

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

MAY 14 2025

Joseph M. Strickland, Master-in-Equity

SC Court of Appeals

Appellate Case No. 2024-001719

U.S. Bank Trust National Association, not in its Individual Capacity, but solely as owner Trustee for the Legacy Trust 2020-GSI, Rushmore Loan Servicing and Goldman Sach Mortgage Company,,.....Respondent,

vs.

Jacob Fulks; Florene Fulks.,.....Appellants.

**MOTION TO CORRECT MISTAKE OR SCRIVENER ERROR IN
CAPTION OF THE APPEAL OR IN THE ALTERNATIVE TO DISMISS
RESPONDENTS RUSHMORE LOAN SERVICING, LLC AND GOLDMAN
SACH MORTGAGE COMPANY FROM THE APPEAL**

COMES NOW Appellants, Jacob Fulks and Florene Fulks, (The Fulks) pursuant to Rule 240(a) of the South Carolina Appellate Court Rules (SCACR), and respectfully move this Court to correct caption of the appeal or dismiss the appeal against Respondents Rushmore Loan Servicing, LLC and Goldman Sachs Mortgage Company, and in support thereof state as follows:

Appellants mistakenly included Rushmore Loan Servicing, LLC and Goldman Sachs Mortgage Company in the caption and other filings in this appeal as well as

their pleadings and other filings in the trial court due to limited knowledge of court proceedings, inaccurate legal advice and misunderstanding of South Carolina procedural rules while acting pro se. Appellants could not afford an attorney to defend this lawsuit, therefore Appellants mistakenly believed these entities were also parties because of their presumed roles in servicing and holding the mortgage, and that they were represented by the same law firm as the properly named respondent, U.S. Bank Trust National... Appellants later felt this belief was supported by the fact that the three prior attorneys for U.S. Bank Trust National never indicated or otherwise mention until recently that they were not the legal counsel for the other two respondents. The Fulks acknowledge that due to this misunderstanding, neither Rushmore Loan Servicing, LLC nor Goldman Sachs Mortgage Company was ever served with the counterclaims or any other pleading, and thus the neither this court nor the trial ever obtained personal jurisdiction over them.

Appellants now recognize that the inclusion of these entities was a mistake or scrivener's error. South Carolina courts have acknowledged that such clerical or inadvertent inclusions can be corrected. See *Robinson v. Robinson*, 619 SE 2d 425 - SC Supreme Court 2005 (recognizing and correcting scrivener's error in affidavit); *Dion v. Ravenel, Eiserhardt Associates*, 316 S.C. 226449 S.E.2d 251 (a clerical error is defined as a mistake in writing or copying). *Holroyd v. Requa*, 603 SE 2d 417 - SC: Court of Appeals 2004 ("Our courts have corrected scriveners' errors when warranted. See *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 7, 524 S.E.2d 416, 419

(Ct.App.1999) (finding that a party was not bound by a scrivener's error regarding commencement time on insurance policy).

Because Rushmore and Goldman Sachs were never served with the counterclaims, the court lacked personal jurisdiction over them. A court generally obtains personal jurisdiction by the service of a summons. *Ex parte S.C. Dep't of Revenue*, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct.App.2002) (citing *State v. Sanders*, 118 S.C. 498, 502, 110 S.E. 808, 810 (1920) ("The purpose of the summons is to acquire jurisdiction of the person of the defendant. . .")). See *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006) (a court must have personal jurisdiction to issue binding rulings). No adverse judgment has been issued against Rushmore nor Goldman Sach thus dismissing them from the appeal will not impact any of the on-going litigation neither in this court nor the trial court. The Fulks have also filed a motion to dismiss Rushmore and Goldman Sach in the trial court since the court never had jurisdiction over them in the first place.

However, U.S. Bank Trust National was properly served with pleading, appeared, and fully participated in the trial proceedings, thereby submitting to the trial and this court's jurisdiction. *Jenkinson v. Murrow Brothers Seed Co., Inc.*, 249 SE 2d 780 - SC Supreme Court 1978 ("(A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's. This motion does not affect the claims against U.S. Bank National Trust, who remains properly before this Court and there is no prejudice against U.S. Bank National Trust

in dismissing the other two respondents from the appeal. Furthermore, U.S. Bank did not allege in its letter to the court dated May 8, 2025, that it was prejudiced by the error. *Moody v Dickinson*, 54 S.C. 526, 32 S.E. 563 (1899) (a court may allow an appellant to correct a mere clerical error...where there is no prejudice to the appellee[respondent])

In further support of this motion, The Fulks have attached an affidavit executed by both Appellants explaining the circumstances of the inclusion of the two parties and confirming the lack of service.

