-CP-33-00653, and final judgment being entered on April 25, 2019, do hereby declare that the mortgage lien listed below is hereby released, canceled, and satisfied by sale under foreclosure held on June 11, 2019:

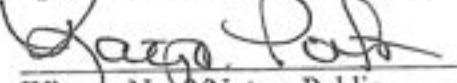
Mortgage held by Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A, given by Bertha E. Dunham to CitiFinancial, Inc. in the principal sum of \$37,970.54, dated April 13, 2006, and recorded on April 13, 2006, in Book 819 at Page 146. Thereafter, by assignment recorded December 21, 2017 in Book 401 at Page 5, the mortgage was assigned to Citifinancial Servicing LLC; thereafter, by assignment recorded December 21, 2017 in Book 401 at Page 6, the mortgage was assigned to the Plaintiff.

The Register of Mesne Conveyances/Register of Deeds for Marion County is hereby authorized and directed to release, cancel, and satisfy the same of record.

DATED this 17th day of June, 2019.


Haigh Porter
Special Referee, Marion County


Witness No. 1
Printed name: E. JANE JOYNER


Witness No. 2/Notary Public
Printed name: Haigh Porter

201900053280
Filed for Record in
MARION COUNTY, SC
CHRISTY H. GRAY, CLERK OF COURTS
08-28-2019 At 01:30 pm.
\$10.00
Vol 666 Page 312 - 313

202000054472
FIDELITY LAND TITLE AGENCY

Instrument Vol Page
202000054472 OR 483 169

202000054472
Filed for Record in
MARION COUNTY, SC
CHRISTY N. GRAY, CLERK OF COURTS
01-07-2020 At 11:25 am.
OTCL DEED 22.40
Vol 483 Page 169 - 173

Please send tax statements to:
2019 Castle, LLC, a New York Limited Liability Company
333 Westchester Ave., W2100, White Plains, NY 10604

Return To:
Fidelity Land Title Agency
10723 Montgomery Rd., Cincinnati OH 45242

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS THAT:

THIS QUITCLAIM DEED, made and entered into on this 23rd day of December, 2019 between Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A ("Grantor") whose address is 1600 South Douglas Rd., Suite 200-A, Anaheim CA 92806 and 2019 Castle, LLC, a New York Limited Liability Company ("Grantee") whose address is 333 Westchester Ave., W2100, White Plains, NY 10604.

FOR VALUABLE CONSIDERATION, in the amount of One Thousand Eight Hundred DOLLARS (\$1,800.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby REMISES, RELEASES, AND FOREVER QUITCLAIMS to Grantee, all right, title, interest and claim to the plat. Piece or parcel of land, with all the buildings, appurtenances and improvements thereon, if any, in the County of Marion, State of South Carolina described as follows:

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One hundred Five (105) feet by US Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

Transfer No. 200005
2020
Map 163 Block 53 Lot
Rueben Butler, Assessor
Marion County, S.C.

ELECTRONICALLY FILED - 2020 JUL 06 10:10 AM - MARION - COMMON PLERS - CASE#2020CP0300274

Being the same property conveyed to Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A by Foreclosure Deed, dated August 9, 219 and recorded August 28, 2019 in Deed Book 466 at Page 309.

TMS No. 163-00-00-053-000

Property Address: 1701 West Highway 378, Gresham, SC 29546

SELLER AND PURCHASER ACKNOWLEDGE AND AGREE THAT THE PROPERTY IS BEING SOLD "WITH ALL FAULTS" AND IN "AS IS" CONDITION WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER INCLUDING WITHOUT LIMITATION ANY WARRANTY OF HABITABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES ACKNOWLEDGE THAT THIS PROVISION WAS SPECIFICALLY NEGOTIATED FOR AS PART OF THE CONSIDERATION FOR SELLER'S AGREEMENT TO SELL THE PROPERTY TO PURCHASER.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed on this 23rd day of December, 2019.

