THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master in Equity

Case No. 2024-CP-38-01428

Appellate Case No. 2025- 001201

Landvest Holdings I, LLC, Respondent,

v.

Fernelephe Ancrum, Appellant.

INITIAL BRIEF OF RESPONDENT

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I. Did the trial court properly order the foreclosure of Appellant's property when Respondent proved Appellant defaulted on a note secured by Appellant's property?

II. Did the court properly dismiss the Appellant's counterclaims when she failed to state a claim as to any statute or offer any evidence?

STATEMENT OF THE CASE

On October 28, 2024, Plaintiff Landvest Holdings, LLC ("Landvest") commenced a foreclosure action against Fernelephe Ancrum ("Ancrum") on property located at 1168 John C. Calhoun Drive, Orangeburg, SC 29115 (the "Property"), based on Ancrum's failure to pay the amount due under a Note secured by the Property. (Complt.) Ancrum was served with the Summons and Complaint on November 22, 2024. (Aff. Serv. Filed Jan 2. 2025). Ancrum did not file any responsive pleading within this case or serve any pleading on Landvest, and Landvest believed Ancrum was in default. (Master Ord. at 2.) A final hearing in this case was held on May 7, 2025. (*Id*. at 1.) Landvest's owner, Benjamin Cognata, testified about the debt giving rise to the foreclosure action. Ancrum appeared at the trial *pro se*. (*Id.* at 1.)

After Ancrum testified that she intended a letter sent to Landvest's lawyer in November 2024 contesting the debt to be her answer, despite the letter never having been filed, Landvest consented to allow Ancrum out of default. (*Id*. at 2.) In her letter/answer, Ancrum requested validation of the debt and "proof of claim" as to the amount owed under the Note to Landvest. (Nov. Ltr.) She also alleged violations of the Fair Credit Reporting Act, Violation of the Fair Debt Collection Practices Act, and mail fraud (collectively the "Consumer Claims.") (*Id*.)

After hearing testimony from Landvest and Ancrum, the Court ruled in favor of Landvest and entered the Master in Equity Order and Judgment of Foreclosure and Sale (the "Order") dated June 10, 2025. (*Id*.) The Order dismissed all of the Consumer Claims and ordered that the Property be sold via judicial sale. (*Id*. at 6-7.) Ancrum filed a Notice of Appeal on June 10, 2025, and an Amended Notice of Appeal on June 17, 2025, both appealing the Order. On June 19, 2025, Landvest filed a Motion for an Appeal Bond pursuant to S.C. Code Ann. § 18-9-170 and Rule 241, SCACR. (Bond Motion.) The bond was granted via Order on Appeal Bond dated July 30, 2025 (the "Bond Order"), and the Master in Equity required Ancrum to deposit $25,000 with the Orangeburg County Clerk of Court by noon on September 5, 2025. (Bond Order at 1-2.). Ancrum failed to pay the Bond and the first judicial sale was held on September 8, 2025, and a deficiency sale was held on October 8, 2025. (Notice of Sale.) Landvest was the only bidder

at $48,833.36, and the Property was deeded to Landvest via judicial deed dated October 28, 2025. (Master Deed.)

STATEMENT OF FACTS

On October 24, 2014, Ancrum executed and delivered to Plaintiff a Promissory Note (the "Note") in the original principal amount of Seventy Thousand Seven Hundred Sixty-Four and 45/100 ($70,764.45) Dollars. (Complt., Trial Tran.) The Note is secured by a Mortgage dated October 24, 2014 (the "Mortgage"), whereby Ancrum mortgaged the Property to Plaintiff. (*Id*.) The Mortgage was recorded on October 30, 2014, in the Orangeburg County Register of Deeds Office in Book 2354, Page 98. (*Id*.) At all relevant times, Ancrum was the current record owner of the Property and the Mortgage was a valid first priority mortgage lien on the Property. (*Id*.) The Note and Mortgage provided that, upon Ancrum's failure to make payments thereunder when due, the entire outstanding balance under the Note and Mortgage shall, at the option of Landvest, become immediately due and payable, and Landvest may foreclose the Mortgage. (*Id*.)

Ancrum defaulted on the Note and Mortgage by failing to make payments when due. After Ancrum defaulted on the loan, Landvest, (through counsel), sent a demand letter to Ancrum on August 30, 2024, accelerating the amount due under the Note and demanding a total of $40,620.69 within fifteen (15) days of the date of the demand. (FDCPA Notice.) Because the loan was made to an individual, out of an abundance of caution, Landvest's counsel sent a notice with the demand pursuant to the Fair Debt Collection Practices Act, 15 USC § 1692 et seq. ("FDCPA"), which stated the origin of the debt and provided that Ancrum had thirty (30) days to dispute the debt being collected. (FDCPA Notice.) However, the Note at issue was not a consumer loan and therefore the FDCPA did not apply. (Trial Tran.)

On or about September 9, 2024, Ancrum sent a document titled "Notice of Dispute; Demand for Validation and Proof of Claim," ("September Validation Request") in response to the demand letter, demanding validation of the debt claimed in the demand letter and requesting documentation concerning the loan. (Ancrum Resp.) In response to the September Validation Request, on September 25, 2024,

Landvest's counsel sent a copy of all of the loan documents and a payment history, validating the debt. (HSB Sept. Ltr Response.)

