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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-In-Equity

Appellate Case No.: 2023-001054

Wells Fargo Bank, National Association, not in its individual or banking capacity, but solely as Trustee on behalf of Green Tree
Mortgage Trust 2005-
HE1……Respondent,

vs.

James E. Turner, a/k/a James Turner, Sr……..Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Did Respondent present evidence establishing the elements needed for a finding for the foreclosure of the subject notes and mortgages? Namely, did Respondent establish: (a) debts owed by Appellant (b) evidenced by notes; (b) which were defaulted on, and; (c) secured by mortgages on real property, along with; (d) evidence indicating that they were entitled to enforce its rights under said notes and mortgages.

2. With proper deference given to the findings of the Master-in-Equity, did Respondent submit evidence sufficient to indicate a preponderance of evidence indicating that they were entitled to a judgment of foreclosure?

STATEMENT OF THE CASE

On July 31, 2018, Respondent initiated a foreclosure action against Appellant involving two properties owned by Appellant which are located in Richland County, South Carolina. Each property was subject to a lien conveyed by a respective note and mortgage. Both notes and mortgages are held by Respondent. (R. pp. 35-56).

Respondent's Complaint included the following causes of action

a) Two foreclosure causes of action, one for each Note and Mortgage (styled as "Note 1" and "Mortgage 1"; and "Note 2" and "Mortgage 2" in the within action).

b) A quiet title cause of action, the merits of which are not being contested by Appellant, and;

c) A declaratory judgment cause of action seeking to have a mortgage satisfaction erroneously filed by a party without authority to do so declared a nullity. Said mortgage satisfaction had been filed by a non-party former holder of the mortgage following said non-party's assignment of said mortgage. (*Id.*)

A summary of the findings of fact for each cause of action is as follows:

REGARDING THE FIRST FORECLOSURE CAUSE OF ACTION

On November 6, 1996, for value received, James E. Turner executed and delivered to Emergent Mortgage Corp. a certain promissory note, in writing, according to the terms and conditions set out therein, by which said maker promised to pay to Emergent Mortgage Corp. the sum of $121,500.00, together with interest thereon at the yearly rate of 11.49% per annum. Said

note is herein referred to as "Note 1." The final payment upon Note 1 was scheduled to occur on November 11, 2026. (R. pp. 7-8; 272-273).

In order to better secure the payment of Note 1 and debt, in accordance with the terms and conditions thereof, the said James E. Turner executed and delivered on November 6, 1996 a mortgage (hereinafter referred to as "Mortgage 1"), of real estate to Emergent Mortgage Corp., its successors and assigns, covering the following described property:

All that certain piece, parcel or lot of land, with any improvements thereon, containing two (2) acres, situate, lying and being on S.C. Road S-61, approximately five (5) miles North of the City of Columbia, in the County of Richland, State of South Carolina, the same being shown on Plat prepared for James E. Turner by B.P. Barber & Associates, Inc., Engineers, dated March 1, 1983, and recorded in the Office of the RMC for Richland County in Plat Book "Z" at page 4913, said property being described on said plat as follows: commencing at an iron on the right-of-way of S.C. Road S-61 and running S 74-01-45 E for a distance of 66.48 feet to an iron, and continuing S 76-53-25 E for a distance of 83.52 feet to an iron, along the right-of-way of said S.C. Road S-61, thence turning and running S 1-55-56 W for a distance of 589.47 feet along property of C.S.W. Co. to an iron; thence turning and running N 82-57-18 W for a distance of 146.71 feet along undesignated property to an iron; thence turning and running N 1-54-13 E for a distance of 608.71 feet along property of C.S.W. Co. to the point of commencement. Be all measurements a little more or less.

