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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
ALAN D. CLEMMONS, MASTER-IN-EQUITY

Appellate Case No. 2025-000708
Lower Court Case No. 2023-CP-26-06121

United States of America acting through the
Rural Housing Service or successor agency,
United States Department of Agriculture, ... Appellant

v.

Eric M. Vaughn and South Carolina Department of Revenue .... Respondents

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INITIAL BRIEF OF APPELLANT UNITED STATES OF AMERICA, ACTING THROUGH THE RURAL HOUSING SERVICE OR SUCCESSOR AGENCY, UNITED STATES DEPARTMENT OF AGRICULTURE

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in determining Appellant United States of America, acting through the Rural Housing Service or successor agency, United States Department of Agriculture ("Appellant") did not meet its burden of proof regarding the fees charged to Respondent Eric M. Vaughn's ("Respondent") account for amounts advanced and/or paid for real property taxes, insurance premiums, and caretaking, maintenance and upkeep of the Property described hereinbelow, and was it error for the trial court to require Appellant to provide additional evidence related thereto?

2. Did the trial court err in raising and relying upon affirmative and/or other defenses not asserted by Respondent in limiting the debt owed by reducing the collectible and/or accrued interest due on the debt instruments described hereinbelow and associated fees Appellant paid on Respondent's account for real property taxes, insurance premiums, and caretaking, maintenance and upkeep?

3. Did the trial court err in reducing the amount of interest owed and fees assessed for the payment of real property taxes, insurance premiums, and fees associated with caretaking, maintenance, and upkeep under the unambiguous debt instruments described hereinbelow, and does the same constitute an impermissible alteration and/or amendment thereof when the trial court's only duty was to enforce same?

STATEMENT OF THE CASE

This is a default matter brought by Appellant to foreclose a Mortgage of Real Estate ("Mortgage") executed by Respondent. The Mortgage secures amounts owed under a Promissory Note and Subsidy Repayment Agreement ("Subsidy") also executed by Respondent (the Note, Subsidy, and Mortgage are sometimes collectively referred to herein as "Loan Documents"). The Mortgage encumbers real property owned by Respondent located in the County of Horry, State of South Carolina, that has Horry County TMS # 150-17-11-033 and is commonly referred to as 615 Ford Circle, Conway, South Carolina 29526.

At the time Appellant filed the Summons and Complaint on October 3, 2023, Respondent had failed and refused to make the monthly payments due under the Note and Mortgage. Also, Appellant had declared Respondent in default under the terms of the Loan Documents, accelerated the entire indebtedness owed, and declared the same to be due and payable. Respondent did not file an answer or responsive pleading after he was served with the Summons and Complaint. In other words, he did not deny the allegations of Appellant's Complaint nor did he assert any defenses, affirmative or otherwise.

Appellant's counsel filed an Affidavit of Default on July 18, 2024, and the matter was referred to the Honorable Alan D. Clemmons, as Master in Equity for Horry County ("Master"), by Order of Reference filed July 18, 2024.

A final hearing took place on October 8, 2024 before the Master at which Appellant's counsel was the only attendee besides Court staff. Respondent did not appear despite being notice of the hearing nor has he made any appearance in this matter whatsoever.

During the hearing, Appellant presented evidence and testimony as to the Loan Documents, the default thereunder, and the amount due. Afterward, the Master questioned the amount claimed

to be due, the components of the debt, , and other matters, including but not limited to the length of time between the date of Respondent's default under the Note and Mortgage and the institution of this matter and the effect the same had on the accrued interest, advances made by the Appellant for the payment of real estate taxes and insurance, and the amount Appellant advanced related to the Property's maintenance. The Master left the hearing open for Appellant to provide him with the additional information requested (to include but not be limited to canceled checks and/or invoices for payment of real property taxes and insurance). Appellant's counsel provided what it could by correspondence sent to the Master and served upon Respondent on November 8, 2024

Thereafter, a Judgment of Foreclosure and Order for Sale ("Judgment") was entered on February 10, 2025 which determined that Appellant failed to provide proof necessary (ie: cancelled checks and insurance declaration pages, and invoices) to satisfy the Master that Appellant's advancement for real property taxes, insurance, and caretaking and maintenance were properly charged to Respondent's account. The Master also determined Appellant sat on its rights in initiating and finalizing the foreclosure, and, as a result, the Judgment limited Appellant's interest recovery to two years from Respondent's default. As a result, the Master reduced the total debt owed from $142,003.16 to $92,861.30.