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A, By Carrington Mortgage Services, LLC as Attorney in Fact

By: [Signature] DEC 23 2019
 Name: Scott Hazen
 Title: REO Director
Carrington Mortgage Services, LLC

[Signature]
 Witness: Glenda Maldonado
 Print Name:

[Signature]
 Witness: Cecilia Alonso
 Print Name:

State of
 County of

SS:

SEE ATTACHED

Before me the undersigned, a Notary Public in and for said County and State, on this ____ day of December, 2019, personally appeared _____ the _____ of Carrington Mortgage Services, LLC as Attorney in Fact for Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A who subscribed her name as the authorized officer hereof to the foregoing instrument and acknowledged to me that she executed the same as on behalf of the corporation, for the uses and purposes herein set forth.

Give under my hand and seal the day and year last above written.

 Notary Public

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

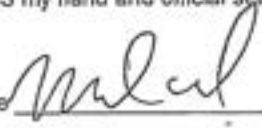
State of California
County of Orange

On December 23, 2019 before me, Marisela J Islas - Notary Public
(insert name and title of the officer)

personally appeared Scott Hazen
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



Ohio
STATE OF ~~XXXXXXXXXX~~
COUNTY OF Hamilton

Page 1 of 2
AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 1701 W Hwy 378, Gresham SC 29546
bearing Marion County Tax Map Number 163-00-00-053-000, was transferred by
Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A
to 2019 Castle, LLC, a New York Limited Liability Company on 12/20/2019.

3. Check one of the following: The deed is

- (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) exempt from the deed recording fee because (See Information section of affidavit):
(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?
Check Yes or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$1,800.00.
- (b) The fee is computed on the fair market value of the realty which is .
- (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is .

5. Check Yes or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: .

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$1,800.00
- (b) Place the amount listed in item 5 above here: 0.00
- (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$1,800.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is:
\$ 7.40

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Coordinator

ELECTRONICALLY FILED - 2023 Jul 05 10:10 AM - MARION - COMMON PLEAS - CASE#2020CP3300277

202000055030
CHRISTY N. GRAY
CLERK OF COURTS
MARION COUNTY, SC
03-10-2020 02:40 pm.
REC FEE: 15.00
State \$ 14.70
Local \$ 18.70

Transfer No. 200215
March 10, 2020
Map 11a3 Block 53 lot
Rushon Butler, Assessor
Marion County, S.C.

202000055030
BLACK, SLAUGHTER & BLACK, PA

PREPARED BY:
BLACK, SLAUGHTER & BLACK, P.A.
JOSEPH W. THOMPSON, IV
1927 S. TRYON STREET, UNIT 100
CHARLOTTE, NC 28203

STATE OF SOUTH CAROLINA

SPECIAL WARRANTY DEED

COUNTY OF MARION

KNOW ALL MEN BY THESE PRESENTS that 2019 Castle, LLC, a New York limited liability company, hereinafter called Grantor in consideration of Seventeen thousand and 00/100 (\$17,000.00) Dollars to the Grantor in hand paid at and before the sealing of these presents by the Grantee(s) hereinafter named, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto Bevance Lynch, its successors and assigns forever, the following described property, to-wit:

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-Half (1/2) acre, bounded Northeast One Hundred Five (105) feet by US Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

TMS#: 163-00-00-053-000

PROPERTY ADDRESS: 1701 W Hwy 378, Gresham, SC 29546

GRANTEES ADDRESS: 15660 SW 152nd, Miami, SC 33187

DERIVATION: This being the property as conveyed to Grantor by Quit Claim Deed recorded on January 7th, 2020 in Book 483, Page 169 in the Marion County Clerk of Courts.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any way incident or appertaining, including, but not limited to, all improvements of any nature located on the Premises and all easements and rights-of-way appurtenant to the Premises.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, and Grantee's heirs successors and assigns forever.