TMS: 12100-03-04

ALSO

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being approximately five miles North of Columbia, South Carolina, in the County of Richland, State of South Carolina, and being shown as 1.00 acre on a plat prepared for C.S.W., Co by B.P. Barber & Assoc., Inc., Engineers, dated October 7, 1982. Said parcel of land being bounded and measuring as follows: Bounded on the North by the highway right-of-way of South Carolina Road S-61 whereon it measures 120.0' feet; on the East by lands of C.S.W. Co. whereon it measures 364.7' feet; on the South by lands of C.S.E. Co. whereon it measures 120.0 feet; and on the West by lands of. C.S.E. Co. whereon it measures 364.7' feet. Be all measurements a little more or less.

TMS: 12100-03-05

**Please note that Mortgage 1 was secured by both of the subject properties.*

On December 19, 1996, said mortgage was recorded in the Office of the Register of Deeds for Richland County in Book 2058 at Page 516. That by Assignment of Mortgage recorded December 19, 1996 in Book M2058 at Page 522, the subject mortgage was assigned by Emergent Mortgage Corporation unto Carolina Investors, Inc. That Carolina Investors, Inc.

assigned the subject mortgage unto Plaintiff, Wells Fargo Bank, Nation Association, not in its individual or banking capacity, but solely as Trustee on behalf of Green Tree Mortgage Trust 2005-HE1. Said assignment of mortgage cannot be located as evidenced by the Affidavit of Lost Assignment recorded May 25, 2018 in the Office of the Register of Deeds for Richland County in Book 2306 at Page 1330. By virtue of said assignment, Respondent is the holder said Note and Mortgage and entitled to enforce the same. No Defendant has raised any issues related to Plaintiff's standing to prosecute this action. (R. pp. 7-8; 267; 274-279).

Said Mortgage 1 evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a first lien on the mortgaged premises. That the Respondent is the mortgagee of record and owner and holder of the Note and Mortgage. (R. pp. 7-8).

Defendant James E Turner admitted the signing of Note 1 and Mortgage 1 in his Answer, in his sworn deposition, and at trial and admitted that he agreed to pay the sums set forth in Note 1. A finding was also made that Payment due on Note 1 was not made as provided for therein, and that the Respondent, as the holder thereof was entitled a judgment of Foreclosure. (R. pp.7-8; 250 lines 15-23).

REGARDING THE SECOND FORECLOSURE CAUSE OF ACTION

On or about February 12, 1997, for value received, James E. Turner executed and delivered to Green Tree Financial Servicing Corporation a certain promissory note, in writing, according to the terms and conditions set out therein, by which said maker promised to pay to Green Tree Financial Servicing Corporation the sum of $55,250.00, together with interest thereon at the yearly rate of 12.00% per annum. Said note is referred to herein as "Note 2." The final payment upon Note 2 was to occur on March 20, 2027. (R. pp. 9-10; 300-301).

In order to better secure the payment of Note 2 and debt, in accordance with the terms and conditions thereof, the said James E. Turner executed and delivered on February 12, 1997, a mortgage (hereinafter referred to as "Mortgage 2"), of real estate to Green Tree Financial Servicing Corporation its successors and assigns, covering the following described property:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being approximately five miles North of Columbia, South Carolina, in the County of Richland, State of South Carolina, and being shown as 1.00 acre on a plat prepared for C.S.W., Co by B.P. Barber & Assoc., Inc., Engineers, dated October 7, 1982. Said parcel of land being bounded and measuring as follows: Bounded on the North by the highway right-of-way of South Carolina Road S-61 whereon it measures 120.0' feet; on the East by lands of C.S.W. Co. whereon it measures 364.7'

feet; on the South by lands of C.S.E. Co. whereon it measures 120.0 feet; and on the West by lands of. C.S.E. Co. whereon it measures 364.7' feet. Be all measurements a little more or less.

TMS: 12100-03-05

On February 21, 1997, said mortgage was recorded in the Office of the Register of Deeds for Richland County in Book 2080 at Page 0253, and that by an Assignment of Mortgage dated April 16, 2018 and recorded April 27, 2018 in Book 2298 at Page 2401, the subject mortgage was assigned by Ditech Financial LLC f/k/a Green Tree Servicing LLC f/k/a Conseco Finance Servicing Corp. f/k/a Green Tree Financial Servicing Corporation unto the Respondent. By virtue of said assignment, Respondent is the holder said Note and Mortgage and entitled to enforce the same. (R. pp. 9-10; 302-309).