Appellant timely filed a Motion to Reconsider, Alter or Amend on February 20, 2025 ("Motion to Reconsider"). The Master summarily denied the Motion to Reconsider by Order Denying Motion to Reconsider, Alter, or Amend ("Order Denying Reconsideration") without a hearing and without acknowledging that Appellant provided additional uncontested evidence and documentation to support Appellant's advancement of real property taxes and insurance subsequent to the hearing. Both the Judgment and the Order Denying Reconsideration appear to raise the standard of proof required in this default foreclosure matter.

This appeal arises from the Master's reduction of the debt owed under the Loan Documents.

STATEMENT OF FACTS

Heretofore, on April 5, 2010, Respondent made, executed and delivered to the Appellant the Note in the original principal amount of Eighty Thousand and 00/100 ($80,000.00) Dollars payable on the terms and conditions contained therein. (Ex. A, Oct. 8, 2024 Record of Hr'g filed Oct. 7, 2024). The Note provides interest on the principal amount due would accrue interest at the rate of four and 87.5/100 (4.875%) per annum with the full amount being due on or before April 5, 2043. Under the Note, Respondent also agreed to repayment of the subsidy granted in the form of payment assistance under Appellant's regulations and as set forth in the Subsidy. Id.

The Note also provides if Respondent would be in default if he failed to make the monthly payments, and, upon an occurrence of default, Appellant could accelerate the entire indebtedness then due and require Respondent to immediately pay the amount of unpaid principal, all accrued interest, and any late charges then due. Id. Additionally, the Note provides interest would continue to accrue on past due principal after default, and Appellant could require Respondent to pay all costs and expenses associated with the collection of amounts due thereunder, including reasonable attorney's fees. Id. Further, Respondent would be charged a late fee of four percent (4%) of any past due payment of principal and interest if his payment was more than fifteen (15) days past due. Id.

As described above, Respondent executed the Subsidy in which he agreed to repay the subsidy received as part of the transaction represented by the Note and the Mortgage. (Ex. B, Oct. 8, 2024 Record of Hr'g filed Oct 7, 2024).

To secure amounts owed under the Note and Subsidy, Respondent executed the Mortgage. (Ex. C, Oct. 8, 2024 Record of Hr'g filed Oct 7, 2024). The Mortgage is dated contemporaneous with Note and Subsidy and was recorded in the Office of the Register of Deeds for Horry County April 6, 2010 in Book 5244 at Page 128. Important to this appeal, the Mortgage specifically provides,

> This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions modifications of the Note (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the property covered by this Security instrument; (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note, and (d) the recapture of any payment assistance and subsidy which may be granted to the Borrower..... Id.

Regarding the payment of real property taxes and insurance, the Mortgage provides, "Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument......if any" and

> Borrower shall keep the improvements now existing and hereafter erected or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards.....If Borrower fails to maintain coverage described above, at Lender's option, Lender may obtain coverage to protect Lender's rights in the Property pursuant to paragraph 7." (¶¶ 2 and 5, Ex. C, Oct. 8, 2024 Record of Hr'g).

Paragraph 7 of the Mortgage specifically states:

> "If Borrower fails to perform the covenants and agreements contained in this instrument....then Lender may do and pay whatever is necessary to protect the value of the Property and the Lender's right in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument......Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument." (¶7, Ex. C, Oct. 8, 2024 Record of Hr'g filed October 7, 2024).

The Mortgage further provides that,

> **SHOULD DEFAULT** occur in the performance or discharge of any obligation in this instrument or secured by this instrument......Lender, at its option, with or without notice, may: (a) declare the entire amount unpaid under the note and any

> indebtedness to Lender hereby secured immediately due and payable (b) for the account of Borrower incur and pay reasonable expenses for repair or maintenance of the Property....(d) foreclose this instrument as provided herein by law, and (e) enforce any and all rights and remedies provided herein or by present or future law. (¶ 22, Ex. C, October 8, 2024 Record of Hr'g filed Oct 7, 2024).