WHEREFORE, Appellants respectfully request that the case caption be amended accordingly and, in the alternative because the Court lacks jurisdiction over Rushmore Loan Servicing, LLC and Goldman Sachs Mortgage Company, they be dismissed from the appeal.

Respectfully submitted,

Jacob Fulks

Florene Fulks

Jacob Fulks and Florene Fulks,

140 Watson Way

Columbia, South Carolina 29229

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Attorney for Plaintiff

Sean Foester/Bar No. 77466

R. Brooks Wright Rogers

Roger Townsend, LLC

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Columbia, SC 29201

sean.foester@rogerstownsend.com

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**AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS APPEAL
AGAINST RUSHMORE LOAN SERVICING, LLC AND GOLDMAN SACHS
MORTGAGE COMPANY**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

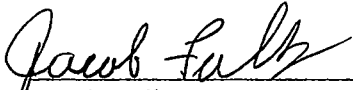
BEFORE ME, the undersigned notary public, personally appeared Jacob Fulks and Florene Fulks, who, being first duly sworn, deposed and stated as follows:

1. We are the Appellants in the above-captioned matter and are fully competent to make this affidavit. We make this affidavit in support of our Motion to Dismiss the Appeal against Respondents Rushmore Loan Servicing, LLC and Goldman Sachs Mortgage Company as well as based upon our personal knowledge of the issues.
2. At the time we filed our answer and counterclaims and other pleadings in the trial court, we were new to maneuvering the court system were and still are self-represented and relied on incorrect legal advice suggesting we should include


Rushmore Loan Servicing, LLC and Goldman Sachs Mortgage Company to the caption as parties.

3. We believed Rushmore was a proper party because it serviced the mortgage loan, and we received monthly loan statements from Rushmore and was unclear of U.S. Bank Trust National role in the case. We were advised and believed that Goldman Sachs held the mortgage. We were also under the mistaken impression that all parties were represented by the same law firm and that service on one respondent was sufficient for all.
4. Based on this misunderstanding, we included Rushmore and Goldman Sachs in the caption and erroneously certified service. We have now learned more about the legal process and now know this was incorrect. These parties were never served and never appeared in the lower court proceedings.
5. We understand that including these parties was both a scrivener's error and an example of improper joinder under Rule 20(a), SCRCP, because there was no basis for joint relief or common factual or legal issues specific to them. They are not necessary parties to this appeal.
6. We respectfully request the Court dismiss the appeal against Rushmore Loan Servicing, LLC and Goldman Sachs Mortgage Company and amend the caption accordingly.
7. This affidavit is made in good faith and not for the purpose of delay or prejudice.

FURTHER AFFIANTS SAYETH NAUGHT.




Jacob Fulks

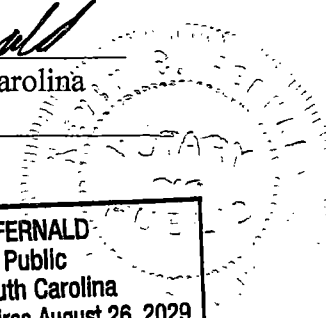


Florene Fulks

Sworn to and subscribed before me
this 14 day of may, 2025.



Notary Public for South Carolina
My Commission Expires: _____


KEVIN C FERNALD
Notary Public
State of South Carolina
My Commission Expires August 26, 2029

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PROOF OF SERVICE

We certify that we have served the foregoing motion to dismiss Rushmore Loan
Servicing, LLC and Goldman Sach Mortgage Company and affidavit in support on
05/13/2025 by emailing and mailing it to counsel for the Respondent at the email and
address noted below.

Attorney for Respondent, Sean Foester, S.C./Bar No. 77466, Roger Townsend, LLC
1221 Main Street, 14th Floor, Columbia, SC 29201,
sean.foester@rogerstownsend.com

Respectfully submitted,

Date: May 14, 2025

Jacob Fulks

Florene Fulks

Jacob Fulks/Florene Fulks.

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