

FORM 13  
BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
IN THE SUPREME COURT

RECEIVED

Jan 22 2026

SC Court of Appeals

APPEAL FROM BERKELEY COUNTY  
COURT OF COMMON PLEAS  
W.T. GEDDINGS, SPECIAL REFEREE

Case No: 2023-CP-08-00547/2025-0015

U.S. Bank Trust National  
Association, Not in its  
Individual Capacity but Solely  
as Owner Trustee for VRMTG  
Asset Trust,

Respondent,

v.

Betty J. Moultrie aka Betty J.  
Shine, In-dividually and as  
Personal Representative of the  
Estate of Bradford Moultrie aka  
Bradford Willie Moultrie, et al;

Appellant.

FINAL BRIEF OF APPELLANT

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2. The Special Referee erred in denying Appellants Motion to Reconsider.
3. The Foreclosure Judgment is not supported by competent evidence to support the granting of the foreclosure.
4. The denial of Appellants defenses violated the due process.
5. The Special Referee erred in not finding the Backdated Ledger Entities where in Violation of the Binding Modification.
6. The trial referee’s conduct caused a breakdown of judicial integrity and evidentiary procedure and thereby denying the due process for the Appellant.
7. The trial referee did not consider the violation of the Federal Services Standard under 12 CFR § 1026.41 and § 1024.35 as applied to Plaintiff’s Bank Ledgers.

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## **STATEMENT OF ISSUES ON APPEAL**

1. Whether or not the Special Referee erred in denying Appellants' Motion to Reconsider despite the absence of competent evidence supporting foreclosure?
2. Whether or not the trial court erred in granting foreclosure where Appellant denied the material allegations and the record lacks proof of default?
3. Whether or not Appellant was deprived of due process where defenses were not fully heard and considered by Special Referee?
4. Whether or not the Special Referee erred in not finding the Backdated Ledger Entities where in Violation of the Binding Modification.
5. Whether or not the trial referee's conduct caused a breakdown of Judicial Integrity and evidentiary procedure and thereby denying the due process for the Appellant.
6. Whether or not the trial referee did not consider violation of the Federal Services Standard under code of the Federal Regulation 12 CFR § 1026.41 and § 1024.35 as applied to Plaintiff's Bank Ledgers.

## **STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

The Respondent initiated this foreclosure action on February 24, 2023, alleging that the Appellant defaulted on installments payments of the mortgage note secured by Appellant's residence located at 102 Spearhead CT, Summerville, SC 29486, TMS # 233-05-05-022 (ROA, 1). Appellant filed an Answer denying the allegations in their entirety (ROA, 90)

On July 14, 2025, the Special Referee entered an order of foreclosure in favor of Respondent. Appellant timely filed a Motion to Reconsider pursuant to Rule 59 (e), SCRCP (ROA, 99), which was denied on July 14, 2025 (ROA, 130). Appellant thereafter filed Notice of Appeal on August 05, 2025 (ROA, 131).

## **STANDARD OF REVIEW**

In foreclosure proceedings, appellate courts review factual findings for clear error and legal determinations de novo. *Elam v. South Carolina Department of Transportation*, 602 S.E. 2d 772, 361 S.C. 9, 2004 S.C. Including whether foreclosure is supported by sufficient evidence, are reviewed de novo. *I 'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E. 2d 716.

## STATEMENT OF FACTS

Respondent alleged that Appellant failed to pay mortgage installments. Appellant denied all allegations, contending that Respondent failed to produce admissible evidence of default, additional argument raised was Respondent failed to demonstrate proper standing to foreclose, and that foreclosure proceedings were flawed procedurally and substantively. Pursuant to *S.C. Code Rule 29-3-610* this foreclosure action was brought into the circuit court. Despite these denials of Appellant, the Special Referee granted foreclosure without requiring competent proof of default, assignment, or amount due or a complete and accurate accounting from the Plaintiff as required in *S.C. Code 29-3-650*, where the foreclosure requires proof of both the existence of the debt and the default.