Thereafter, Respondent failed to make his payments of principal and interest under the Note and Mortgage, failed to pay the real property taxes charged against the Property, and failed to keep the same insured. (Ex. D, Oct. 8, 2024 Record of Hr'g filed Oct 7, 2024; ¶¶ 13, 15, Feb. 10, 2025 Judgment). As a result, Appellant took steps to insure the real property taxes assessed against the Property were paid, advanced funds for insurance premiums, and expended funds for property maintenance and upkeep. Id. Appellant's records presented at the hearing indicate Respondent is/was delinquent for the payment due August 5, 2018 and thereafter. (Ex. D, Oct. 8, 2024 Record of Hr'g filed Oct 7, 2024).

Prior to the date by which all amounts due under the Loan Documents were to be paid, Appellant held Respondent in default, accelerated the entire indebtedness, declared the same to be immediately due and owing, and brought the underlying action to foreclose the Mortgage. (Feb. 10, 2025 Judgment)

Appellant filed the case on appeal on October 3, 2023 by filing of a *Lis Pendens*, Summons, and Complaint, and Respondent was served with the same on April 13, 2024. (Oct. 3, 2023 *Lis Pendens*, Summons, and Compl; April 17, 2024 Aff. of Service). Respondent did not serve an answer or other responsive pleading on Appellant's counsel within thirty (30) days of service of the Summons and Complaint, nor did he make an appearance, and, as a result, Appellant's counsel filed the Affidavit of Default described above. (July 18, 2024 Aff. of Default) The case was referred to the Master as shown by the Order of Reference filed July 18, 2024 (July 18, 2024 Order of Reference) The final hearing was scheduled for October 8, 2024 at 11:00 A.M. to take place *via*

the video conferencing platform Webex.com, and the Respondent sent a copy of the Notice of Hearing. (Sept 4, 2024, Notice of Hr'g for Oct. 8, 2024 Hr'g).

At the hearing, Appellant presented copies of the Note, Subsidy, Mortgage, and an Affidavit of Debt executed by one of Appellant's records custodians, Angela Woods-Bargney, Foreclosure Specialist, all of which were uncontested and admitted into evidence. (Exs. A, B, C, and D Ocb. 8, 2024 Record of Hr'g) Appellant also presented an Affidavit of Attorney's Fees and Costs. (Oct. 8, 2024 Aff. of Att'y Fees and Costs). The Affidavit of Debt provides an itemized statement of debt indicating the interest charged, the escrow fees (taxes and insurance) advanced by Appellant and charged on Respondent's account, and a breakdown of the property preservation and/or caretaking fees advanced. (Ex. D, Oct. 8, 2023 Record of Hr'g). Included as an exhibit to the Affidavit of Debt is Appellant's "payoff funds panel" and fee breakdown differentiating advances for "negative escrow", "caretaking/maintenance", and Appellant's attorney's fees and costs then paid. Id. As discussed above, the Master questioned the components of the debt and the purported delay in the institution of this matter. (lns 7-16, pg. 6, Oct. 8, 2025 Tr. of Hr'g). Also, the hearing was left open so Appellant could obtain information and documentation requested by the Master as to additional proof or evidence of the payment of real property taxes and insurance premiums (copies of cancelled checks and invoices). Id.

Thereafter, on November 8, 2024, Appellant's counsel sent the Master and Respondent additional evidence of the payment of real property taxes and other fees and costs advanced by Appellant. (Nov. 8, 2025 letter from Taylor A. Peace, Esq.) This evidence was uncontested.