On October 28, 2024, Landvest filed its foreclosure Complaint. (Complt.) Landvest did not get notice of any answer filed by Ancrum as to the Complaint at the time the Answer was filed. (Trial Tran.) However, Ancrum did send a letter dated November 25, 2024, which largely restated the September Validation Request. (Nov. Letter) Landvest's lawyer sent a copy of the prior validation of debt and additional documents on December 11, 2024, all in an effort to provide information at Ancrum's request. (HSB Dec. Ltr Response.) However, the letters did not appear to be answers to the Complaint and were never filed with the Court. (Trial Tran.)

A final hearing in the Action was held on May 7, 2025. (Trial Tran.) Benjamin Cognata, the sole member of Landvest, testified on behalf of Landvest as to the loan documents and the amount owed under the Note. (*Id.*) Ancrum appeared *pro se* and testified on her own behalf. (*Id.*) At the onset of the trial, Landvest believed that Ancrum was in default, but Ancrum testified that she believed her letters and correspondence to Landvest were sufficient to answer the Complaint. (*Id.*) Landvest consented to allow her letters to be admitted as an answer and counterclaim, and the trial proceeded. (*Id.*)

Cognata testified as to the authenticity of the Note and Mortgage, both of which Ancrum admitted she signed. (*Id.*) Ancrum further admitted she received the money loaned under the Note. (*Id.*) Cognata testified that the Note matured in 2019 and was not paid. (*Id.*) Landvest allowed Ancrum to keep making monthly payments, but she stopped altogether. The amount due on the Note as of May 7, 2025, was $44,298.67. (*Id.*) Cognata further testified that the purpose of the loan was commercial, and that Ancrum used the property to operate a burger restaurant. (*Id.*)

Ancrum testified that she disputed the amount due under the Note and demanded a "proof of claim." (*Id.*) She never articulated exactly what "proof" or "claim" she was referring to, and cited non-applicable bankruptcy and consumer laws. (*Id.*) She also never articulated or admitted any evidence in support of her Consumer Claims. (*Id.*) There was no evidence that she had made payments that were not accounted for by

Landvest, or that Ancrum was not in default under the terms of the Note or Mortgage. (*Id*.) She also never presented any evidence that the Note and Mortgage were consumer and not commercial. (*Id*.)

The Master in Equity issued an order finding that the Note and Mortgage were in default, and that Landvest was entitled to have the Property sold via judicial sale. (Order.) This appeal followed.

STANDARD OF REVIEW

An action to foreclose a real estate mortgage is one in equity. *First Palmetto Sav. Bank, F.S.B. v. Patel*, 344 S.C. 179, 183, 543 S.E.2d 241, 243 (Ct. App. 2001). "The appellate court's standard of review in equitable matters is our own view of the preponderance of the evidence." *Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray*, 419 S.C. 605, 614, 799 S.E.2d 310, 315 (Ct. App. 2017) (quoting *Horry Cty. v. Ray*, 382 S.C. 76, 80, 674 S.E.2d 519, 522 (Ct. App. 2009)). "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 the better position to assess the credibility of the witnesses." *U.S. Bank Tr. Nat. Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) (quoting *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001)). "Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings." *Id*. (quoting *Pinckney*, 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 particular 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, 719 (2000).

ARGUMENT

I. The trial court correctly held that the Note and Mortgage were in default and Landvest was entitled to foreclose on the Property.

"Generally, the party seeking the foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on the debt." *U.S. Bank Tr. Nat. Ass'n v. Bell*, 385 S.C. 364, 374–75, 684 S.E.2d 199, 205 (Ct. App. 2009). "Once the debt and default have been established, the mortgagor has the

burden of establishing a defense to foreclosure." *Id*. (citing *Bandy v. Bandy*, 187 S.C. 410, 413, 197 S.E. 396, 397 (1938)).

Here, at trial, Landvest presented unrebutted evidence that (1) Ancrum executed the Note and Mortgage; (2) the Note and Mortgage were in default due to her failure to make payments when owed; and (3) the amount owed on the Note was $44,298.67. (Trial Tran.) Ancrum admitted that she signed the loan documents and she never presented any evidence at all about payments made, the debt owed, or how the final amount owed was calculated. (Trial Tran.) Therefore, the trial court properly ruled that Landvest met its burden of proof for foreclosure and ordered the sale of the Property.

II. **Ancrum failed to prove any of her counterclaims, and the trial court properly dismissed her claims**.

The Consumer Claims asserted by Ancrum all have specific statutory elements that must be proved by the person making the claim. Other than citing the statutes by name and citation to the United States Code, Ancrum did not identify the specifics of any claim she asserted or produce any evidence showing that Landvest had violated any state or federal law. Further, she did not submit any evidence in opposition to the foreclosure action or in support of her claims, other than repeatedly insisting that she was entitled to "proof of claim." When pressed by the Master in Equity about what she meant by "proof of claim," Ancrum could not articulate any defense or claim against Landvest, other than she wanted proof of the loan.

As set forth above, Landvest acknowledges that it had the burden of proof as to the validity of the debt giving rise to the foreclosure action and believes that all proof related to its claim was met. Because Ancrum failed to properly allege, much less prove, any counterclaim, the trial court properly dismissed all of her Consumer Claims.

CONCLUSION

Based on the above, the Master in Equity did not err by granting judgment at trial in favor of Landvest on its claim of foreclosure and all defenses and counterclaims asserted by Ancrum. For these reasons, the Court should affirm the Master in Equity's ruling.

Respectfully submitted,

s/Mary M. Caskey

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