## ARGUMENT

### **I. The Special Referee Erred in Denying Appellant's Rule 59 (e) Motion.**

Rule 59 (e) serves to allow corrections of errors before appellate review. *Elam v. SCDOT*, 602 S.E. 2d 772, 361 S.C. 9, 2004 S.C. Appellate identified substantive defects in Respondent's case; lack of admissible proof and failure to establish standing. The Special Referee's summary denial without addressing these issues was an abuse of discretion (ROA, 130).

### **II. The Foreclosure Judgment is Not Supported by Competent Evidence.**

South Carolina courts have consistently held that judgments must be supported by competent and admissible proof. In *Poole vs Jefferson Standard of Life Ins, Co*, the court emphasized that speculative or conclusory statements cannot sustain a judgment. Similarly, in *Kitchen Planners vs Friedman*, the court made clear documentary evidence that must be properly authenticated and supported by testimony to be relied upon. There was no admissible testimony to support the Plaintiff's position of default and no accurate accounting and no certified records from the records custodian of Plaintiff (ROA, 38-89; 97-98).

### **III. The Proceedings Denied Appellant Due Process.**

Due process requires a meaningful opportunity to be heard. *I 'On, LLC*. Appellant raised defenses, including lack of standing, improper calculation of debt, and lack of proof of default which were never substantively considered by Special Referee. By ignoring these defenses, objections and granting judgment solely on the face of the allegations, the Special Referee (ROA, 97-98).

### **IV. The Special Referee erred Not Finding the Backdated Ledger Entries where in Violation of the Binding Modification.**

That Appellants respectfully move this Court to reverse the foreclosure judgment pursuant to Rule 59(e), SCRPC. The judgment must be reversed because it was entered on a record

that materially conflicts with binding contractual evidence and was adjudicated under circumstances that denied Appellants a fair and impartial hearing (ROA, 99-101).

**V. The Trial Referee's Conduct caused a Breakdown of Judicial Integrity and Evidentiary Procedure and thereby denying the due process for the Appellant.**

The Court issued a final judgment without establishing a formal evidentiary record; Appellants were not permitted to speak until after the ruling had already been rendered. Disregard for evidentiary integrity as outlined Rule 43(a), SCRCP and Rule 603, SCRE. Combined with the denial of cross-examination, lack of rebuttal opportunity, and admission of unauthenticated evidence acted as these actions which deprived Appellants of a fundamentally fair hearing, undermining the validity of the judgment and alleging incompetent and uncertified hearsay to be used.

**VI. The trial referee did not consider violation of the Federal Services Standard under 12 CFR § 1026.41 and § 1024.35 as applied to Bank Ledger.**

That the Respondent's actions have appeared to violate federal servicing standards. According to *12 CFR § 1026.41* and *§ 1024.35*, which states services must provide written disclosure for any adjustment to principal, reversal of payments, or changes to ledger status that impact the loan balance. The backdated ledger introduced by Plaintiff at hearing showed arrears prior to the effective date of Loan Modification, which was not supported by a rescission letter, amendment, transaction level audit trail, or Notice of Error. Such requirements prior to a ruling that a default existed acted as a fatal flaw in the ruling of the Special Referee (ROA, 97-98).

Under *CFPB Bulletin 2013-12* and *RESPA (12 USC § 2605)*, material changes to loan status must be communicated clearly and timely to the borrower. None of these requirements were met. Courts have ruled that principal adjustments lacking documentation or clarity constituted ledger fraud and warranted dismissal of foreclosure actions. Such is the position of the Appellants and its 59(e) motion. This Honorable Court should reverse the findings of the Special Referee and dismiss the foreclosure (ROA, 104).

**CONCLUSION**

For the reasons stated, this Honorable Court should reverse the judgment if the Special Referee and,

1. Reverse the order denying Rule 59 (e) Motion to Reconsider;
2. Vacate the foreclosure decree; and
3. Remand the matter for further proceedings consistent with due process and evidentiary requirements.

Respectfully Submitted,

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