Subsequent thereto, the Office of the Master in Equity for Horry County issued an Administrative Memorandum dated February 21, 2025 ("Administrative Memorandum") stating,

> 3. Miscellaneous costs associated with the foreclosure: Miscellaneous costs associated with the foreclosure, including but not limited to, preservation costs,

> inspection costs, repair costs, penalty interest, deferred principal balance, escrow and other cost advances, interest charged on costs, etc. must be supported by invoices, authorized by the loan documents and readily available for the court's review upon request. The Court generally will not consider costs that cannot be substantiated with supporting documents." (emphasis added).
>
> ....
>
> 10. Date of Default: If the date of default is more than two years prior to the filing of the foreclosure, please provide a Certificate of Non-Owner Occupancy if applicable. It is the expectation of the court that counsel be prepared to explain any delays in the filing of the foreclosure after default. (Feb. 21, 2025 Admin. Memo.)

The Administrative Memorandum provides no delineation between a default matter where no Defendant appears, a default matter where a Defendant appears and presents no contest, or a contested matter. Id. It also provides no guidance on what the Master believes to be a reasonable explanation of "any delays in the filing of the foreclosure after default" or the what is to occur if the Master is unsatisfied as to the explanation. Id.

Despite Respondent's lack of objection, contest, or defense to the evidence presented by Appellant, the Master affirmed the reduction in the interest owed based, ultimately, on its dissatisfaction of Appellant's explanation of the delay between the date of default and institution of the matter, apparently, in compliance with the Administrative Memorandum. (Feb. 20, 2025 Order Denying Recons.) It also affirmed its reduction in the real property taxes, insurance premiums advanced on Respondent's behalf as well as the caretaking and property preservation fees charged on Respondent's account. Id.

Appellant timely filed this appeal on April 10, 2025.

STANDARD OF REVIEW

An action to foreclose a mortgage is an action in equity. Fibkins v. Fibkins, 303 S.C. 112, 115, 399 S.E.2d 158, 160 (Ct.App.1990) (internal citations omitted). "In an appeal from an action

in equity, tried by a judge alone, the appellate court may find facts in accordance with our own view of the preponderance of the evidence." U.S. Bank Trust Nat. Ass'n v. Bell, 385, S.C. 364, 373, 684 S.E. 2d 199, 204 (Ct. App. 2009) (internal citations omitted). "However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in a better position to assess the credibility of the witnesses." Pinckney v. Warren, 344, S.C. 282, 387, 544 S.E. 2d 620, 623 (2001). "Moreover, the appellant is not relieved of the burden of convincing the appellate court the trial judge committed error in his findings. Id. at 387-88, 544 S.E. 2d at 623. Additionally, "[a] legal question in an equity case receives review as in law." Sloan v. Greenville County, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct.App.2003). Because questions of law may be decided with no deference to the trial court, this court may correct errors of law in both legal and equitable actions. I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 718-719 (2000). The appellate court's standard of review in equitable matters is the preponderance of the evidence. Williams v. Wilson, 349 S.C. 336, 339–40, 563 S.E.2d 320, 322 (2002).

ARGUMENTS

Appellant argues it met its burden of proof as to the debt (total and components thereof) owed under the Loan Documents as presented at the October 8, 2024 hearing by evidence that was admitted, uncontested, and unobjected. Accordingly, it was error and an abuse of discretion for the Master to require Appellant to produce further and additional evidence of the same. By placing such an additional requirement on Appellant in light of Respondent's lack of contest, objection, or participation whatsoever in this matter, Appellant argues the Master changed the burden of proof and committed error when it reduced the debt allowed. Appellant additionally argues any alteration of the debt based on the Master's *sua sponte* assertion of affirmative or other defenses

when Respondent did not raise the same constitutes an alteration and/or amendment of the Loan Documents and is reversible error.

I. **At the final hearing, Appellant established its debt in full by the preponderance of the evidence and a finding to the contrary is an abuse of discretion tantamount to an alteration of the burden of proof.**

In this matter, Appellant proved its debt in full (total and the components thereof) by the preponderance of the evidence, and, in light of Respondent's failure to appear and participate in this matter whatsoever, the Master's requirements of additional proof related to the debt, is an abuse of discretion constituting reversible error as the same is tantamount to changing the burden of proof.