And, SUBJECT TO the matters set forth above, Grantor does hereby bind Grantor and Grantor's heirs, successors and assigns, executors, administrators and other lawful representatives, to warrant and forever defend all and singular the Premises unto Grantee and Grantee's heirs, successors and assigns against Grantor and Grantor's successors lawfully claiming, or to claim, the same or any part thereof but no others.

Witness the execution hereof by Grantor this 3 day of March, 2020.

Signed, Sealed and Delivered
in the Presence of:

SELLER(S):
2019 Castle, LLC

By X
Victor Naar, Manager

Witness (Browne) (all)

Witness/Notary

STATE OF NY)
COUNTY OF Westchester)

ACKNOWLEDGEMENT

I, the undersigned, a Notary Public for North Carolina hereby certify that Victor Naar, as Manager for 2019 Castle, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 3 day of March, 2020.

(SEAL)

NOTARY PUBLIC FOR
MY COMMISSION EXPIRES: _____

RAQUEL HELENA DESOUZA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DE6380847
Qualified in Putnam County
My Commission Expires 09-17-2022

thousand dollars or imprisoned not more than one year, or both.

BY


2019 Cause, LLC, Victor Naar as Manager

Sworn to before me this 17 day of March 2020.

Notary Public for

My Commission Expires: 09-17-2022

RAQUEL HELENA DESOUZA
NOTARY PUBLIC-STATE OF NEW YORK
No. 010E6360847
Qualified in Putnam County
My Commission Expires 09-17-2022

All statements are to the best of seller's knowledge.*

STATE OF SOUTH CAROLINA)

2020CV3310100522
CIVIL CASE NUMBER

COUNTY OF MARION)

IN THE MAGISTRATE'S COURT

AFFIDAVIT OF LANDOWNER)

Bevance Lynch
15660 Sw 152 Place
Miami, FL 33187
(305) 951-2655

PLAINTIFF(S)

Vs

Bertha E Dunham
1701 W Hwy 378
Gresham, SC 29546

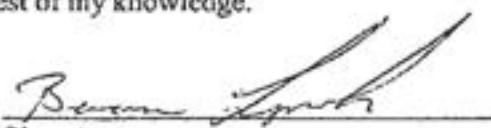
DEFENDANT(S)

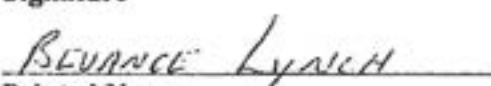
I, Bevance Lynch make the following statement and affidavit: That on or about the above named defendant(s) did trespass upon and have remained in possession of lands or tenements I own at without consent or permission in the following particulars: To the best of my knowledge Ms, Bertha E Dunham was the previous owner of the said property at 1701 W Hwy 378 Gresham and that the property was foreclosed on her. I am now the new owner of that property.

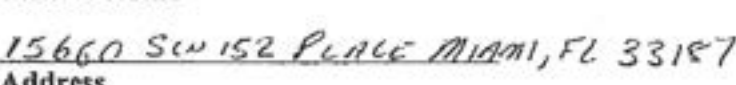
I swear or affirm the above to be true as to the best of my knowledge.

SWORN to and subscribed
before me, May 20, 2020


Commission Expires

WALTER A. CORNEJO
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG116243
Expires 6/19/2021

Signature


Printed Name


Address

2020 JUN -2 PM 3:25

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	
	)	CASE NO.: 2020-CP-33-00277
Bevance Lynch,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	AFFIDAVIT OF BEULAH BELIN
Bertha E. Dunham,	)	
	)	
Defendant.	)	
_____	)	

PERSONALLY appeared before me the undersigned who, being duly sworn under oath, certifies as to the following:

1. I am Beulah Mae Belin and I reside at 1701 West Highway 378, Gresham, South Carolina 29546. The tax map number is 163-00-00-053. I have resided at the real property continuously for over twenty-eight (28) years.
2. My husband, James Belin, and I own a 1996 mobile home located on the property and have paid the property taxes on 1701 West Highway 378, Gresham, South Carolina 29546 since the time we moved the mobile home to the property.
3. The portion of land we have occupied, exclusive to all others, is outlined by the fence shown in the photo from 2008 and is attached as Exhibit "A".
4. My husband and I were advised that if we took care of the property and paid the property taxes, we would receive a deed.
5. My husband and I fenced our portion of the property, improved the land, cut the grass and taken care of the property for the last twenty-eight (28) years, since 1996.