Said Mortgage 2 evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a second lien on the mortgaged premises, and that Respondent is the mortgagee of record and owner and holder of the Note 2 and Mortgage 2. (R. pp. 9-10).

James E Turner admitted the signing of Note 2 and Mortgage 2 in his Answer, in his sworn deposition, and at trial and admitted that he agreed to pay the sums set forth in Note 2. A finding was also made that Payment due on Note 2 was not made as provided for therein, and that the Respondent, as the holder thereof was entitled a judgment of Foreclosure. (*Id*.).

REGARDING THE DECLARATORY JUDGMENT CAUSE OF ACTION

On October 05, 2007, prior holder Emergent Mortgage Corp filed a "Lost Mortgage Satisfaction" as to Mortgage 1 above. Said Lost Mortgage Satisfaction being filed in the Office of the Register of Deeds for Richland County in Book 1364 at Page 1234. (R. pp. 8-9; 260).

Prior to the filing of said Lost Mortgage Satisfaction, Emergent Mortgage Corp. had already assigned Mortgage 1 unto Carolina Investors Inc., and therefore, Emergent Mortgage Corp. was not the owner/holder of the subject mortgage and thus had no legal authority to satisfy Mortgage 1. (R. pp. 8-9; 267).

The Defendant failed to provide any evidence that the Lost Mortgage Satisfaction was a valid legal document and that Respondent was entitled to an order declaring that the aforesaid Lost Mortgage Satisfaction had no legal effect on Mortgage 1, thereby rescinding the Lost

Mortgage Satisfaction of record and further declaring that Mortgage 1 remained unsatisfied. (R. pp. 8-9).

The Master-in-Equity further found that Respondent's representative at the bench trial, a Charles Kevorkian, had testified that he reviewed the payment history of Appellant's accounts that said payments history was properly admitted into evidence under Rule 803(6) of the South Carolina Rules of Evidence and S.C. Code Ann. § 19 – 5 – 510. Respondent also submitted then-current copies of the subject payment histories, sworn to as authentic by Plaintiff with an Affidavit that accompanied its prior Motion for Summary Judgment. Said documents were filed in the instant case on June 10, 2021. (R. p. 18)

Respondent was granted judgment on all of its causes of action and a judicial sale of the subject properties was set prior to Appellant's filing of the instant appeal. When it became apparent that Appellant was unable to adhere to the Master-in-Equity's validly issued supersedeas bond order, filed August 21, 2023 and amended October 17, 2023, Appellant filed bankruptcy under Chapter 13 in the District of South Carolina.

Respondent specifically incorporates into its Statement of the Case any references to events or testimony which are included in its Argument.

STANDARD OF REVIEW

Masters-in-equity or Special referees are given the authority to hear foreclosure matters pursuant to Rule 53 of the South Carolina Rules of Civil Procedure. Any appeal of a final judgment issued by a master-in-equity or special referee must be to the South Carolina Supreme Court or Court of Appeals. *S.C. Code Ann. § 14-11-85*.

The scope of review a case heard by a master-in-equity who enters a final judgment is the same as that for review of a case heard by a circuit court without a jury. *Miller v. Dillon*, 432 S.C. 197, 205, 851 S.E.2d 462, 467 (Ct. App. 2020) (*citing Tiger*, *Inc. v. Fisher Agro*, *Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989). A mortgage foreclosure is an action in equity. *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). (*citing Collier v. Green*, 244 S.C. 367, 137 S.E.2d 277 (1964). "This Court's scope of review of a case heard by a master who enters a final judgment is to determine facts in accordance with our own view of the preponderance of the evidence." *Id*. (*citing Tiger* S.E.2d 538 *at* 391). "While this standard permits [this Court with] a broad scope of review, [the Court] will not disregard the findings of

the master who saw and heard the witnesses and was in a better position to evaluate their credibility. *Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 139, 425 S.E.2d 764, 769 (Ct. App. 1992) (*citing Tiger* S.E.2d 538 *at* 391).