As mentioned above, an action to foreclose a mortgage is an action in equity. Fibkins v. Fibkins, 303 S.C. at 115, 399 S.E.2d at 160 (Ct.App.1990) (internal citations omitted). To make out its *prima facie* case, the foreclosing party has to prove by the preponderance of the evidence it is the owner of the note and mortgage and that the defendant has defaulted on the note. U.S. Bank Tr. Nat. Ass'n v. Bell, 385 S.C. 364, 684 S.E.2d 199 (Ct. App. 2009). To establish the prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage note, ownership of the mortgage, and the defendants' default in payment. Id at n.9. In making findings of fact, the Court must determine whether the Plaintiff has met their burden by the preponderance of evidence, simply meaning that the evidence presented by the Plaintiff, as compared with that opposed to it, has more convincing force and is more than likely true than not true. See Pascoe v. Wilson 416 S.C. 628, 788 S.E. 2d 686 (2016) ("A preponderance of the evidence is evidence which convinces the fact finder as to its truth.); Ralph King Anderson Jr., Requests to Charge -Civil, 2002 §1-3A(1) ("...the plaintiff has the burden of proving her case by what is known in the law as the greater weight or the preponderance of the evidence. When we

say that a party must prove a proposition by the greater weight or the preponderance of the evidence, we mean that the evidence on that proposition must be more convincing on that party's side than the other.....When the case ends after all the evidence is presented....if those scales remain evenly balanced or if those scales tip ever so slightly in the defendant's favor, then the plaintiff has not met the required burden of proof....If, on the other hand, those scales tip ever so slightly in Plaintiff's favor, then the plaintiff has me the required burden...."). If Plaintiffs have met their burden of proof, the burden shifts to the Defendants to prove their defenses, if any. See U.S. Bank Tr. Nat. Ass'n v. Bell, 385 S.C. 364, 684 S.E. 2d 1999 (Ct. App. 2009). Once the debt has been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment or accord. Id. As to the debt, under Rule 71(a), SCRCP,

> In foreclosure actions the judge or master shall compute the amounts due the plaintiff and any other claimants, which amounts when determined shall be the total debt due to each. The total debt shall at a minimum set forth clearly the principal due upon default, the rate of interest and interest from date of default to hearing date, any other relevant interest charged, any amounts due or to be credited on escrow items, the taxable costs of collection prior to hearing, and the amount of allowable attorneys fees due and anticipated through conclusion of the action. Also included shall be the rate of interest to accrue until the date of the judgment and the post judgment interest rate. Rule 71(a), SCRCP.

As applied to this matter, Appellant presented the Master with copies of the Note, Subsidy, Mortgage, and an Affidavit of Debt with supporting documentation from a custodian of records which contains an itemization of the amount due at the Final Hearing. (Exs. A, B, C and D, Oct. 8, 2025 Record of Hr'g; Oct 8, 2024 Trans. Of Hr'g.) These documents were admitted into evidence and went uncontested. Id. This is all Appellant is/was required to do in a mortgage foreclosure matter to satisfy its initial burden of proof, and, as a result, Appellant satisfied same. U.S. Bank Tr. Nat. Ass'n v. Bell, 385 S.C. 364, 684 S.E. 2d 1999 (Ct. App. 2009). It was then Respondent's duty to present evidence of any defenses he had or may have had concerning the

debt owed, to include but not be limited to any evidence of payments made or credits due[1]. This would include evidence to rebut Appellant's claims as to the calculation of interest, that it paid the real property taxes due, paid to insure the Property, and took action to maintain, repair, and upkeep the Property. Rather than presenting or raising any such evidence, Respondent failed and refused to appear. (July 8, 2024 Aff. of Default; Tr. of Oct. 8, 2024 Hr'g.) There was no evidence from Respondent for the trial court to consider. Id. Viewed another way, there was no evidence for the Master indicating that Appellant calculated the interest incorrectly, did not pay the real property taxes or insurance for the Property, and did not pay for the caretaking or property preservation fees, which did or may have redounded to Respondent's benefit. (Tr. of Oct. 8, 2024 Hr'g.) Accordingly, there was no evidence before the Master indicating Appellant did not meet its burden of proof.

