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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Roy Hemphill, Special Referee
Case No. 2023-CP-19-00117

Appellate Case No. 2024-000649

Mortgage Assets Management, LLC

Respondent,

v.

Any Heirs-At-Law or Devisees of Paulette C. Mims, Deceased, their Heirs, Personal Representatives, Administrators, Successors and Assigns, and All other Persons or Entities entitled to claim through them; All Unknown Persons or Entities with any right, title, estate, interest in or lien upon the real estate described in the Complaint herein; also Any Persons who may be in the Military Service of The United States of America, being a class designated as Richard Roe; and Any Unknown Minors, Incompetent or Imprisoned Person, or Persons Under A Disability being a class designated as John Doe; Stuart Crocket Mims; Julian L. Mims, IV; Florence Adams Mims; the United States of America acting by and through its agency The Department of Housing and Urban Development,

Defendants,

Of whom, Julian Mims IV is the Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Whether the matters or issues the Appellant has designated for argument have any affect upon or relate to the Respondent's foreclosure action and its subsequently entered Special Referee's Order and Judgment of Foreclosure and Sale.

STATEMENT OF THE CASE AND FACTS

This appeal pertains to a foreclosure proceeding filed on April 25, 2023, and the default by reason of death of a Home Equity Conversion Mortgage, also known as a Reverse Mortgage, executed by Paulette C. Mims, Deceased, of which the Respondent is the holder of the Note and Mortgage. (Civil Action Case No. 2023-CP-19-00117). (*Foreclosure Complaint, R.p ____*) The Appellant on May 2, 2023 was personally served a copy of the Summons and Foreclosure Complaint as shown on the Affidavit of Service filed on November 17, 2023. (*Affidavit of Service, R.p ____*) The Appellant failed to file an Answer or any other responsive pleadings to the Foreclosure Complaint as shown by the Affidavit of Default filed on December 18, 2024. (*Affidavit of Default, R.p ____*) An Order of Reference referring this proceeding to The Honorable Roy Hemphill, Special Referee for Edgefield County, South Carolina was filed on December 18, 2024. (*Order of Reference, R.p ____*) A Final Foreclosure Hearing was scheduled, noticed and held on February 19, 2024, and a Special Referee's Order and Judgment of Foreclosure and Sale was entered on that date and filed on February 20, 2024. (*Special Referee's Order and Judgment of Foreclosure and Sale, R.p ____*) A Special Referee's Order and Notice of Sale was filed on February 27, 2024. (*Special Referee's Order and Notice of Sale, R.p ____*) And a Notice of Appeal was filed by the Appellant on May 2, 2024, with the Appellant's Initial Brief being filed and served on July 21, 2025.

ARGUMENT

THE COURT OF APPEALS SHOULD DISMISS THE APPEAL ON THE GROUNDS THAT THE APPELLANT HAS FAILED TO PRESERVE FOR APPEAL THE MATTERS APPELLANT HAS DESIGNATED FOR ARGUMENT IN THE APPELLANT'S INITIAL BRIEF

“To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled on by the trial court.” *Doe v. Doe* 370 S.C. 206, 212, 634 S.E.2d 51, 54 (Ct. App. 2006) (citing *Floyd v. Floyd* 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct. App. 2005)). All issues must be raised and ruled upon the trial court to be preserved for appellant review. *In re McCracken* 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001). Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has consider all relevant facts, law and arguments. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406. 422. 526 S.E.2d 716, 724 (2000). The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case. *Id.*

In review of the Appellant's Initial Brief, it appears to initially reference a Plaintiff's (Respondent's) argument that the estate holds a reverse mortgage balance and fees owed to the Respondent, Mortgage Assets Management, LLC. This argument is consistent with and a reiteration of the issue raised and ruled upon by the trial court. (*Appellant's Initial Brief, R.p* ___) But then it sets out an Appellant's Argument which contains matters and an issue that were not raised and ruled upon by the trial court. It contends that a foreclosure newspaper committed a series of South Carolina Code Section Crimes against the Appellant's farm in Aiken County and Estate of Marie Mims in Edgefield County, and concludes that criminal liability has occurred on

the part of the foreclosure newspaper and requests the return of physical items of the Marie Mims estate. (*Appellant's Initial Brief, R.p ____*)

These matters and this issue have not been preserved for appellant review. Neither were never raised to the trial court in any form or ruled upon by the trial court. No evidence was presented to the trial court to support them, no foreclosure newspaper was made a party to the foreclosure proceeding, and no facts, law or arguments were made to the trial court in relation to them. (*See generally Appellant's Initial Brief, R.p ____*) These matters and this issue have been raised for the first time on appeal and the lower court has never been given the opportunity to properly rule on them after consideration of all relevant facts, law and arguments.

CONCLUSION

Wherefore and based upon the foregoing, the Respondent respectfully submits that this Court should dismiss the Appellant's Appeal and affirm the Special Referee's Order and Judgment of Foreclosure and Sale.

Dated: August 19, 2025

Respectfully Submitted,

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