Two principles underlying the proper review of an equity case by the Court of Appeals include consideration of the "superior position of the [master] to determine credibility and the imposition of a burden on an appellant to satisfy the appellate court that the preponderance of the evidence is against the finding of the [master]." *Belle Hall Plantation Homeowner's Ass'n v. Murray*, 419 S.C. 605, 615, 799 S.E.2d 310, 315 (Ct. App. 2017) (citing *Bloody Point Property Owner's Ass'n, v. Ashton*, 410 S.C. 62, 762 S.E.2d 731 (Ct. App. 2014); *Crossland v. Crossland*, 408 S.C. 443, 452, 759 S.E.2d 419, 423-24, &; *Lewis v. Lewis*, 392 S.C. 381, 391, 709 S.E.2d 650, 655 (2011).

ARGUMENT

PLAINTIFF PROVED ALL OF THE NECESSARY ELEMENTS OF A FORECLOSURE

(i) Debts owed by Appellant, Evidenced by Notes which were Defaulted on.

As noted above, Respondent brought two foreclosure causes of action based upon the default of two separate Notes and Mortgages (styled "Note 1" & "Mortgage 1"; and "Note 2" & "Mortgage 2" herein).

Appellant admitted to executing Note 1 in both his Answer filed August 24, 2018 in the instant case and in his sworn testimony provided at trial. (R. pp. 31; 83 lines16-25; 84 lines 1-3; 86 lines 1-8; 272-273). Appellant further admitted through testimony at trial that he agreed to repayment of the amounts advanced under Note 1. (R. p. 86 lines 1-5). Appellant's Answer and testimony at trial also included an admission that he executed Note 2. (R. pp. 31; 87 lines1-22; 300-301).

Appellant further testified when deposed and at trial that he had no records substantiating his claim that Note 1 was paid off in full. (R. pp. 89 lines11-25; 90-91; 255 lines 18-21; 256-257).

Appellant's counsel also took testimony at trial from a Charles Kevorkian ("Kevorkian" hereinafter). Kevorkian served as a fact witness and is an employee of Appellant under the title "Litigation Foreclosure" case manager. (R. pp. 129 lines 12-25; 130 lines 1-10). Kevorkian testified that his duties in the course of his employment included: management of a small

portfolio of loans that are in default; the review of files and documents, and; preparation for contested and uncontested trials as well as depositions. (R. 130 lines 20-25). Kevorkian further testified that he had performed similar duties for a prior employer which had earlier serviced the subject loans. (R. p 131).

Aside from having a general familiarity with the documents used by lenders and mortgage servicers, Kevorkian testified to having specific knowledge about the subject Notes 1 & 2 gained through the review of records maintained by his employer. (R. pp. 132 lines 19-25; 133 lines 20-25; 148 lines 17-25; 149 lines 1-24). Regarding Notes 1 & 2, Kevorkian testified that both were in payment default, having then owed balances of $353,029.02 and $172,270.76, respectively. (R. pp. 170-178). Kevorkian stated that Respondent was the holder of Notes 1 & 2, and that notices of default were sent to the Appellant for both. (R. pp. 170-178; 293-467).

Kevorkian's testimony also addressed Appellant's unsubstantiated assertion that Note 1 had been paid in full. Appellant's argument regarding this purported payoff consisted solely of pointing to the errant mortgage satisfaction dealt with in Respondent's Declaratory Judgment cause of action. Kevorkian testified that the final payment made by or on behalf of Appellant on Note 1 was submitted on January 31, 2009. As such, this final payment was made over two years after the ineffectual Lost Mortgage Satisfaction had been filed on October 5, 2007 by a party who no longer held Mortgage 1. (R. pp. 168 lines 11-25; 169).