As a result, any finding by the Master that Appellant did not meet its burden of proof regarding the amount of interest owed, the amount of payments advanced for real property taxes and insurance, and the amounts advanced for caretaking/property preservation fees in light of uncontested and unobjected to evidence is the application of an undefined higher standard of proof more akin to the "clear and convincing evidence" standard that is an abuse of discretion and error of law, and as a result, the Judgment and Order Denying Reconsideration should be amended to remove any reduction in the amount of debt owed.[2] (Feb. 12, 2025 Judgment; March 12, 2025 Order Denying Recons.)

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[1] As Respondent in the underlying case is in default under Rule 55, SCRCP, as evidenced by the Affidavit of Default referenced herein, they are deemed to have admitted the admitted the material allegations of the Complaint (ie: 1) their execution and existence of the Note, Subsidy, and Mortgage at issue, 2) their default in the payment thereunder, 3) the principal due, and 4) Appellant's entitlement to foreclosure. Rule 55, SCRCP. The only matter to be taken up by the trial court is and/or should have been the amount of the debt.

[2] "Clear and convincing" evidence is that "degree of proof which will produce in the [fact finder' a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a preponderance but less than is required for proof beyond a reasonable doubt; it is not clear and unequivocal." Satcher v. Satcher, 351 S.C.

II. <u>Aside from the Appellant meeting its burden of proof and Respondent's failing to present any evidence to rebut the same, it is/was error of law for the Master, *sua sponte*, to raise and rely on defenses, affirmative or otherwise, not raised by Respondents in reducing the debt owed.</u>

In addition, the Master erred as a matter of law by *sua sponte* raising and ruling upon defenses, affirmative or otherwise, when Respondent waived same.

Under Rule 12, SCRCP, "Every defense, in law or in fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third party claim, shall be asserted in the responsive pleading if one is required…." Rule 12(b), SCRCP. "In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy…..*laches*….waiver, and *any other matter constituting an avoidance or affirmative defense*." Rule 8(c), SCRCP (emphasis added). Laches is an affirmative defense and must be pled. <u>Emery v. Smith</u>, 361 S.C. 207, 216 603 S.E.2d 598, 602 (Ct. App. 2004). Similarly, estoppel must be pled as a defense and cannot be bootstrapped on another claim. <u>Wright v. Craft</u>, 372 S.C. 1, 21 640 S.E.2d 486, 497 (Ct. App. 2006). Further, unclean hands must also be pled in order to be asserted as a defense, affirmative or otherwise. <u>See</u> <u>Allendale County Bank v. Cadle</u>, 348 S.C. 367, 377-78, 559 S.E. 2d 342, 347-348 (Ct. App. 2001). This is consistent with the concept, "An affirmative defense is waived if not pled." <u>RIM Assocs. v. Blackwell</u>, 359 S.C. 170, 597 S.E.2d 152 (Ct. App. 2004). Also, it is well settled that ordinarily a party may not receive relief not contemplated in his or her pleadings. Additionally, it is well settled the failure to plead an affirmative defense is deemed a waiver of the right to assert it. <u>Collins Entertainment, Inc. v. White</u>, 363 S.C. 546, 563, 611 S.E.2d 262, 270 (Ct.App.2005). When a defendant asserts an

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477, 483, 570 S.E. 2d 535, 539 (Ct. App. 2002) (citing <u>Anonymous v. State Bd. Of Med. Exam'rs</u>, 329 S.C. 371, 374 n. 2, 496 S.E. 2d 17, 18 n. 2 (1998)).

affirmative defense, he becomes the actor in the suit as to that matter, therefore, he has the burden of providing it by a preponderance of the evidence. The doctrine of unclean hands must be pled in an answer or other responsive pleading or waived. Cole v. S.C. Electric and Gas, 355 S.C. 183, 195, 584 S.E.2d 405, 412 (Ct. App. 2003). See also Allendale Cnty. Bank v. Cadle, 348 S.C. 367, 377, 559 S.E.2d 342, 347-48 (Ct. App. 2001) (noting an argument about the doctrine of unclean hands was not properly before the court for review because the appellants did not plead the doctrine "as an affirmative defense in their answers").