6. My mother was foreclosed upon but neither myself nor husband were ever served with the lawsuit and were not allowed to intervene into that lawsuit nor present any defense whatsoever.
7. My husband and I are in the process of filing a quiet title action on our property. I have attached the lis pendens on the property, attached as Exhibit "B".
8. My husband and I are necessary parties to this action and need to be joined in this matter.
9. We demand a trial by jury on the above claims concerning 1701 West Highway 378, Gresham, South Carolina 29546.

Beulah Belin

Beulah Belin

SWORN to before me this 16th
day of August, 2023

Jane K. Azuma (L.S.)
Notary Public for South Carolina

My Commission Expires: 2-10-2025

B. B

Google Maps 1701 US-378

Gresham, South Carolina

Google Street View.

Jul 2023

[See more dates](#)



Image capture: Jul 2013 © 2013 Google

Arch's Coin Laundry

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	
	)	CASE NO.: 2020-CP-33-00277
Beva nce Lynch,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	LIS PENDENS
Bertha E. Dunham,	)	
	)	
Defenda nt.	)	
	)	
Beaullah Mae Belin and James Belin,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Beva nce Lynch,	)	
	)	
Defenda nts.	)	
	)	

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One Hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TMS # 163-00-00-053-000

Property Address: 1701 West Highway 378, Gresham, SC 29546.

Respectfully submitted,

/s/ Paul B. Ferrara III

Paul B. Ferrara, III (S.C. Bar No. 70511)

FERRARA LAW FIRM, PLLC

8887 Old University Blvd., Suite 200

North Charleston, SC 29406

Telephone: (843)569-5511

Facsimile: (843) 569-5411

Attorney for Beaulah Mae Belin

August 16, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	
	)	CASE NO.: 2020-CP-33-00277
Bevance Lynch,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	AFFIDAVIT OF BEULAH MAE BELIN
Bertha E. Dunham,	)	
	)	
Defendant.	)	
_____	)	
	)	
Beaullah Mae Belin and James Belin,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Bevance Lynch,	)	
	)	
Defendants.	)	
_____	)	

PERSONALLY appeared before me the undersigned who, being duly sworn, on oath says:

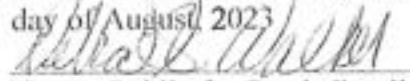
1. That she is an employee in the office of Ferrara Law Firm, PLLC, attorneys for the plaintiffs herein;
2. That on the 16th day of August, 2023 she did serve via USPS an Affidavit of Beulah Mae Belin:

Joseph Jacob Kennedy
Kennedy Law Firm
PO Box 925
Marion, SC 29571

3. That she is not a party to this action.


Tina Markferding

SWORN to before me this 16th
day of August, 2023

 (L.S.)

Notary Public for South Carolina

My Commission Expires: March 23, 2025

RECEIVED

Apr 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable Thomas L. Hughston, Jr.

Common Pleas Case No.: 2020-CP-33-00277
Appellate Case No.: 2024-000632

Bevance Lynch,

v.

Bertha E. Dunham,

Respondent,

Appellant.

CERTIFICATION OF COUNSEL

I certify that the Record on Appeal complies with Rule 210(g) of the South Carolina
Appellate Court Rules.

FERRARA LAW FIRM, PLLC

/s/ Paul B. Ferrara, III

Paul B. Ferrara, III
S.C. Bar No. 70511
8887 Old University Blvd.
North Charleston, SC 29406
(843) 569-5511

Attorney for Appellant

April 7, 2025