Kevorkian's testimony on behalf of the Respondent was effective in establishing that: a debt was owed by Appellant unto Respondent; that Appellant was in payment default as to the contracts governing repayment of that debt; and the then-current amounts owed under said contracts. As noted above, the trial court found that "the customer file of [Appellant] James E Turner including the respective notes and mortgages and payment history were properly admitted under Rule 803 (6) SCRE and S. C. Code of Laws Section 19 – 5 – 510." (R. 18). The lower Court also found that "[t]he [Appellant's] witness testimony as to the debt was properly admitted as the witness testified that he had reviewed the payment history previously entered into evidence in Plaintiff's Motion for Summary Judgment." (*Id*.).

"Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. *S.C. R. Evid. 801(c)*. Hearsay is inadmissible unless an exception or an exclusion applies. *S.C. R. Evid. 802*. One such exception is the business records exception, which states: A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or

diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness. S.C. R. Evid. 803(6)." *State v. Thompson*, 420 S.C. 386, 392, 803 S.E.2d 44, 47 (Ct. App. 2017). Respondent's witness, having testified to his experience with his employer was properly deemed a qualified witness in this matter. Further, Kevorkian's testimony clearly states that his familiarity with the subject accounts stemmed from a review of records on the Subject Notes, Mortgages, and accounts as kept by his employer in the ordinary course of his employer's regularly conducted business activities. (R. pp. 132 lines 19-25; 133; 134 lines 1-11; 233 lines 19-25; 234-242.

The relevant account documents were also properly authenticated pursuant to S.C. R. Evid. 901. "A party offering evidence must meet '[t]he requirement of authentication . . . as a condition precedent to admissibility.' Rule 901(a), SCRE. The authentication requirement 'is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.' '[T]he burden to authenticate . . . is not high' and requires only that the proponent 'offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.' *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct. App. 2015) (*citing United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014); *901(a) S.C. R. Evid.*; & *29A Am. Jur. 2d Evidence § 1045* (2008). The Master-in-Equity was rightfully satisfied with the foundation laid through Kevorkian's testimony.

Appellant's Initial Brief seems to misconstrue the effect of the findings in *Deep Keel, LLC v. Atl. Private Equity Grp., LLC* upon the proof offered by Respondent. *App. Br. 11-14*. In *Deep Keel*, loan documents offered by the creditor were considered authenticated under S.C. R. Evid. 901(b)(1), since its member's testimony showed he had personal knowledge that the loan documents were the same ones the bank provided to him when the creditor purchased the asset the loan documents represented. Said loan documents were also considered as having been authenticated under Rule 901(b)(4), and were self-authenticating under S.C. R. Evid. 902(9). As such, the loan documents were not hearsay under S.C. R. Evid. 801(c). The member's testimony as to the deficiency was hearsay and was not admissible under S.C. R. Evid. 803(6), which allowed for the admission of a document but not testimony describing it, and did not apply to

admit live testimony offered to prove the contents of a record containing hearsay when that record was not offered in evidence. Put another way, Rule 803(6) S.C. R. Evid. permits the introduction of documents, but does not allow a witness to testify as to the content of documents that are not of record.

There was some controversy at trial as to the admission of the relevant payment histories for the subject accounts. (R. pp. 319-467). During Kevorkian's cross examination, Respondent's counsel stated that he had neglected to enter the payment histories into evidence as they had been inadvertently "laid on the floor." (R. p. 181 lines 21-25). The Master-in-Equity later allowed the evidence to be admitted on redirect. The Master's decision was correct, as it served the ends of justice in this case, and was also clearly made within his authority. "The scope of redirect examination is a matter within the discretion of the trial judge." *Levy v. Outdoor Resorts of S.C.*, 304 S.C. 427, 431, 405 S.E.2d 387, 390 (1991) (*citing State v. Stroman*, 281 S.C. 508, 316 S.E.2d 395 (1984).