It is uncontested Respondent did not file an answer or other responsive pleading or served the same upon Appellant's counsel within thirty (30) days of service of the Summons and Complaint. (July 18, 2024 Aff. of Default). Respondent was held in default under Rule 55, SCRCP, and failed and refused to participate whatsoever. (July 8, 2024 Aff. of Default; Tr. of Oct. 8, 2024 Hr'g.) Accordingly, Respondent waived any defenses, affirmative or otherwise, raised and ruled upon by the Master, including the doctrine of unclean hands, and it is and/was improper to raise and rule upon on same *sua sponte*. (Feb. 10, 2025 Judgment.) It was also improper for the Master to determine Appellant sat on its rights to timely commence and finalize the mortgage foreclosure and/or reduce the debt owed based on unexplained/unjustified public policy concerns. For the Master to take such action removes him from the position of finder of fact to one of advocate. (Oct. 8, 2024 Record of Hr'g; Feb. 20, 2025 Judgment; March 12, 2025 Order Denying Recons.)

As a result, it was improper for the Master to raise and rule upon affirmative defenses and/or to rely on the same when reducing the debt owed, and the Judgment and Order Denying Reconsideration should be amended as a result.

III. The Master's reduction in the debt owed constitutes an alteration and/or amendment of the Loan Documents, which are, clear and unambiguous and it was impermissible for him to do the same when his only duty is/was to enforce their terms.

Further, the Master's reduction of the debt owed constitutes an improper amendment and/or alteration of the Loan Documents that are clear and unambiguous.

As identified *supra*, the debt owed is determined by looking at the facts and evidence presented. See Rule 71(a), SCRCP. The includes the terms of the Promissory Note, Subsidy, and Mortgage, which are contracts and must be governed by rules of contract construction. See Southern Atlantic Fin. Services, Inc. v. Middleton, 349 S.C. 77, 562 S.E. 2d 482 (Ct. App. 2002)

"The primary objective is to ascertain and give effect to the intentions of the parties." Id. 349 S.C. at 80, 562 S.E. 2d 484 (internal citations omitted). "The parties' intentions are governed by looking at the language of the contract." Id. "If the language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect unless an ambiguity exists." S.C. Dept. of Transp. v. M & T Enters. of Mt. Pleasant, LLC, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct.App.2008). "A contract is ambiguous when its terms are susceptible of more than one interpretation." Southern Atlantic Financial Services, Inc., 349 S.C. at 81, 562 S.E. 2d at 464 (Ct. App. 2002). "Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract. Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 591, 658 S.E. 2d 539, 542 (Ct. App. 2008) (citing Farr v. Duke Power Co., 265 S.C. 356, 362, 218 S.E. 2d 431, 433 (1975)). "Hence, words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." Id. (citing McPherson v. J.E. Sirrine & Co., 206, S.C. 183, 204, 33 S.E. 2d 501, 509 (1945)). "If a contract is unambiguous, a court must enforce it 'according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their

rights carefully.'" Mears Group, Inc. v. Kiawah Island Utility, Inc., 372 F. Supp. 3d 363, 373 (D.S.C. 2019) (citing S.C. Dep't of Transp. v. M&T Enterprises of Mt. Pleasant, LLC, 370, S.C. 465, 667 S.E. 2d 7, 13 (S.C. Ct. App. 2008)).

As applied to this matter, when he signed the Note, Respondent agreed to repay Eighty Thousand and 100/100 ($80,000.00) Dollars, plus interest at the rate of Four and 87.5/100 percent (4.875%) until the full amount has been paid according to the terms of the Note. (Ex. A., Oct. 8, 2024 Record of Hr'g filed Oct 7, 2024). He also agreed to pay that interest rate both before and after any event of default. Id. He further agreed to pay a late fee of 4% of any overdue payment of principal and interest if his monthly payment were made more than fifteen (15) days past its due date. Id. He additionally agreed to repayment of the subsidy and that, if he failed to make the payments when due, Appellant had the ability to declare him in default, accelerate all amounts due, and require him to immediately pay all unpaid principal, all interest that he owes, and any late charges. Id. He further agreed that interest would continue to accrue on any past due principal and interest. Id. These are clear and unambiguous terms and contain no limitation on the time when interest will stop accruing, and/or, at a minimum, Respondent did not appear and interject or appear to interject an ambiguity in them.