Further, as Kevorkian had already testified to his review of the documents, the redirect examination did not delve into an altogether new matter. *Id*. Additionally, in his cross examination, Appellant's counsel asked questions of Kevorkian which could only be answered through reference to the relevant payment histories, opening the door to further testimony on the matter in a redirect examination. (R. p. 185) (*see also 611(d) S.C. R. Evid.*). Rule 611(d) S.C. R. Evid. also explicitly states that a witness may be re-examined as to the same matters to which they testified prior at the discretion of the court. Therefore, the Master-in-Equity's admission of the payment histories on redirect was not only permissible but was the proper decision under these circumstances.

As indicated above, Respondent provided ample and emphatic evidence indicating that the Appellant owed a debt unto Respondent and that Appellant was in payment default as to the contracts governing that debt.

(ii) The Subject Debts were Secured by Mortgages on Real Property and Respondent, as holder of the subject Notes and Mortgages, was in a Position to Enforce its Rights Under Both.

AS TO MORTGAGE 1

Appellant admitted to executing Mortgage 1 in both his Answer filed in the instant case and in his sworn testimony provided at trial. (R. pp. 31; 83 lines 1-24). As is outlined in

Plaintiff's Complaint and as indicated by documents recorded in the Richland County Register of Deeds, Mortgage 1 was initially executed by the Appellant unto Emergent Mortgage Corp. and recorded on December 19, 1996 in Book 2058 at Page 516. Subsequently through an Assignment of Mortgage recorded December 19, 1996 in Book M2058 at Page 522, Mortgage 1 was assigned by Emergent Mortgage Corporation unto Carolina Investors, Inc. Following that, Carolina Investors, Inc. assigned the subject mortgage unto Appellant as evidenced by that Affidavit of Lost Assignment recorded May 25, 2018 in Book 2306 at Page 1330. (R. pp. 267-268; 274-279; 289).

Appellant has not made any contention with the authenticity of the original mortgage, the collateral described therein, or the initial assignment. Regarding the aforesaid Affidavit of Lost Assignment, Kevorkian testified that the document "reflect[ed] that there was an assignment of mortgage [1] from Carolina Investors to the [Respondent], and that it was misplaced." (R. pp. 161; 287-288). Respondent's ownership of Mortgage 1 was substantiated by the introduction of records establishing that Green Tree (assignee of Mortgage 1 on whose behalf Respondent is acting as trustee) purchased the right to repayment of Mortgage 1. (R. pp. 155 lines 17-25; 156; 161 lines 17-25; 280-281). As the Lost Mortgage Satisfaction had been executed by a representative of "Ditech Financial, LLC f/k/a Green Tree Servicing, LLC," Respondent further established that Green Tree had merged with and into Ditech Financial, LLC. (R. pp. 157-159; 282-288.) Said Affidavit of Lost Assignment states within the document that it was made necessary as prior holder Carolina Investors was "no longer in business and a replacement assignment [was] therefore unavailable." (R. p. 287 ¶ 4). The Affidavit of Lost Assignment also complies with all of the relevant requirements included in S.C. Code Ann. §§ 30-7-40 & 50.

In light of the foregoing, Respondent submitted evidence sufficiently indicating that it was the Holder of Mortgage 1 and as such was entitled to enforce its rights under the contract. Moreover, it has been long established in South Carolina that secondary evidence such as the subject Affidavit of Lost Assignment may be used to establish the assignment of a mortgage, "[w]e not think his Honor was in error in finding that the papers were lost, and in allowing the contents of the assignment to be shown by secondary evidence. *Talbert v. Talbert*, 97 S.C. 136, 144, 81 S.E. 644, 647 (1914).

Buttressing Respondent's standing as the real party in interest as to Mortgage 1 is the fact that, "[t]he assignment of a note secured by a mortgage carries with it an assignment of the

mortgage." *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013). The subject Note 1, which corresponds to Mortgage 1 and was admitted into evidence without objection by opposing counsel includes an allonge executed by a representative of prior holder Emergent unto Green Tree (again, the party on whose behalf Respondent is acting as trustee). (R. pp. 151; 272-273).

As referenced herein, Appellant has frequently pointed to the errant Lost Mortgage Satisfaction as evidence that his assertion of the underlying debt secured by Mortgage 1 has been paid in full. This assertion has been repeated despite the absolute impossibility of Emergent Mortgage Corp., the issuer, having the authority to submit a satisfaction following its alienation of the underlying security interest and right to repayment of the debt. "An assignee stands in the shoes of its assignor." *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013). As such, at the time of the Lost Mortgage Satisfaction's recordation on October 5, 2007, Respondent was the only party in the world who could have recorded a satisfaction of Mortgage 1 with effective authority. Emergent, as the original mortgagee had relinquished that right on December 19, 1996. The date upon which its assignment to Carolina Investors was recorded. For the foregoing reasons Respondent was the proper party to bring a foreclosure action against Mortgage 1.

AS TO MORTGAGE 2

Please note that the Initial Brief of Appellant seems to conflate the facts surrounding the Respondent's acquisition of Mortgage 2. Said brief in § 'E' refers to Mortgage 2 but incorrectly cites Respondent's Exhibit 15, the Affidavit of Lost Assignment referred to herein above, as being applicable to Mortgage 2. This statement is incorrect, as the Affidavit of Lost Assignment is incontrovertibly pertinent to Mortgage 1.

Respondent's acquisition of Mortgage 2 is rather mundane and is indicated in the public records found at the offices of the Richland County Register of Deeds. As noticed herein, Appellant executed and delivered Mortgage 2 on February 12, 1997, unto Green Tree Financial Servicing Corporation its successors and their assigns. On February 21, 1997, said Mortgage was recorded in the Office of the Register of Deeds for Richland County in Book 2080 at Page 0253, and that by an Assignment of Mortgage dated April 16, 2018 and recorded April 27, 2018 in Book 2298 at Page 2401, the subject mortgage was assigned by Ditech Financial LLC f/k/a

Green Tree Servicing LLC f/k/a Conseco Finance Servicing Corp. f/k/a Green Tree Financial Servicing Corporation unto the Respondent. (R. pp. 302-309).

Appellant introduced a single exhibit at trial, an unrecorded assignment executed on or about March 7, 1997 by an agent of Green Tree Financial Servicing Corporation unto a First Trust National Association. *App. Ex. 1*. It is important to note that this assignment is ineffective as it does not comply with S.C. Code Ann. § 30-7-50. Notably, the assignment was not "witnessed as mortgages of real property are required to be witnessed" in South Carolina. *Id*. Put another way, the assignment was not witnessed by a second witness in addition to the notary public. Appellant's Exhibit 1 was also deficient under S.C. Code Ann. § 30-7-50 in that it failed to include address of the mortgagee and the book, page, and date of recording of the original mortgage. Further, there is no extrinsic evidence whatsoever that the purported assignor intended to assign the mortgage and did not abandon the purported assignment after its execution.

Finally, South Carolina follows a race-notice recording statute for mortgage assignments. *S.C. Code Ann. § 30-7-10*. As mentioned above, Appellant's Exhibit 1 was not recorded and as such the assignment of Mortgage 2 into Respondence takes priority. Given the facts outlined above, Respondent was clearly the holder of Mortgage 2 and the proper party to bring a foreclosure action to enforce its rights as to Mortgage 2.

CONCLUSION

For the foregoing reasons, Respondent has established the debts owed by Appellant along with Appellant's default on said debts. From the date upon which this matter was filed, Appellant has acted solely to delay Respondent's pursuit of its rights under the subject contracts. Respondent respectfully requests that this Court affirm the ruling of the Master-in-Equity. Respondent also notes for the Court that the sale of the subject properties has already been adjudged as allowed to move forward, and that a judicial sale has not yet occurred only because of Appellant's pending bankruptcy suit filed in the District of South Carolina.

RESPECTFULLY SUBMITTED

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HE1……Respondent,

vs.

James E. Turner, a/k/a James Turner, Sr……..Appellant.

PROOF OF SERVICE

I, Jason Hunter certify that I have served the foregoing Final Brief of Respondent in this matter on May 7, 2025, by mailing it to opposing counsel addressed as follows:

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