Regarding the Mortgage, Respondent agreed,

> This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the property covered by this Security Instrument; (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note, and (d) recapture of any payment assistance and subsidy..... (Ex. C, Oct. 8, 2024 Record of H'rg filed Oct 7, 2024).

He also agreed, "Borrower shall promptly pay when due the principal and interest on the debt evidenced by the Note and any prepayment of any prepayment and late charges due under the

Note."

Respondent further agreed "...Borrower shall pay to Lender on the day monthly payments are due under the Note, a sum for (a) yearly taxes and assessments....(c) yearly hazard or property insurance premiums, and (d) yearly flood insurance premiums...." and Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property....",

> Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term 'extended coverage' and any other hazards, including floods or flooding....If Borrower fails to maintain coverage described above, at Lender's option Lender may obtain coverage to protect Lender's rights in the Property pursuant to Paragraph 7...,

and

> If Borrower fails to perform the covenants and agreements contained in this Security Instrument,....then Lender may do or pay whatever is necessary to protect the value of the Property and Lender's rights in the Property....Although Lender may take action under this paragraph 7, Lender is not required to do so.....Any amounts disbursed under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

(¶¶2, 5, and 7, Ex. C, Oct. 8, 2024 Record of Hr'g.filed Oct 7, 2024)

These terms and provisions of the Mortgage are clear and unambiguous and provide no limitation as to the interest that may accrue, what is required to be proved for the payment of real estate taxes and insurance, and there is no limitation as to the amount Appellant could expend for upkeep, maintenance, and property preservation fees, the payment of which redounds to Respondent's benefit. Id. It also does not appear the Master considered them ambiguous such that they must be considered clear and ambiguous. (Tr. of Oct. 8, 2024 Hr'g.)

As a result, the Master's only duty was to enforce terms of the Note and Mortgage according to their terms, and it did not do so in this matter. See Rhodus v. Goins, 129 S.C. 40, 41,

123 S.E. 645, 645-46 (1924).[3] Rather, the Master, through the Judgment and the Order Denying Reconsideration, created an artificial and arbitrary cutoff date regarding the collection of interest, collection of funds advanced for payment of property taxes and insurance, and property preservation/caretaking fees, none of which appears to have been agreed to by Appellant and Respondent at the time the Loan Documents were executed. (Feb. 20, 2025 Judgment; March 12, 2025 Order Denying Recons.) In other words, the Master re-wrote them in Respondent's favor without his participation whatsoever. This is an action the Master cannot do and should not have taken, especially regarding the calculation interest which can be computed by calculation and constitutes liquidated damages and considering Appellant's satisfaction of the burden of proof and Respondent's lack of participation herein. See Rule 55, SCRCP; Mears Group, Inc. v. Kiawah Island Utility, Inc., 372 F. Supp. 3d 363, 373 (D.S.C. 2019) (citing S.C. Dep't of Transp. v. M&T Enterprises of Mt. Pleasant, LLC, 370, S.C. 465, 667 S.E. 2d 7, 13 (S.C. Ct. App. 2008)).

Accordingly, it was error for the trial court to alter the calculation of the debt owed and reduce the same considering the same is/was not allowed by the Note, Mortgage, or any of the evidence presented at the final hearing.

CONCLUSION

Based on the above, Appellant is entitled to have the Judgement and Order Denying the Motion for Reconsideration reversed to the extent required to allow Appellant the full amount of the debt claimed to be owed and uncontested under the Loan Documents.

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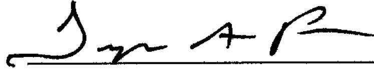
[3] See also Wilmington Sav. Fund Soc'y v. Furmanchik, No. 2015-UP-353, 2015 WL 4275455 (S.C. Ct. App. July 15, 2015

Respectfully Submitted,



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July 24, 2025
Chapin, South Carolina